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H I G H - T R E A S O N,
A N D O T H E R
C R I M E S a n d M I S D E M E A N O U R S ;
F R O M
The Reign of King RICHARD II.
T O
The End of the Reign of King GEORGE I.

The **F O U R T H** V O L U M E .

With two Alphabetical Tables to the Whole.

The **S E C O N D** E D I T I O N , *with great* A D D I T I O N S .

L O N D O N :

Printed in the Year M.DCC.XXX.

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A Complete
C O L L E C T I O N
 O F
T R I A L S, &c.

CXXXII.

The Trial of TITUS OATES D. D. * *at the King's-Bench,*
for Perjury, May 8. 1685. Paschæ 1 Jac. II.



HIS Day being appointed for the Trial of one of the Causes for our Sovereign Lord the King, and *Titus Oates* for Perjury; the same began between eight and nine in the Morning, and proceeded in the manner following.

First, Proclamation was made for Silence, then the Defendant was called, who appeared in Person, being brought up by Rule from the *King's-Bench* Prison, where he was in custody, and was advised to look to his Challenge to the Jury that were impannel'd to try the Cause.

Oates. My Lord, I am to manage my own Defence, and have a great many Papers and things which I have brought in order to it; I pray I may have some Conveniency for the managing my own Trial.

L. C. J. Ay, ay, let him sit down there within the Bar, and let him have Conveniency for his Papers.

Clerk of Cr. Cryer, swear Sir *William Dodson*.

Oates. My Lord, I except against Sir *William Dodson*.

Mr. At. Gen. What is the Cause of Exception, Mr. *Oates*?

L. C. J. Why do you challenge him?

Oates. My Lord, I humbly conceive in these Cases of Criminal Matters, the Defendant has liberty of excepting against any of the Jurors, without shewing Cause, provided there be a full Jury besides.

L. C. J. No, no, that is not so, you are mistaken in that, Mr. *Oates*,

Oates. My Lord, I am advised so, I do not understand the Law myself.

L. C. J. But we will tell you then, it cannot be allow'd; if Mr. *Attorney* will consent to wave him, well and good.

Mr. At. Gen. No, my Lord, I know no reason for it, I cannot consent to any such thing.

L. C. J. Then, if you will not have him sworn, you must shew your Cause presently.

Oates. My Lord, I cannot assign any Cause.

L. C. J. Then he must be sworn.

Cl. of Cr. Swear him.

Cryer. Sir *William Dodson* take the Book: You shall well and truly try this Issue between our Sovereign Lord the King, and *Titus Oates*, and a true Verdict give according to the Evidence; so help you God.

Cl. of Cr. Swear Sir *Edmund Walsman*.

Richard Aley Esq;
Benjamin Scutt. [Which was done.
 [Who was sworn.

Oates. My Lord, I challenge him.

L. C. J. For what Cause?

Oates. My Lord, he was one of the Grand Jury that found the Bill.

L. C. J. Was he so? that is an Exception indeed; what say you, *Mr. Attorney*?

Mr. At. Gen. My Lord, I believe he was upon one of the Indictments, but I think it was not this.

L. C. J. But if he were in either of them, he cannot be so impartial.

Mr. At. Gen. My Lord, we will not stand upon it, we'll wave him.

Cl. of Cr. Thomas Fowlis.

Oates. Pray let me see that Gentleman. [*Who was shown to him.*]

Are you not a Goldsmith in *Fleetstreet*, between the two Temples?

Fowlis. Yes, I am.

Oates. Very well, Sir, I do not except against you, only I desir'd to know whether it were you or not.

Cl. of Cr. Swear him. [*Which was done.*]

Thomas Blackmore,
Peter Pickering,
Robert Beddingfield,
Thomas Rawlinson,
Roger Reeves, } Sworn.

Edward Kempe, Sworn.

Oates. My Lord, I challenge him.

L. C. J. You speak too late, he is sworn already.

Oates. My Lord, they are so quick, I could not speak, but he was one of the Grand Jury too.

L. C. J. We cannot help it now.

Mr. At. Gen. I did not know that he was so; but to shew that we mean nothing but fair, we are content to wave him.

L. C. J. You do very well, *Mr. Attorney General*; let him be withdrawn.

Cl. of Cr. Mr. Kempe, you may take your ease; swear *Ambrose Isted.* [*Which was done.*]

Henry Collier,
Richard Howard, } Sworn.

Cl. of Cr. Cryer, count these.

Cryer. One, &c. *Sir William Dodson.*

Cl. of Cr. Richard Howard.

Cryer. Twelve good Men and true, hearken to the Record, and stand together, and hear the Evidence.

The Names of the Twelve sworn, were these.

Sir William Dodson,
Sir Edmund Wifeman,
Richard Aley,
Thomas Fowlis,
Thomas Blackmore,
Peter Pickering, } *Jur* } *Robert Beddingfield,*
 } *Thomas Rawlinson,*
 } *Roger Reeves,*
 } *Ambrose Isted,*
 } *Henry Collier,* and
 } *Richard Howard.*

Oates. Before the Counsel opens the Cause, I desire to move one thing to your Lordship.

L. C. J. What is it you would have?

Oates. My Lord, I have three Witnesses that are very material ones to my Defence, who are now Prisoners in the *King's-Bench*, for whom I moved yesterday, that I might have a Rule of Court to bring them up to-day, but it was objected, that they were in Execution, and so not to be brought; I humbly move your Lordship now, that I may have a *Habeas Corpus* for them, to bring them immediately hither.

L. C. J. We cannot do it.

Oates. Pray, good my Lord, they are very material Witnesses for me, and I moved yesterday for them.

L. C. J. You did so, but we told your Counsel then, and so we tell you now, we cannot do it by Law, it will be an Escape.

Oates. My Lord, I shall want their Testimony.

L. C. J. Truly we cannot help it, the Law will not allow it, and you must be satisfied.

Cl. of Cr. Gentlemen, you that are sworn of this Jury, hearken to the Record: By virtue of an Inquisition taken at *Justice-Hall* in the *Old-Bailey*, in the Parish of *St. Sepulchre*, in the Ward of *Faringdon* without, *London*, upon *Wednesday* the 10th of *December*, in the 36th of the Reign of our late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. before *Sir James Smith*, Knight, Mayor of the City of *London*; *Sir George Jefferies* Knight and Baronet, Lord Chief Justice of this Honourable Court; *Sir Thomas Jones* Knight, Lord Chief Justice of the Court of Common Pleas; *William Montague*, Lord Chief Baron of the Exchequer; *Sir James Edwards* Knight; *Sir John Moore* Knight, Aldermen of the said City; *Sir Thomas Jenner* Knight, one of his Majesty's Serjeants at Law, and Recorder of the same City, and others, their Companions, Justices of Oyer and Terminer, by the Oaths of twelve Jurors, honest and lawful Men of the City of *London* aforesaid, who then and there being sworn and charged to enquire for our said Lord the King, and the Body of the City aforesaid, upon their Oaths present, That at the Session of our Sovereign Lord the King, holden for the County of *Middlesex*, at *Hicks's-Hall*, in *St. John's-street*, in the County aforesaid, on *Monday*, to wit, 16 *December*, in the Year of the Reign of our late Sovereign Lord *Charles II.* of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. the thirtieth, before *Sir Reginald Foster*, Baronet; *Sir Philip Matthews*, Baronet; *Sir William Bowls* Kt. *Sir Charles Piffeld*, Knight; *Thomas Robinson*, *Humphrey Wryley*, *Thomas Haricot*, and *William Hempson*, Esquires, Justices of our said Sovereign Lord the King, to enquire by the Oath of Honest and Lawful Men of the County of *Middlesex* aforesaid, and by other ways, manners, means, by which they might better know, as well within Liberties as without, by whom the Truth of the Matter may be better known and enquired, of whatsoever Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings and false Makings of the Money of this Kingdom of *England*, and of other Kingdoms and Dominions whatsoever; and of whatsoever Murders, Felonies, Manslaughters, Killings, Burglaries, and other Articles and Offences in the Letters Patents of our said Sovereign Lord the King, to them, or any four or more of them therefore directed, specified; as also the Accessaries of the same within the County aforesaid, as well within Liberties as without, by whomsoever, howsoever had, made, done or committed; and the said Treasons, and other the Premises, to hear and determine, according to the Law and Custom of this Kingdom of *England*, being assigned by the Oath of *Ralph Wain*, *John Vaughan*, *Richard Foster*, *Thomas Paget*, *Robert Newington*, *Henry Tompkins*, *Robert Hays*, *John Greenwood*, *Peter Stimpson*, *Josias Cresley*, *Richard Richman*, *Augustine Bear*, *John King*, *Nathaniel Brett*, *Francis Fisher*, and *Samuel Linn*, Honest and Lawful Men of the County aforesaid, sworn, and charged to enquire for our said Sovereign Lord the King, and the Body of the County aforesaid, upon their Oaths: It was presented, That *Thomas White*, other-
wise

wife *Whitebread*, late of the Parish of *St. Giles* in the Fields, in the County of *Middlesex*, Clerk; *William Ireland*, late of the Parish aforesaid, in the County aforesaid, Clerk; *John Fenwick*, late of the Parish aforesaid, in the County aforesaid, Clerk; *Thomas Pickering*, of the Parish aforesaid, in the County aforesaid, Clerk; *John Grove*, of the Parish aforesaid, in the County aforesaid, Gent. as false Traitors against the most Illustrious, Serene, and most Excellent Prince, our said late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. their Supreme and Natural Lord, not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and seduced by the Intigation of the Devil: The Cordial Love, and True and Natural Obedience, which faithful Subjects of our said Sovereign Lord the King towards him, should, and of right ought to bear, utterly withdrawing, and contriving, and with all their Might intending the Peace and Tranquillity of this Kingdom of *England* to disturb, and the true Worship of God within this Kingdom of *England* used, and by Law establish'd, to subvert; and Rebellion within this Kingdom of *England* to move, stir up, and procure, and the Cordial Love, and true and due Obedience, which faithful Subjects of our said Lord the King, towards him, the said Sovereign Lord the King, should, and of right ought to bear, utterly to withdraw, put out, and extinguish; and our said Sovereign Lord the King, to Death and final Destruction to bring and put, the four and twentieth Day of *April*, in the Year of the Reign of our late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. the thirtieth, at the Parish of *St. Giles* in the Fields, in the County aforesaid, falsely, maliciously, subtly, advisedly, and traitorously did purpose, compass, imagine and intend, Sedition and Rebellion within this Kingdom of *England* to move, stir up and procure; and a miserable Slaughter among the Subjects of our said Lord the King to procure and cause; and our said late Lord the King from the Regal State, Title, Power and Government of his Kingdom of *England*, utterly to deprive, depose, cast down, and disinherit; and him our said late Sovereign Lord the King to Death, and final Destruction to bring and put, and the Government of the said Kingdom, and the sincere Religion of God, rightly by the Laws of the said Kingdom establish'd, at their Will and Pleasure to change and alter, and the State of this whole Kingdom of *England*, throughout all its Parts well instituted and ordained, wholly to subvert and destroy, and War against our said late Sovereign Lord the King, within this Kingdom of *England* to levy: And those their most wicked Treasons, and traitorous Imaginations and Purposes aforesaid to fulfil and perfect, they the aforesaid *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, with other false Traitors to the Jurors not known, the said four and twentieth Day of *April*, in the Year of the Reign of our said late Sovereign Lord the King, the thirtieth, with Force and Arms, &c. at the Parish of *St. Giles* in the Field, in the County of *Middlesex* aforesaid, falsely, maliciously, subtly, advisedly, devilishly, and traitorously did assemble themselves, unite and meet together, and then and there falsely, maliciously, subtly, advisedly, devilishly, and traitorously,

did consult and agree our said late Sovereign Lord the King to Death, and final Destruction to bring and put, and the Religion within this Kingdom of *England*, rightly, and by the Laws of the same Kingdom establish'd, to the Superstition of the *Romish* Church, to change and alter; and the sooner to fulfil and perfect their said most wicked Treasons, and traitorous Imaginations and Purposes, they, the said *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other false Traitors of our said late Sovereign Lord the King, to the Jurors unknown, afterwards, to wit, the same 24th Day of *April*, in the said 30th Year of our said late Sovereign Lord the King, at the aforesaid Parish of *St. Giles* in the Fields, in the County aforesaid, falsely, subtly, advisedly, devilishly, and traitorously among themselves, did conclude and agree, that they the aforesaid *Thomas Pickering*, *John Grove*, him the said late Sovereign Lord the King should kill and murder: And that they the said *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors to the Jurors unknown, a certain Number of Masses between them, then and there agreed for the Health of the Soul of him the said *Thomas Pickering*, therefore should say, celebrate and perform, and therefore should pay unto the said *John Grove* a certain Sum of Money, between them then and there agreed. And the Jurors aforesaid, upon their Oath aforesaid, did further present, that the said *Thomas Pickering* and *John Grove*, upon the Agreement aforesaid, then and there falsely, subtly, advisedly, maliciously, devilishly and traitorously did take upon them, and did promise to the said *Thomas White*, alias *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors of our late said Sovereign Lord the King, to the Jurors aforesaid unknown, then and there, falsely, subtly, advisedly, maliciously, devilishly, and traitorously, did promise that they the said *Thomas Pickering* and *John Grove* would kill and murder our said late Sovereign Lord the King; and they, the said *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other false Traitors of our said late Sovereign Lord the King, afterwards, to wit, the said four and twentieth Day of *April*, in the thirtieth Year aforesaid, at the aforesaid Parish of *St. Giles* in the Fields, in the County of *Middlesex* aforesaid, subtly, advisedly, maliciously, devilishly, and traitorously, did severally every one of them give their Faith each to the other, and upon the Sacrament then and there traitorously did swear and promise, to conceal, and not to divulge their said most wicked Treasons and traitorous Compassings, Consultations and Purposes so between them had, him, our said late Sovereign Lord the King, traitorously to kill and murder, and the *Romish* Religion in this Kingdom of *England* to be used, to introduce, and the true Reformed Religion in this Kingdom of *England* rightly, and by the Laws of the same Kingdom established, to alter and change; and that the aforesaid *Thomas Pickering*, and *John Grove*, in Execution of their traitorous Agreement aforesaid, afterwards, to wit, the same four and twentieth Day of *April*, in the thirtieth Year aforesaid, and divers other Days and Times after, at the aforesaid Parish of *St. Giles* in the Fields, in the County aforesaid, Muskets, Pistols, Swords, Daggers, and other offensive and cruel Weapons, him, our said late Sovereign Lord the King, to kill and

murder, falsely, subtly, advicedly, maliciously, and traitorously did prepare, and obtain for themselves, and them had and kept; and that they the aforesaid *Thomas Pickering* and *John Grove* afterwards, to wit, the said four and twentieth Day of *April*, in the thirtieth Year aforesaid, and divers Days and Times afterwards, with Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, and in other Places within the County of *Middlesex* aforesaid, falsely, subtly, advicedly, maliciously, devilishly, and traitorously did lie in wait, and endeavour our said late Sovereign Lord the King to murder, and that the said *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors to the Jurors unknown, afterwards, to wit, the same four and twentieth Day of *April*, in the thirtieth Year aforesaid, at the Parish aforesaid, in the County of *Middlesex* aforesaid, falsely, subtly, advicedly, maliciously, devilishly and traitorously did prepare, persuade, excite, abet, comfort and counsel four other Persons, Men to the Jurors unknown, and Subjects of our said late Sovereign Lord the King, him our said late Sovereign Lord the King traitorously to kill and murder, against the Duty of their Allegiance, against the Peace of our said late Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided; and thereupon it was so far proceeded, that afterwards, to wit, at the Court of Goal-Delivery of our Sovereign Lord the King, of *Newgate*, at Justice-Hall in the *Old-Bailey*, in the Suburbs of the City of *London*, in the Parish of *St. Sepulchre*, in the Ward of *Faringdon* without, *London* aforesaid, the seventeenth Day of *December*, in the thirtieth Year aforesaid, before the Justices of our said Lord the King, then and there being present, held by Adjournment for the County of *Middlesex* aforesaid, before whom the Indictment aforesaid was then depending, came the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove* under the Custody of *Sir Richard How*, Kt. *Sir John Chapman* Kt. Sheriffs of the County of *Middlesex* aforesaid, into whose Custody, for the Cause aforesaid before that were committed, being there brought to the Bar in their proper Persons, and immediately being severally spoken unto concerning the Premises above charged upon them, how they would acquit themselves thereof; the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove* did say that they were not thereof guilty, and for the same, for good and bad, they severally put themselves upon the Country, and by a certain Jury of the Country on that behalf, in due manner impanel'd, sworn and charged, then and there, in the same Court before the Justices of Goal-delivery aforesaid were tryed, and that upon that Trial between our said late Sovereign Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove*, at *London* aforesaid, to wit, at Justice-Hall in the *Old-Bailey* aforesaid, in the Parish and Ward aforesaid, the Defendant *Titus Oates*, by the Name of *Titus Oates*, late of the Parish of *St. Sepulchre* aforesaid, in the Ward aforesaid, Clerk, was a Witness produced on the behalf of our late Sovereign Lord the King upon the Trial aforesaid, and before the aforesaid Justices of Goal-delivery in the Court aforesaid, then and there held, upon the Holy Evangelists of God, to speak and testify the Truth, the whole Truth, and nothing but the Truth of, and in the Premises between our said late Sovereign Lord the King, and

the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove*, put in Issue, was duely sworn; and that he, the aforesaid *Titus Oates*, then and there, in the Court of Goal-delivery aforesaid, upon his Oath aforesaid, upon the Indictment aforesaid, at the Parish and Ward aforesaid, by his own proper Act and Consent, of his most wicked Mind, falsely, voluntarily, and corruptly did say, depose, swear, and to the Jurors of the Jury aforesaid, then and there sworn, and impanel'd to try the Issue aforesaid, between our said late Sovereign Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove*, did give in Evidence, that there was a traitorous Consult of Jesuits that were assembled at a certain Tavern, called the *White Horse* Tavern in the *Strand*, (in the *White Horse* Tavern in the *Strand*, in the County of *Middlesex* aforesaid, meaning) upon the four and twentieth Day of *April*, in the Year of our Lord 1678. At which Consult, *Whitebread*, *Fenwick*, *Ireland*, (the aforesaid *Thomas White* alias *Whitebread*, *John Fenwick*, and *William Ireland*, meaning) and he the said *Titus Oates*, were present; and that the Jesuits aforesaid did separate themselves into several lesser Companies, and that the Jesuits aforesaid came to a Resolution to murder the said our late Lord the King, and that he, the said *Titus Oates*, did carry the Resolution aforesaid from Chamber to Chamber, and did see that Resolution signed by them (the aforesaid Jesuits meaning;) whereas in truth and in deed, the aforesaid *Titus Oates* was not present at any Consult of the Jesuits at the *White Horse* Tavern aforesaid in the *Strand*, in the County of *Middlesex* aforesaid, upon the 24th of *April*, in the Year of our Lord 1678, nor did carry any Resolution to murder our said late Lord the King, from Chamber to Chamber by any Persons to be signed. And so he, the aforesaid *Titus Oates*, on the 17th Day of *December*, in the thirtieth Year aforesaid, at the Justice-Hall aforesaid, in the Court aforesaid, upon the Trial aforesaid, upon the Indictment aforesaid, between our said late Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering*, and *John Grove*, so as aforesaid had, by his own proper Act and Consent, and of his most wicked Mind, falsely, voluntarily, and corruptly in Manner and Form aforesaid, did commit voluntary and corrupt Perjury, to the great Displeasure of Almighty God, in manifest Contempt of the Laws of this Kingdom of *England*, to the evil and pernicious Example of all others in like case offending, and against the Peace of our said late Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been arraign'd, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon the Country, and his Majesty's Attorney-General likewise; which Country you are; your Charge is to enquire, whether the Defendant be guilty of this Perjury and Offence whereof he is now indicted, or whether not guilty: If you find him guilty, you are to say so; if you find him not guilty, you are to say so, and no more, and hear your Evidence. Cryer, make Proclamation.

Oates, Hold, Sir, I beg one Favour of your Lordship, to give me leave to have that part of the Record, wherein I am said to have sworn such and such things, read distinctly in *Latin*.

L. C. J. Let it be read in *Latin*.

Cl. of Cr. *Juravit & jur' jurat' prædixit ad tunc & ibidem jurat' & impanelat' ad triend' exitum prædixit inter diæ' D'num nostrum Regem & præfat' Will'm Ireland, Thomam Pickering, & Johannem Grove*

in Evidentiis dedit, quod fuit proditoria Consultatio, Anglice, Consul' Jesuit' qui Assenblat' fuer' apud quandam Tabernam vocat' the White Horse Tavern in le Strand, (Le White Horse Tavern in le Strand in Com' Mid' prædiæ innuendo) super vicesimum quartum diem April' Ann. Dom. millesimo sexcentesimo, septuagesimo octavo, ad quam quidem Consultationem, Whitebread, Fenwick, Ireland, (prædiæ Thomam White aliàs Whitebread, Johannem Fenwick, & Will'm Ireland innuendo) & præfat' Titus Oates fuer' præsent' & quod Jesuitæ prædiæ sese separaver' in separales minores Conventus quodque Jesuitæ prædiæ venerunt ad Resolutionem ad murdrand' dictum D'num Regem, & quod ipse idem Titus Oates portavit Resolutionem prædiæ à Camerâ ad Cameram, & videbat Resolutionem illam signat' per ipsos (præfat' Jesuitas innuendo.) That is the Perjury that you are said to have sworn.

Oates. Pray go on, Sir, *Ubi revera*—

Cl. of Cr. *Ubi revera* & in prædiæ Titus Oates non præsens fuit ad aliquam Consultationem Jesuit' apud le White Horse Tavern prædiæ in le Strand, in Com' Mid' prædiæ super vicesimum quartum diem Aprilis Anno Domini millesimo sexcentesimo septuagesimo octavo, nec portavit aliquam Resolutionem ad dict' D'num Regem murdrand' à Camerâ ad Cameram per aliquas Personas signand'.

Mr. *Just. Wilkins*. Now, you have read it, go on, Sir, to make your Proclamation.

Cl. of Cr. Cryer, make an O-yes.

Cryer. O-yes! If any one can inform our Sovereign Lord the King, the King's Serjeant, the King's Attorney-General, or this Inquest now taken concerning the Perjury and Offence, whereof the Defendant *Titus Oates* stands indicted; let them come forth, and they shall be heard, for now he stands upon his Discharge.

Mr. *Phipps*. May it please your Lordship, and you Gentlemen of the Jury—

Oates. My Lord, I desire your Lordship and the Court would be of Counsel for me in one thing, which I take to be a Fault and Error in my Indictment.

L. C. J. Look you, Mr. *Oates*, whatever you have to say of that nature, you must not speak to it now, you will have your time as to that hereafter, in case you be convicted.

Oates. My Lord, I have but one small Exception to open to you.

L. C. J. We are now upon the Fact only.

Oates. My Lord, I beg you would give me leave only to tell you of a Mistake in the Indictment, which I hope, when I have opened, will satisfy your Lordship, that it ought not to be put upon me or the Court to try this Cause; or to be sure, if there should be a Conviction, I hope I may move an Arrest of the Judgment.

L. C. J. So I tell you you may, but not now.

Oates. Good my Lord, hear me but a few Words; the Indictment charges me to have given such and such Evidence, that there was such a Consult of the Jesuits at the *White Horse Tavern* in the *Strand*, the 24th of *April* 1678. that the Jesuits did afterwards divide themselves in several lesser Companies, that they came there to a Resolution to murder the late King, and that I swore that I carried that Resolution from Chamber to Chamber, and saw the Resolution signed by them, so the Word is, *Signal'*; now the Perjury assigned is, that I was not present at that Consult, nor did carry the Resolution from Chamber to Chamber to be signed, and there the Word is *Signand'*; now I conceive if *Signal'* be the

Word, that is used in setting forth the Oath that I made, the Assignment of the Perjury ought to follow that Form, and the Word there ought to be *Signal'* too; being *Signand'*, I take that to be an Error.

L. C. J. Look, that is not proper at this time, as I told you at first; but withal I do not think there is any great Matter in what you say.

Mr. *At. Gen.* Either I do not understand Mr. *Oates* what he means by the Objection, or he will find himself much mistaken in it.

L. C. J. Well, well, we have nothing to do with that now; go on with the Cause.

Mr. *Phipps*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against *Titus Oates* for Perjury, which Indictment sets forth, that *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering* and *John Grove*, the 16th of *December*, in the thirtieth Year of the late King, at the *Old-Bailey*, were indicted of High Treason for Conspiring the Death of the King, and that *Ireland*, *Pickering*, and *Grove*, were tryed the 17th of *December* in that Year, and upon that Indictment *Titus Oates* was produced as a Witness on the behalf of the King against the said *Ireland*, *Pickering* and *Grove*, being sworn to give Evidence to the Jury that were impannelled and sworn to try that Cause; he did swear and give in Evidence that there was a treasonable Consult of the Jesuits at the *White Horse Tavern* in the *Strand*, (meaning the *White Horse Tavern* in the *Strand*, in the County of *Middlesex*) the 24th of *April* 1678. at which Consult, *Whitebread*, *Fenwick*, and *Ireland*, and the said *Titus Oates* were present, and that they separated themselves into several lesser Clubs, and came to a Resolution to murder the King, and that he, the said *Titus Oates*, carried the said Resolution from Chamber to Chamber, to be signed by them, meaning the Jesuits; whereas in truth and in fact, he, the said *Titus Oates*, was not present at any such Consult, the four and twentieth of *April*, 1678. nor carried any such Resolution from Chamber to Chamber to be signed; and he, the said *Titus Oates*, the 17th Day of *December*, in the thirtieth Year aforesaid, at the *Old-Bailey* aforesaid, upon the Trial aforesaid, on the Indictment aforesaid, between the King, and the said *Ireland*, *Pickering*, and *Grove*, so as aforesaid had, by his own proper Act and Consent of his most wicked Mind, falsely, voluntarily and corruptly in manner and form aforesaid, did commit wilful and corrupt Perjury; and this is laid to be to the Dishonour of God, in Contempt of the Law, to the evil Example of others in the like case offending against the King's Peace, Crown and Dignity. To this he has pleaded Not Guilty, and that is the Issue that you are to try; if we prove him Guilty, we question not but you will find him so.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen that are sworn, I am of Counsel in this Cause for the King, and our Case stands thus: The Defendant stands indicted for corrupt and wilful Perjury, for what he swore at the Trial of *Ireland*, and that which he swore was this, in order to convict the Prisoners then at the Bar of the High Treason they were accused of: *Oates* did swear, that upon the 24th of *April*, 1678. there was a Consult of Jesuits held at the *White Horse Tavern* in the *Strand*, where *Ireland* and several other Jesuits were present, and their Business was to consult how they might murder and destroy the King, and

subvert the Government, and there they came to a Resolution that *Pickering* and *Grove* should kill the King; and he was present at the Debate, and he carried the Resolution from Chamber to Chamber, where they had separated themselves in lesser Numbers; and there he saw the Resolution signed: and this is the Matter that he swore, upon which this Indictment is founded. And, Gentlemen, we do charge that this was a false Oath, and in a point expressly to the Matter then in Controversy before that Court, for we shall prove he was beyond Sea at that time, and on that day; and in order to his Conviction we shall make out by clear Evidence to you as full and plain as ever was given, that from *Christmas* before, which was in *December 1677*. till *Midsummer* after, which was the latter end of *June 1678*. *Oates*, that swears this Consult in *April*, was at *St. Omers*, and in all that time was not absent from the College there above 24 Hours, and that but once only, which was in *January* when he played Truant, and went to *Watton*, which is about two Miles from *St. Omers*, but otherwise he was all along in the College. And, my Lord, that we may give such a satisfactory Evidence as may make it undeniably plain to the Jury, I desire your Lordship, and you Gentlemen of the Jury, would please to observe some particular Periods of Time, that I shall open for the better clearing our Evidence methodically; and the first Period of Time is from *Mr. Hillsley's* leaving *St. Omers*; now he left *St. Omers* the 14th of *April* Old Stile, which is the 24th of *April* New Stile, and then when he came away, he left *Oates* there at *St. Omers*. *Mr. Hillsley* when he came into *England*, in *Kent* in his Journey to *London*, meets one *Mr. Burnaby*; this was I say in *Mr. Hillsley's* Return into *England* from *St. Omers*, which he left ten Days before the time assigned by *Oates* for this Consult, at the *White Horse* Tavern in the *Strand*. And the next Period is, *Mr. Burnaby* was going to *St. Omers*, and there he arrives in Time the 21st of *April* Old Stile, and there he finds *Mr. Oates*, who swore he was then in *London*: and by the Evidence you will hear that *Mr. Oates*, according to his usual Custom, and according to that Virtue he is endowed with, very boldly insinuates himself into this Gentleman's Company, as he uses to do with all new Comers; and you will hear from *Mr. Burnaby* himself, and many others, that from the time of his coming to *St. Omers*, which was the 21st of *April*, he convers'd with *Mr. Oates* several Days, every Day till after the 24th of *April* Old Stile at *St. Omers*. Then, my Lord, another Period of Time that I would desire you to observe, is, from *Mr. Pool's* coming from *St. Omers*, which was in Time the 25th of *April* Old Stile, the very Day after the Day that this Consult was sworn to be on; and when he came from *St. Omers*, you will hear from many Witnesses that he left *Oates* there, and there he stayed. For, my Lord, we shall, besides these particular times of these Gentlemen's coming over who left him there, prove the very Day when he left *St. Omers*, and that was the end of *Midsummer-day* following, which was the 23d of *June*; then was the time when *Oates* came first from *St. Omers* to *England*, and we shall prove he took his leave of them then. My Lord, we have many other Circumstances that will unanswerably strengthen this Evidence, and shew that our Witnesses testify nothing but the Truth; one particularly is this: This Gentleman being a Novice of the House, was Reader in the *Sodality*, as they call it, we shall

prove that; for every *Sunday* and *Holiday* throughout all *April* and *May*, he did officiate in that place, and did read to the Society according as the Custom there is; and we shall prove another particular thing, that upon this 24th of *April* he was in the College, by a particular Circumstance, and that by several Witnesses: so that, Gentlemen, not to detain you with any long Opening of the Matter, if we prove this that I have opened, as we shall with a Cloud of Witnesses, it will make an end of the Question. We shall first call our Witnesses to prove that he swore at that Trial, that such a Consult was, and he was at it, and then if we prove that he was at another Place beyond Sea, at such Distance that it is impossible for him to be here; I do not doubt but the Court and the Jury will conclude, he hath wilfully and corruptly forswore himself; the sad Effects of which we are all Witnesses of; it was to take away the Lives of his Fellow-Subjects wrongfully; and it will appear to the World, he has been one of the greatest Impostors that ever did appear upon the Stage, either in this Kingdom, or in any other Nation.

Mr. Sol. Gen. We will now go on with our Evidence, and prove all the Parts of *Mr. Finch*. the Indictment, and first produce the Record of the Trial of *Ireland*, and then by Witnesses, *viva voce*, that were present at that Trial, we shall prove what he swore, and then prove that Oath of his to be false. Swear *Mr. Swift*. [Which was done.]
Where is the Record of *Ireland's* Trial?

Mr. Swift. Here it is, my Lord.

Mr. Recorder. Is that a true Copy, Sir?

Mr. Swift. Yes, I examin'd this from the Record, it is a true Copy.

L. C. J. Read it.

Mr. At. Gen. If *Dr. Oates* does desire the whole may be read, let it be so; otherwise a Word of it may serve, it being only an Inducement.

Oates. Yes, I desire it may be all read.

L. C. J. It must be read, if he will have it.

Mr. Sol. Gen. Well, I submit it, I did only offer it to save the time of the Court.

Oates. I would save the time of the Court too all that I can; but I think it may be material for me to have the whole read.

L. C. J. In God's name let it be read, we will not hinder you in any thing that may be for your Defence.

Cl. of Cr. Memorandum quod —

Mr. At. Gen. Now this long Record in *Latin* is read, I would fain know whether it be to any great purpose, but only to spend Time?

L. C. J. Nay, I think it has not been very edifying to a great many; do you think, *Mr. Oates*, that the Jury, who are Judges of this Fact, do understand it?

Oates. I cannot tell, may be they may, my Lord.

Mr. Just. Withins. Do you understand it yourself, *Mr. Oates*?

Oates. That's not any Question here; but to oblige the Court and the Jury, I desire it may be read in *English* too.

L. C. J. No, the Court understands it well enough, and they can tell the Jury what it is; it is only the Copy of a Record, to prove that *Ireland* was tried for High Treason at the *Old Bailey*, the 17th of *December 1678*.

Mr. Sol. Gen. Now, my Lord, we will call our Witnesses, to swear what *Oates* did at that Trial swear: Pray swear *Mr. Foster*. [Which was done.]
Mr.

Mr. *At. Gen.* Pray, Mr. *Foster*, will you acquaint the Court and the Jury, whether Dr. *Oates* was produced as a Witness at *Ireland's* Trial, and what he did there depose about a Consult in *April* 78.

Mr. *Foster*. My Lord, I was so unhappy as to be one of that Jury, by whom Mr. *Ireland*, Mr. *Pickering*, and Mr. *Grove* were try'd.

Jury-men. My Lord, we desire that Mr. *Foster* would lift up his Voice, for we cannot hear him.

Mr. *Foster*. Truly, my Lord, I have been very sick of late, and am not now very well, and therefore cannot speak louder than I do.

L. C. J. Go nearer the Jury, and speak as loud as you can.

Mr. *Foster*. My Lord, I say, I did see Mr. *Oates* produced as an Evidence at the Sessions in the *Old-Bailey*, where I was so unhappy as to be a Jury-man, when Mr. *Pickering*, Mr. *Ireland*, Mr. *Grove*, and Mr. *Whitebread* were try'd.

Mr. *At. Gen.* When was that ?

Mr. *Foster*. It was in *December* 78.

Mr. *At. Gen.* And what did *Oates* then swear ?

Mr. *Foster*. I did see Mr. *Oates* sworn as an Evidence there, in behalf of the King, against the Prisoners; and he did then swear, that there was a Meeting of several Jesuits at the *White-horse* Tavern in the *Strand*, upon the 24th of *April* 78. and that Mr. *Whitebread*, Mr. *Ireland*, and Mr. *Fenwick* were present at the Meeting, and there they did consult the Death of the King, and the altering of the Religion; and some went away, and others came: at last they reduced themselves into several smaller Companies or Clubs, and they came to a Resolution, that *Pickering* and *Grove* should go on to assassinate the King, for which the one was to have 1500 Pound, and the other 30,000 Maffes, and that this Resolution was drawn up by one *Mico* (if I am not mistaken in his Name) I have it in my Notes I then took of the Evidence; and he swore further, that he himself went with this Resolution to several of their Chambers; he went to *Whitebread's* Chamber, and saw *Whitebread* sign it; he went to *Fenwick's* Chamber, and saw *Fenwick* sign it; and went to *Ireland's* Chamber, and saw *Ireland* sign it; and this was upon the 24th of *April* 78. My Lord, I am positive in this, for I had the good-hap to take the Notes at the Trial for my own help, being a Jury-man, and I never look'd upon those Notes afterwards, till the printed Trial came out, and then I compared my Notes with the Print, and found them to agree, and I have kept them ever since by me, and this is all under my own Hand as I have testified.

Oates. My Lord, may I ask this Gentleman a Question ?

L. C. J. Ay, if the King's Counsel have done with him.

Mr. *At. Gen.* Yes, my Lord, we have done with him.

Mr. *Foster*. Pray, my Lord, give me leave to sit down, for I am not able to stand.

Oates. My Lord, I desire you to ask that Gentleman, whether in the Oath that I took, I call'd it a Consult, or I call'd it a Traitorous Consult.

Mr. *Foster*. Truly I think you call'd it both, if I am not mistaken; but if your Lordship please, I will look upon my Notes.

L. C. J. You may look upon your Notes to refresh your Memory, if you will.

Mr. *Just. Withins*. Truly I think if it were a Consult to murder the King, it must be a traitorous one without doubt.

Oates. Sir, that is not to the purpose, my Question is, what I swore it was.

L. C. J. He tells you, he believes you did swear both ways.

Mr. *Foster*. At that Consult he said such a Resolution was taken, and I think he called it a Traitorous Consult.

Oates. If you please, I'll tell your Lordship the Reason, why I asked that Question.

L. C. J. No, you may save yourself the trouble of that, you best know the reason of your own Questions; he has given you a satisfactory Answer.

Oates. Then if your Lordship please, ask him this Question, whether I swore that all these three Jesuits were present at one time, or how many of them ?

L. C. J. You hear the Question, what say you to it ?

Mr. *Foster*. Sir, you swore that *Ireland*, *Fenwick* and *Whitebread* were at that Consult, but whether they were all three of them there at one time, I cannot tell, or which of them were together; but this you did swear, that they were there, and came to such a Resolution, and you carried it to all their Chambers, and did see them sign it.

Mr. *Just. Withins*. He gives you a plain Account, what you did swear, I think, Mr. *Oates*.

Oates. Very well, my Lord, I would ask him a third Question, if you please.

L. C. J. Ay, in God's Name ask him as many Questions as you will.

Oates. Whether did I swear that it was resolved to kill the King at the *White-Horse* Tavern, or whether that Resolution was made after they separated themselves into lesser Clubs ?

L. C. J. Mr. *Foster*, this is his Question, whether you did apprehend by what he swore, that he affirmed, the Resolution to kill the King was made at the *White-Horse* Tavern, or afterwards when they were divided ?

Mr. *Foster*. They came to a Resolution, you said, at the *White-Horse* Tavern, and the Resolution was there drawn up by one *Mico*, I think, and it was carried by you, for every one to sign it from Chamber to Chamber; for I remember you were asked the Question, whether you saw them sign it, and you answered that you did carry it, and saw them sign it.

Mr. *Just. Withins*. He speaks very plain, Mr. *Oates*.

L. C. J. He answers your Question very fully.

Oates. Ay, my Lord, so he does, I am glad of it.

L. C. J. Have you any more Questions to ask him ?

Oates. I would ask him another Question; whether I did swear, that I did carry this Resolution from Chamber to Chamber to be signed, or that I carried it from Chamber to Chamber, and saw them sign it.

Mr. *Foster*. You did swear that you carried the Resolution from Chamber to Chamber, and saw them sign it.

Oates. But did you remember it so particularly, as to say, which you swore, whether I did carry it to be signed, or carried it, and saw them sign it ?

Mr. *Foster*. You said, you carried it to be signed, and you saw it signed.

L. C. J. He tells you for Satisfaction in that Point, that he does remember you did swear it both ways.

Oates. He does say so indeed, but whether it was so or no, is a doubt.

L. C. J. That will be a Question by and by, it may be; if he be in the wrong, I suppose you can rectify him.

Oates. We are now, my Lord, upon my Oath, and therefore it concerns me to enquire whether I swore as is laid in the Indictment.

L. C. J. You say right, it does so.

Oates. And I rather ask these Questions, my Lord, because it is six Years ago since that Trial.

L. C. J. I hope you have not forgot what you swore, have you?

Oates. My Lord, I think it is fair for me to ask the Witnesses what they remember after so long a time.

L. C. J. 'Tis very fair, no body says any thing to the contrary.

Oates. Then, my Lord, I hope I may ask this Gentleman how he comes to remember all this after so long a time?

L. C. J. He has told you already, but tell it him again, *Mr. Foster.*

Mr. Foster. Truly it is so long ago, that had I not taken all these Notes at the Trial, I had not been able to have given so good an Account.

L. C. J. 'Tis a very good reason.

Oates. 'Tis so, my Lord, I have subpoena'd others of the Jury, and they will, I suppose, give you as good an Account.

L. C. J. Have you done with him then?

Oates. I have one Question more to ask *Mr. Foster*, and that is, whether I swore they met all in one Room, at the *White-Horse* Tavern, or in more than one?

Mr. Foster. You swore they were in several Rooms.

Oates. Then I would ask him this Question, my Lord, whether he were then satisfied that *Ireland* was guilty of the High Treason he was then indicted of?

L. C. J. The meaning of the Question is, I suppose, whether you did believe *Mr. Oates* at that time.

Mr. Foster. Yes, my Lord, I had no reason to the contrary.

L. C. J. But I would ask you a Question then *Mr. Foster.* Do you believe him now? Do you think, *Mr. Oates*, he would have found him guilty, if he had not believed the Evidence against him?

Oates. We know how Juries have gone alate.

L. C. J. Ay, very strangely indeed, *Mr. Oates*, and I hope so as we shall never see them go again.

Mr. Foster. My Lord, I have lived so long in the City of *London* without any Blemish, that I hope it will not be thought I would give corruptly a Verdict against my Conscience.

Oates. My Lord, I speak of later Times than *Ireland's* Trial.

L. C. J. He is an honest Man, I know him.

Oates. Good my Lord, be pleased to hear me.

L. C. J. Nay, you shall hear me, as well as I shall hear you, I'll assure you that, *Mr. Oates*, in plain *English*: ask as many Questions of the Witnesses as you will, that are proper to be asked; but I'll have no Descants, nor Reflections: I know him, and he is very well known in the City of *London*, he is a Man of very considerable Quality, and very good Repute.

Oates. I beseech your Lordship to forgive me, if I mistake in my Questions, I do assure you I design no Reflections on *Mr. Foster*.

L. C. J. Ask what Questions you will, but do not reflect.

Oates. I desire to ask *Mr. Foster* one Question more, and that is, that he would be pleased to tell the reason why at the beginning of his Evidence he said, it was his unhappiness to be a Juryman at that time?

Mr. Foster. Really, Sir, I think it not a happiness for any Man to be of a Jury, where the Life of a Man is in question. I assure you for myself, I never accounted it so, and if I could have avoided it, I should have been very glad to have been excused.

Oates. I have done with *Mr. Foster*.

Mr. At. Gen. My Lord, thus we prove what *Mr. Oates* swore at the Trial, which *Mr. Oates* himself will not deny; for the Fact, *Mr. Oates* has printed in his Narrative, as we have now proved it.

Oates. I intend to produce some others of the Jury-men by and by.

Mr. Sol. Gen. Now we shall call our Witnesses to prove, that what he then swore was false.

Mr. At. Gen. We call no more to the Point, what he did swear; but go on to disprove what he did then swear.

Oates. My Lord, I would put this Question to the Court, whether this be a Proof sufficient for this Point?

L. C. J. I leave that to the Jury, it is a Point of Fact that they are to try.

Oates. I beseech your Lordship, that the Court would be pleased to give me an Answer.

L. C. J. If you ask impertinent Questions, the Court is not obliged to answer them. Go on, *Mr. Attorney.*

Mr. At. Gen. Call *Martin Hillsley* Esq; and *Henry Thornton* Esq; Swear *Mr. Hillsley.* [Which was done.]

Come *Mr. Hillsley*, pray acquaint my Lord and the Jury what time you came from *St. Omers*, in the Year 78.

Mr. Hillsley. My Lord, I came from *St. Omers*, the 24th of *April* New Stile, where I left the Prisoner, *Mr. Oates*.

L. C. J. From whence did you come, say you?

Mr. Hillsley. From *St. Omers* the 24th of *April*, New Stile.

L. C. J. What Year?

Hillsley. In the Year 78. that is, the fourteenth of *April* here; and the three and twentieth of *April* New Stile, I saw the Prisoner at *St. Omers*, and went to School with him, and on the four and twentieth I came from *St. Omers*, and went to *Calais*, and from thence into *England*; but he was never in my Company all the while I was coming for *England*, though he swore he came over with me.

L. C. J. The three and twentieth of *April* you say you saw him?

Mr. Hillsley. Yes, I was with him, that was the Day before I came from *St. Omers*.

L. C. J. You left him there the Day before you came away, you say?

Mr. Hillsley. I did not see him that Morning that I came away, but here are others that did.

Mr. At. Gen. Was he a Scholar there?

Mr. Hillsley. Yes, my Lord, he was.

Mr. At. Gen. Did you know him very well?

Mr. Hillsley. Yes, my Lord, I did.

Mr. At. Gen. Did he come over into *England* with you?

Mr. Hillsley. My Lord, I came from *St. Omers* to *Calais*, and never saw him; from *Calais* to *Dover*;

I never saw him from *Dover* to *London*, I never saw him all the way; and I am confident, he was not in the same Ship I came over in, for I should have seen him if he had.

Mr. *At. Gen.* Was he for some time before that constantly at *St. Omers*?

Mr. *Hilsley.* We went perpetually to School together.

L. C. J. What time did you take shipping after you went from *St. Omers*?

Mr. *Hilsley.* The very next Day; the Day I went from *St. Omers* was on the *Sunday* morning: On *Monday* I took shipping from *Calais* to *Dover*, and I arrived in *England* at Ten of the Clock the same Night.

Oates. When does he say he arrived in *England*?

L. C. J. He says, he went from *St. Omers* on the *Sunday*, he came that Night to *Calais*, and the next day went on board from *Calais*, and came that Night to *Dover*, that was *Monday* Night.

Mr. *Hilsley.* Yes, I came that Night to *Dover*, and I lay there that *Monday* Night, the next Day was the 26th of *April* New Stile.

Mr. *At. Gen.* Where came you then, from thence?

Mr. *Hilsley.* I came as far as *Bockton-street*, and there I lay four or five Days, and then I came to *Sittenbourn*, and by long Sea from thence to *London*.

Mr. *At. Gen.* Where did you meet Mr. *Burnaby*?

Mr. *Hilsley.* I met him hard by there, at a Relation's of mine.

Mr. *At. Gen.* Do you remember what Day you met him?

Mr. *Hilsley.* I think it was a Day or two before I came away from thence to *London*.

Mr. *Just. Withins.* Had you any Discourse with Mr. *Oates*, about your coming into *England*?

Mr. *Hilsley.* Nothing at all, Sir *Francis*, that I remember.

L. C. J. What time did you come to *London*?

Mr. *Hilsley.* I came within a few Days to *London*, I staid four or five Days there by the way; and I saw Mr. *Burnaby* within four Days, I think, after I came into *England*. It was about *Monday* seven-night after I came from *St. Omers*, that I came to *London*.

Mr. *At. Gen.* That was *May* New Stile.

Mr. *Hilsley.* That is their Stile. It was fo.

Mr. *Sol. Gen.* In our Stile it was the 21st of *April*.

Mr. *Hanseys.* Pray did you give an account to any body, after you came to *London*, that you left *Oates* at *St. Omers* when you came away.

Mr. *Hilsley.* What say you, Mr. *Hanseys*? I did not well understand your Question.

L. C. J. Then mind me, Sir: It was asked of you, whether you had any Discourse with any body, after you came hither, that you had left Mr. *Oates* behind you at *St. Omers*?

Mr. *Hilsley.* I did tell some Persons I left an *English* Parson there, at the same time I came away.

L. C. J. Did you not name him, who it was?

Mr. *Hilsley.* Yes, I named him by the Name he went by there, and that was *Sampson Lucy*.

Mr. *At. Gen.* To whom did you tell it?

Mr. *Hilsley.* To one Mr. *Osbourne*.

Mr. *Sol. Gen.* Did he go by that Name of *Sampson Lucy* in the College?

Mr. *Hilsley.* Yes, he did sometimes, he had three or four Names, he was called sometimes *Titus Ambrosius*.

V O L. IV.

Oates. Now my Lord, I desire I may ask that Gentleman a Question or two.

L. C. J. Ay, if they have done with him.

Mr. *At. Gen.* We have, my Lord.

L. C. J. Then ask him what you will.

Oates. I desire, my Lord, that you would be pleased to ask that Gentleman what Religion he is of; for it is a fair Question, and an equitable one, and that which very nearly concerns me; and I desire to know where he lives.

L. C. J. What Religion are you of, Sir?

Mr. *Hilsley.* I am a *Roman* Catholick.

L. C. J. Where do you live?

Mr. *Hilsley.* I live in *London*, I am of the *Inner Temple*.

L. C. J. He says that he is a *Roman* Catholick, and lives in *London*.

Oates. Pray be pleased, my Lord, to ask him when he went to *St. Omers* first, and how long he stayed there?

Mr. *Hilsley.* My Lord, I was there about six Years, I presume it was about the Year 1672, when I went there first.

Oates. Pray ask him what he did there, what was his Business?

Mr. *At. Gen.* That is not a pertinent Question at all, with submission, my Lord.

Oates. I beseech you, Mr. Attorney, give me leave to ask my own Questions.

L. C. J. Ay, but you must ask fair and pertinent Questions.

Oates. My Lord, I would know what was his Employment there at *St. Omers*?

Mr. *Hilsley.* I know not my self of any particular Employment I had, any more than any of the rest that were there.

L. C. J. But, Mr. Oates, you must not ask any such Questions; what know I, but by asking him the Question, you may make him obnoxious to some Penalty, you must not ask him any Questions to ensnare him.

Oates. My Lord, it tends very much to my Defence to have that Question truly answered.

L. C. J. But if it tends to your Defence never so much, you must not subject him to a Penalty by your Questions.

Oates. The nature of my Defence requires an Answer to that Question.

L. C. J. But shall you make a Man liable to Punishment, by ensnaring Questions? If a Man should ask you what Religion you are of, —

Oates. My Lord, I will tell you by and by my Reason, and I hope a good one, why I ask it.

L. C. J. I do not believe you can have any Reason, but to be sure we must not suffer any such entangling Questions to be asked.

Oates. Pray ask him, my Lord, when I came to *St. Omers*?

L. C. J. When did Oates come to *St. Omers*?

Mr. *Hilsley.* As well as I remember, he came to *St. Omers* either the latter end of *November*, or the beginning of *December*, in the Year 1677. I think it was that Year.

Oates. I desire you would ask him, whether they were not Priests and Jesuits that govern'd that House?

L. C. J. What a Question is that! I tell you 'tis not fit to be asked.

Oates. I demand an Answer to it, upon the Oath he has taken.

L. C. J. And I tell you, upon the Oath you have taken, you are not bound to answer any such Question,

Oates. Good my Lord, let my Questions be answered.

L. C. J. No, Sir, they shall not: How now, do not think to put Irregularities upon us, if you will behave your self as you ought to do, and keep to that which is proper, well and good.

Oates. If your Lordship pleases, I think this very proper for me.

L. C. J. What, to ask such improper Questions as these are?

Oates. Truly, my Lord, I think they are fit Questions to be asked.

L. C. J. But we are all of another Opinion.

Oates. My Lord, I desire to know, whether they are not set on by their Superiours to do this?

L. C. J. That is not a fair Question neither.

Oates. Give me leave to make my Defence, my Lord, I beseech you.

L. C. J. Ay, in God's Name; but I pray you then make it in a regular and becoming way; for I know of no Privilege you have more than other People, to use Witnesses as you do.

Oates. My Lord, I look upon my self as hardly used in the case.

L. C. J. I care not what you look upon your self to be, if you will ask Questions, ask none but fair Questions, and while you keep within Bounds you shall be heard as well as any of the King's Subjects; but if you will break out into Questions that are impertinent, extravagant, or eniaring, we must correct you, and keep you within proper Limits.

Oates. Then, my Lord, I ask whether he was not a Witness at the Trial of the five Jesuits, and at *Langborn's* Trial?

L. C. J. Ay, that is a proper Question, what say you to't, Sir?

Mr. Hillsley. I was so, Sir.

Oates. Pray, my Lord, ask him what Credit he received at those Trials?

L. C. J. What a Question is that to ask any Man!

Oates. My Lord, I think it is a fair Question.

L. C. J. No, indeed, it is not a fair one at all.

Oates. My Lord, I desire to know what induces him to come here as a Witness now, since it appears that now he comes to give an Evidence that he gave six Years ago, and was not believed?

Mr. Hillsley. My Lord, I am subpoena'd.

L. C. J. He has given you an Answer to the Question, though I think it was an idle Question, and not at all to the purpose.

Oates. It may be he may have some particular reason to induce him to it now.

L. C. J. Well, he tells you he came because he was subpoena'd, and that is sufficient: He is not compellable to be a Witness, unless he be subpoena'd; but if a Man will come without a Subpoena, and give Evidence in a Cause, that is no Objection to his Testimony.

Oates. My Lord, I desire to know of him, whether he is to have any Reward for swearing in this Cause?

L. C. J. What say you, Sir, are you to have any Reward for your Evidence?

Mr. Hillsley. None at all as I know of, my Lord, I assure you.

Mr. Just. Withins. He is not paid for his Evidence, Mr. *Oates*.

Oates. If he be or be not, I cannot tell, nor do I know who ever was paid for it.

L. C. J. Have you any more Questions to ask him?

Oates. Pray my Lord, I desire to know what was the occasion of his coming away from *St. Omers*?

Mr. Hillsley. I had finished my Studies.

Oates. Pray, my Lord, be pleased to ask him, if he never heard of any Consult of the Jesuits here in *England*, in the Month of *April* 78, and from whom he did hear of it?

Mr. Hillsley. I did hear of it among the rest of the Students of the College.

L. C. J. What did you hear of?

Mr. Hillsley. I did hear of a Consult of the Fathers in *April* 1678.

Mr. At. Gen. Yes, there was, but not such an one as Mr. *Oates* speaks of, nor was he at it.

Mr. Just. Holloway. For what was that Consult, I pray you?

Mr. Hillsley. It was nothing but a Triennial Congregation about the Affairs of the Society.

L. C. J. What were they to do there?

Mr. Hillsley. My Lord, I was informed among them there, that it was only what they used to have once in three Years for ordinary Affairs.

Oates. My Lord, he pretends to tell when I came thither, I desire to know of him from what time it was he saw me there, and how often?

Mr. Hillsley. Generally every day, as near as I can remember, I think, Mr. *Oates*; you and I, Mr. *Oates*, went to School in the same place.

Oates. Pray, how many Days was I absent from thence in that time you were there?

Mr. Hillsley. You were there generally as often as I, I do not know whether ever you mis'd a Day or no.

Oates. Pray, my Lord, will you ask the Gentleman one Question more, whether he can particularly tell that he did see me every Day at *St. Omers*? For 'tis not enough for him to swear that he saw me there; but he ought to give an account how he comes to know it by some particular Circumstances.

L. C. J. He has given you several Circumstances of his Knowledge, for he says he was there all the while from your coming, till the 23d of *April* New Stile, that he came for *England*; he says he was a Scholar in the same Form and Class with you, and because he does not remember himself to have been absent, he does not remember you to be absent neither.

Mr. At. Gen. And he swears particularly to the very time he came over, which was *April* the 14th Old Stile.

Oates. Well, I have no more Questions to ask this Gentleman.

L. C. J. Then call another.

Mr. Sol. Gen. Cryer. Call Mr. *John Dorrel*.

[*Who was sworn.*]

L. C. J. Look ye, Mr. Attorney, you did open things at the first for Method's sake by Periods of Time; the first was *Hillsley's* coming over, the next was the meeting with *Burnaby*, now pray observe that Method, and call that *Burnaby* next.

Mr. At. Gen. My Lord, we shall call him by and by; but we have not done with this Business about *Hillsley*, we have some Witnesses that will give an Evidence to strengthen and back his Testimony. Come, Mr. *Dorrel*, what have you to say to this Matter?

Mr. Dorrel. My Lord, in *April* 1678, I came from *Brussels* to *England*, where presently after I came, I was with one Mr. *Osbourne* and my Mother; and there was a Discourse between my Mother and him about Religion.

L. C. J. Where was that?

Mr. Dorrel. It was here in *England*.

Mr. At. Gen. Now tell the time when that was.

Mr. Dorrel. As near as I can guess, it was the 15th or 16th of *April* Old Stile, in the Year 1678.

Mr. At. Gen. Well, Sir, go on with your Story.

Mr. Dorrel. My Mother was laughing at his Religion, and telling him some ridiculous Stories, and he replied, there are a great many that are so ignorant, that are bred up in the Religion of the Church of *England*, that they are forced to be sent to the Colleges abroad to be taught, even some of the Clergy of that Church, and particulariz'd in one *Sampson Lucy* alias *Oates*, that was a Scholar at that time at *St. Omers*, as he was assured by a Gentleman that was newly come from thence. My Mother is now sick, or else she would have been here, and would have testified the same I now do.

Mr. Sol. Gen. This Gentleman is a Protestant, Mr. *Oates*.

Oates. What is your Name, Sir, I pray?

Mr. Dorrel. My Name is *John Dorrel*, Sir.

Oates. Were you never at *St. Omers* a Student there?

Mr. Dorrel. I was there, but before your time; Doctor; I had not the Happiness to be there, while you were there.

Oates. I pray, Sir, what Religion are you of?

Mr. Dorrel. I am a Papist now.

Oates. I desire, my Lord, the Court would be pleas'd to take notice of it, he owns he was reconcil'd to the Church of *Rome*.

Mr. Dorrel. Mr. *Oates*, to satisfy you, I went over when I was a Child of 12 or 13 Years old, and so was bred in that Persuasion.

L. C. J. Well, well, we all observe what he says.

Mr. Sol. Gen. Pray swear Mr. *Osbourne*.

[Which was done.

Mr. At. Gen. My Lord, we call this Person only to this Matter. Pray, Sir, will you give the Court and the Jury an Account what Discourse you had with Mr. *Hilsley* about *Oates*, and pray, Sir, tell the time when it was.

Mr. *Osbourne*. My Lord, I went out of Town the 30th of *April*, the Year before the pretended Plot was discover'd by Mr. *Oates*, and I met with Mr. *Hilsley* two or three Days before, and enquiring of him about the Affairs of *St. Omers*, he told me of a Minister of the Church of *England* that was come thither to be a Student there, who went under the Name of *Sampson Lucy*, but his right Name was *Oates*; I ask'd him what he pretended to; did he intend to be of that Order? He told me, he did believe that he would not be admitted for his irregular and childish Behaviour, and that he had left him in the College; and this I afterwards in Discourse told to Madam *Dorrel*, who is a Protestant; and to my Mother, who is since dead.

Mr. At. Gen. Will Mr. *Oates* ask this Gentleman any Questions?

Oates. I only ask him what Religion he is of?

L. C. J. What Religion are you of, Sir?

Mr. *Osbourne*. I am a Roman Catholic, my Lord.

Mr. Sol. Gen. Now, my Lord, we come to call Mr. *Burnaby*. Pray swear him.

[Which was done.

Mr. At. Gen. Mr. *Burnaby*, pray will you acquaint my Lord and the Jury, of the time when you came from *St. Omers* to *England*, and when you met with Mr. *Hilsley*?

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Mr. *Burnaby*. I met with *Hilsley* on the 18th of *April* Old Stile, in the Year 78. then I pursued my Journey the following Day to *St. Omers*.

L. C. J. Where did you meet him?

Mr. *Burnaby*. Between *Sittenbourn* and *Canterbury*, and afterwards I pursued my Journey from *Canterbury* to *Dover*, from thence to *Calais*, and from thence to *St. Omers*. I arrived at *St. Omers* the 21st of *April* Old Stile, which was the 1st of *May* New Stile; upon the 2d of *May* Mr. *Oates* was in my Company, I was walking in the Garden, and he came into my Company.

L. C. J. When was it?

Mr. *Burnaby*. The 2d of *May* New Stile, and the third of *May* again I went into the Garden, and there he was with me again; and the 5th of *May* I saw him again.

L. C. J. Where?

Mr. *Burnaby*. In the *Rhetorick* Form.

L. C. J. But where, in what Place?

Mr. *Burnaby*. At *St. Omers*.

L. C. J. You speak of your own Knowledge, you are sure you saw him there at those times?

Mr. *Burnaby*. Yes, in the *Rhetorick* School, and in the Garden.

Mr. At. Gen. What more do you know of him?

Mr. *Burnaby*. I saw him again the 8th of *May* New Stile, that is the 28th of *April* Old Stile; I mean by New Stile, that Stile which was used in the Place where I was then.

Mr. At. Gen. How long was he there before he went away?

Mr. *Burnaby*. I know he was there from the 2d of *May*, the Day after I came thither, to the 20th of *June*, and then I went away, or thereabouts.

L. C. J. Did you see him daily all that time?

Mr. *Burnaby*. Yes, from Day to Day he was not out of the House.

L. C. J. Were you a Scholar there with him?

Mr. *Burnaby*. Yes, I was.

L. C. J. What Year was that?

Mr. *Burnaby*. In the Year 78.

Mr. At. Gen. Mr. *Oates* may ask him what Questions he will.

Oates. My Lord, he says he went away, I desire to know whither he did go.

Mr. *Burnaby*. I went away the 20th of *June* from *St. Omers*, it is no matter whither I went.

Oates. I desire he may give an account what Religion he is of.

Mr. *Burnaby*. I am a Roman Catholic.

Oates. My Lord, I desire to know whether he be not of that Order.

L. C. J. That I will not ask him, I'll assure you.

Oates. Truly, my Lord, I think it is a very hard matter for me to have Jesuits admitted as Witnesses in such a Cause against me.

L. C. J. I have told you already, you are not to ask any Questions of any Witnesses that may subject them to any Penalty, or make them accuse themselves of any Crime.

Oates. My Lord, I humbly desire he would give an account, whether he were not admitted into the Society.

L. C. J. I tell you, he is not to be ask'd that Question.

Oates. He has own'd it before.

L. C. J. Do you take your Advantage of it, if you can prove it.

Oates. Then, my Lord, I desire to ask him, whether or no he did appear as a Witness at the Trial of the five Jesuits.

Mr. *Burnaby*. No, my Lord, I did not.
Oates. Pray, my Lord, ask him whether he was not fummon'd to appear then.

Mr. *Burnaby*. No, I was not.
Oates. Pray, my Lord, ask him what Reward he is to have for coming, and giving this Evidence.

L. C. J. Are you to have any Reward for being a Witness in this Cause?

Mr. *Burnaby*. None, my Lord, that I know of.
L. C. J. That was a proper Question to be ask'd, and you have a fair Answer to it.

Oates. Pray, Mr. *Burnaby*, by what Name did you go at *St. Omers*?

Mr. *Burnaby*. By the Name of *Blunt*.
 Mr. *At. Gen.* And what Name did he go by there?

Mr. *Burnaby*. Who, Sir?
 Mr. *At. Gen.* Mr. *Oates*.

Mr. *Burnaby*. By the Name of *Sampson Lucy*.
Oates. My Lord, I desire you to ask him whether he did know of any Consult that was to be held here in *London*, in *April 78*. and by whom he knew it?

L. C. J. What say you, Sir, did you know of any Consult?

Mr. *Burnaby*. No, I neither heard of it, nor knew any thing of it.

Mr. *At. Gen.* Now, my Lord, we shall go on to another Period of Time, and that is concerning *Pool*. Swear Mr. *Pool*. [*Which was done.*]

Mr. *Sol. Gen.* Pray will you acquaint my Lord and the Jury, whether you knew Mr. *Burnaby* at *St. Omers*.

Mr. *Pool*. Yes, I did, Sir.
 Mr. *Sol. Gen.* Do you know the time when he came to *St. Omers*?

Mr. *Pool*. No, I do not remember it.
 Mr. *At. Gen.* When did you come over from *St. Omers*?

Mr. *Pool*. The 25th of *April*.
 Mr. *At. Gen.* What Stile?

Mr. *Pool*. Old Stile.
 Mr. *At. Gen.* In what Year?

Mr. *Pool*. In the Year 78.
 Mr. *At. Gen.* Did you know Mr. *Oates* at *St. Omers*?

Mr. *Pool*. Yes, I did know that Gentleman there?

Mr. *At. Gen.* Was he at *St. Omers* that time you were there?

Mr. *Pool*. Yes, he was.
 Mr. *Sol. Gen.* Did you leave him there when you came away?

Mr. *Pool*. Yes, I did leave him there when I came away.

Mr. *Sol. Gen.* Pray tell the Court some particular thing why you remember it, and upon what account you came away.

Mr. *Pool*. Upon the Occasion of my Brother's Death I came over, and I can tell several Particulars of my Journey; I came away upon the *Thursday*, and I came to *London* upon the *Sunday* following.

Mr. *At. Gen.* You are sure you left Mr. *Oates* there then.

Mr. *Pool*. Yes, I am sure I did leave Mr. *Oates* there when I came away, and I came away thence the fifth of *May* New Stile, the twenty-fifth of *April* Old Stile.

Mr. *Sol. Gen.* Pray how long did you know Mr. *Oates* there?

Mr. *Pool*. I knew him there from *Christmas* before that.

L. C. J. You were of the College, were you not?

Mr. *Pool*. Yes, I was a Student there.
L. C. J. You are sure he was there all the while.

Mr. *Pool*. I do not remember he was a Day absent, and if he had gone away, particular Notice would have been taken of it.

L. C. J. Did you see him there two or three Days before you came away?

Mr. *Pool*. I saw him that Morning I came away.
L. C. J. And what time before?

Mr. *Pool*. I saw him two or three Days before that.

L. C. J. Can you name any particular Days?

Mr. *Pool*. I saw him the first of *May*, and the second of *May*, and the fifth of *May*, which was the 25th of *April* Old Stile, and then I came away.

L. C. J. Are you sure you left him there then?

Mr. *Pool*. I am sure I left him there, I can swear it without any difficulty at all.

L. C. J. What do you ask him, Mr. *Oates*?

Oates. I desire to know what Religion he is of.
L. C. J. What Religion are you of?

Mr. *Pool*. I am a *Roman* Catholick.
Oates. I desire your Lordship would ask him, whether he was a Witness at the Trial of the five Jesuits, or at *Langborn's* Trial.

Mr. *Pool*. No, I was never an Evidence before in my Life.

Oates. Pray, my Lord, ask him, whether he was not admitted into the Sodality of the *Virgin Mary*.

L. C. J. No, indeed, I shall ask him no such Question.

Oates. Pray, my Lord, let him answer it.
L. C. J. Prove what you can when it comes to your Turn, but ask him no entangling Questions.

Oates. He has made himself liable to a Penalty by being in that Seminary.

L. C. J. I hope a Man may be at *St. Omers*, and yet not be punish'd for it, Mr. *Oates*.

Oates. It is my Defence to disable the Witnesses against me.

L. C. J. But they must not be ask'd what may make them accuse themselves.

Oates. My Lord, it is hard that the Witnesses shall not be made to answer my Questions.

L. C. J. Pray, Sir, be quiet, we have told you often enough already, you must not think to govern us, it must not be allow'd.

Oates. My Lord, I desire he may be ask'd then, what Reward he has to come, and swear in this Cause.

Mr. *Pool*. My Lord, I do not know that I am so much as to have my Charges borne.

L. C. J. Are you to have any Reward?

Mr. *Pool*. No, my Lord, that I know of.

Oates. Pray, my Lord, I desire he may be ask'd, what was the occasion of Mr. *Hilsley's* coming away from *St. Omers*.

Mr. *Pool*. Indeed I did not examine into the occasion at all, for I was never a Man that meddled or made on any side, but lived quietly in the College, and minded my Studies.

Oates. My Lord, I desire your Lordship to ask him whether he did know of any Consult of the Jesuits in *April 78*. and from whom he knew it.

Mr. *Pool*. I know not of any particular Consult, I heard something in general of a Triennial Congregation, but I cannot speak any thing of my own Knowledge.

Oates. My Lord, I desire to know of him, if he can tell when I came to *St. Omers*.

L. C. J. Do you know when *Oates* came to *St. Omers*?

Mr. Pool. About *Christmas*, as near as I can remember, it was the latter end of *November*.

Oates. How much before or after *Christmas* was it?

Mr. Pool. I cannot tell exactly.

Oates. What Year was it in?

Mr. Pool. In the Year 77.

Oates. I desire to know of him, my Lord, whether he saw me every Day at *St. Omers* at Dinner.

Mr. Pool. I cannot say that ever I knew he was absent any one Day, never three Days I think I may affirm, but only when he was in the Infirmary.

Mr. At. Gen. That's the Place where they go when they are sick.

Oates. Pray, my Lord, ask him by what Name he went, when he was there in the College.

Mr. Pool. By the Name of *Killingbeck*.

Mr. Sol. Gen. By what Name did he go, I pray you?

Mr. Pool. By the Name of *Sampson Lucy*.

Mr. Sol. Gen. Swear *Mr. Henry Thornton*.

[Which was done.]

Mr. At. Gen. *Mr. Thornton*, pray where were you in the Year 78?

Mr. Thornton. At *St. Omers*, my Lord.

Mr. At. Gen. Do you remember *Mr. Oates* there, do you know him?

Mr. Thornton. Yes, I know him very well.

Mr. At. Gen. When did he come thither?

Mr. Thornton. He came there about *Christmas* 77.

Mr. At. Gen. How long did he continue there?

Mr. Thornton. He staid there till *St. John Baptist's* Eve in *June* 78.

Mr. At. Gen. *Midsummer* you mean.

Mr. Thornton. Yes, the Eve of *St. John Baptist*.

Mr. At. Gen. What Stile?

Mr. Thornton. New Stile.

Mr. Sol. Gen. Did you see him there all the while?

Mr. Thornton. Yes, I did see him every Day, I believe, in the Refectory at Dinner-time, and at Night in the Dormitory, where all the Collegians have their Beds: I lay over-against him every Night, I saw him particularly upon the Day of *Hilsley's* Departure, which was the 24th of *April* New Stile, and I saw him the 1st of *May* New Stile, upon the coming of *Mr. Burnaby* to the College; and particularly again I remember him there the 2d of *May*, when my School-fellows exhibited an Action, or Play.

Mr. At. Gen. Was *Mr. Oates* there then?

Mr. Thornton. Yes, I saw him present at it, and I know it by this particular Circumstance, there was a Scuffle between him and another about a Place to see the Play.

Mr. Jones. Did you see him the 23d of *April* Old Stile, that is, the 3d of *May* New Stile, which was the Day after your Play, that you remember?

Mr. Thornton. I do not remember that I did see him that Day, by any particular Circumstance, tho' I believe I did.

Mr. Jones. Do you remember when *Mr. Pool* came away from *St. Omers*?

Mr. Thornton. Yes, I do.

Mr. Jones. When was that?

Mr. Thornton. The 5th of *May* New Stile.

Mr. Jones. Was *Oates* at *St. Omers* at that time?

Mr. Thornton. Yes, he was there then, I am sure.

Mr. At. Gen. Was not he Reader there in the College?

Mr. Thornton. He was Reader in the Sodality, and to my knowledge, he did not miss once from the 24th of *April* New Stile, to the 24th of *May* New Stile, from being there, and reading in the Sodality.

L. C. J. What did he use to read?

Mr. Thornton. Some spiritual Book, or piece of Divinity, or the like, as it was usual to have read every *Sunday* and *Holiday*.

L. C. J. And that is one reason why you conclude he was there all that while, because every *Sunday* and *Holiday* he was to read, and did read.

Mr. Thornton. Yes, my Lord.

Oates. Pray, my Lord, be pleas'd to ask this Gentleman what Religion he is of.

Mr. Thornton. A *Roman* Catholick.

Oates. Where does he live?

L. C. J. Where do you live, *Mr. Thornton*?

Mr. Thornton. I am a *Northumberland* Man, that's my Country.

Oates. My Lord, I desire to know of him, when he did come from *St. Omers*.

Mr. Thornton. I came from *St. Omers*, my Lord, about two Years after that *Oates* went away from thence.

Oates. Pray, my Lord, be pleas'd to ask him, who it was that was Rector or Governour of that House or College.

Mr. Thornton. It was one *Mr. Richard Afby*.

Oates. Pray, my Lord, be pleas'd to ask him what School he was in there.

Mr. Thornton. I was in *Syntax*, my Lord.

Oates. Then, my Lord, I would ask him another Question, and that is this, whether he was not a Witness in behalf of the five Jesuits and *Mr. Langborn*?

Mr. Thornton. No, I was not, my Lord.

Oates. My Lord, I desire to know if he can tell the occasion of *Mr. Hilsley's* coming away from *St. Omers*.

Mr. Thornton. It never concern'd me at all, and I never enquired into it.

Oates. Then, my Lord, I would ask him this Question, why he is so precise as to his Remembrance of what was done in *April* and *May*, when he does not give any account of any other time, nor did the other Witnesses.

L. C. J. Yes, but they do; they give you a particular account from the time of your coming thither, which was about *Christmas*, some say the latter end of *November*, or the beginning of *December*, they are not positive to any particular time, but thereabouts, and so from that time all along till *June*.

Oates. I beg your Lordship's pardon, I did not hear that he said any such thing.

L. C. J. If you will, I'll ask him that Question again for your Satisfaction.

Oates. If you please, my Lord.

L. C. J. Then mind what is said; do you remember that *Oates* was there in *March* before, and in *February* before?

Mr. Thornton. Yes, I particularly remember in *March* before, he did read a ridiculous Book in the Sodality, and he was remarkable in the House by twenty ridiculous Passages.

Oates. I do acknowledge I did in *March* read a pleasant Book, call'd, *The Contempt of the Clergy*.

L. C. J. By whose order did he read that Book in the Sodality?

Mr. *Thornton*. I do not know whether it was by his own Election that he was Reader there, or by the Command of the Prefect of the Studies, that has the Care of the Students, and appoints them their Business.

Oates. Pray, my Lord, be pleas'd to ask him how long he was resident at *St. Omers*.

Mr. *Thornton*. I was there seven Years.

L. C. J. You said he was there in *June* till *Midsummer* Eve.

Mr. *Thornton*. Yes, he was so.

Oates. I own that I was there in *June*, but that was after I return'd from *England*.

L. C. J. When do you say he left the College first?

Mr. *Thornton*. He never left the College from the time of his coming thither first till *Midsummer* Eve, only one time that he was at *Watton*, and that was but a Day or two at most, which is not a League out of Town.

L. C. J. Do you remember him there about *Christmas* time?

Mr. *Thornton*. Yes, my Lord, very well.

L. C. J. When was it he went to *Watton*?

Mr. *Thornton*. About the latter end of *January*, as I do remember, and in *February* above *Shrovetide*, I remember him particularly to be there.

L. C. J. Now, Mr. *Oates*, you see he speaks to other times besides *April* and *May*, and he brings, upon my Word, very notable Circumstances.

Oates. He says he went to School with me there, I think, my Lord?

Mr. *Thornton*. No, I say he was in the same College.

L. C. J. But not in the same Classis, for it seems you were in the Rhetorick Form, and he in the Syntax.

Mr. *Thornton*. My Lord, he went there by reason of his Age, and upon no other account; he might have gone elsewhere with us who were of a lower Form for any great store of Learning he had.

L. C. J. You hear him, I suppose, Mr. *Oates*, he gives no great Commendation of your Scholarship.

Oates. That is nothing to this Question; but pray, my Lord, be pleas'd to ask him, whether he did not hear of a Consult of the Jesuits held here in *England* in *April* 78?

L. C. J. What say you, Sir? Did you hear of any such Consult?

Mr. *Thornton*. Yes, my Lord, I did hear of a Triennial Congregation, such as used to be held by them, but that did not belong to me to enquire into it.

Oates. My Lord, I desire to know of whom he did hear it?

L. C. J. How do you know there was such a Consult, who told you of it?

Mr. *Thornton*. I heard of it in the House, and I had read that it was the Custom of that Society of People, to have such a Meeting once in three Years.

Mr. *At. Gen.* Pray for what purpose did they so meet?

Mr. *Thornton*. As I have been told, it was to send a Procurator to *Rome*, and for their managing their other Affairs, which concern'd their Society.

Mr. *Sol. Gen.* Have the Jesuits usually such a Consult once in three Years, Sir?

Mr. *Thornton*. I was never present at any such Congregation, I was not capable of it.

L. C. J. But was it used to be said so?

Mr. *Thornton*. Yes, my Lord, I have heard it said so, and read of it.

L. C. J. Mr. *Oates*, will you ask him any more Questions?

Oates. No, my Lord.

L. C. J. Well then, go on, Mr. Attorney, and call another Witness.

Mr. *At. Gen.* Swear Mr. *William Conway*.

[Which was done.]

Mr. *Sol. Gen.* Mr. *Conway*, pray will you give my Lord and the Jury an account where you were in the Year 1677, and in the Year 1678?

Mr. *Conway*. I was then at *St. Omers*, my Lord.

Mr. *Sol. Gen.* Do you remember Mr. *Oates* there at any time?

Mr. *Conway*. Yes, my Lord, I do.

Mr. *Sol. Gen.* Pray, at what time was he there, as you remember?

Mr. *Conway*. He came in *December* before *Christmas* 1677, and did not go away till *June* 1678.

Mr. *Sol. Gen.* What time in *June* did he go away?

Mr. *Conway*. About the twentieth of *June*, I think.

Mr. *Sol. Gen.* Were you there all that Year?

Mr. *Conway*. Yes, I was there a Scholar in the College.

Mr. *Jones*. Was he all the time you speak of in the College?

Mr. *Conway*. He lay out one Night.

Mr. *Sol. Gen.* What time was that?

Mr. *Conway*. In *January*, to the best of my remembrance.

Mr. *Sol. Gen.* Could he be out of the College any time and not be mis'd?

Mr. *Conway*. No, my Lord, he could not.

Mr. *Sol. Gen.* Did you mis's him at any time?

Mr. *Conway*. No, my Lord.

Mr. *Sol. Gen.* Was he there in *April* 1678?

Mr. *Conway*. Yes, my Lord.

Mr. *Sol. Gen.* Can you tell any particular Passages that can make you remember it?

Mr. *Conway*. Yes, my Lord, I can.

Mr. *Sol. Gen.* Tell my Lord and the Jury how you can remember it.

Mr. *Conway*. I remember Mr. *Hilley's* Departure, which was the 24th of *April* New Style, and soon after Mr. *Burnaby* came, but I do not know the time exactly; I was desirous to know of Mr. *Burnaby* whether he met Mr. *Hilley* upon the way, and he told me he did meet him, and the next Day I saw Mr. *Oates* and Mr. *Burnaby* walking together very familiarly, and I took particular notice of it at that time, Mr. *Burnaby* being but newly come, so that I took him to have known Mr. *Burnaby* before, or else I concluded him to be a little impudent by his intruding into his Company.

Mr. *Sol. Gen.* Do you remember him in *March* before?

Mr. *Conway*. Yes, Sir.

Mr. *Sol. Gen.* What Particulars do you remember of his being there then?

Mr. *Conway*. I remember him to be there on the *Thursday* in *Mid-Lent*, the Scholars in the College had a particular Recreation, which they call, *Sawing of the Witch*, and Mr. *Oates* was among them, and I was one of them that broke a Pan about his Head for Recreation.

Mr. *Sol. Gen.* Do you remember the 1st of *May*, that there was in your College a Play acted?

Mr. *Conway*. As for the Play, I remember what Part *Equire Pool* acted in it, but I remember not any Particulars that can make me so sure as to swear that *Oates* was there?

Mr. *At. Gen.* Do you remember any scuffling for a Place there?

Mr. *Conway*. I do not remember it of my own Knowledge, I heard of it afterwards.

Mr. *Sol. Gen.* You say that you saw Mr. *Burnaby* and him walking together the next Day after he came?

Mr. *Conway*. Yes, I did so, Sir.

Mr. *Sol. Gen.* Did *Oates* use to read in the *Sodality*?

Mr. *Conway*. My Lord, there was another chosen according to the Custom to read, but Mr. *Oates* took the Book, and did read.

Mr. *Sol. Gen.* Did he read constantly?

Mr. *Conway*. I did never miss him any *Sunday* or *Holiday* all the time.

L. C. J. From what time to what time did he read?

Mr. *Conway*. From a little after *Easter* till he went away.

Mr. *At. Gen.* Is it usually taken notice of in the College, when any Person who is a Student goes away from the College?

Mr. *Conway*. There is nothing more discours'd of among the Scholars than that, when it happens any one goes out of the College.

L. C. J. And pray when did he go away?

Mr. *Conway*. In *June*, about the twentieth, as near as I can remember.

Mr. *Sol. Gen.* Did you observe him at Dinner there constantly?

Mr. *Conway*. Yes, he sat by himself.

Mr. *Sol. Gen.* How came that to pass?

Mr. *Conway*. He sat at a little Table in the Hall by himself, for he pretended, being a Man in Years, he could not diet as the rest of the young Students did, and therefore obtain'd leave to sit alone at a little Table by himself, and he sat next to the Table of the Fathers, to which all the Students were to make their Reverence before they sat down.

L. C. J. He was a very remarkable Man by his sitting by himself; did he sit there always?

Mr. *Conway*. He chang'd his Table once, and I took notice that he sat on the other side of the Refectory.

Mr. *Sol. Gen.* When was that I pray, can you remember?

Mr. *Conway*. That was a little after *Easter*.

Mr. *At. Gen.* Will Mr. *Oates* ask him any Questions?

Oates. Pray, my Lord, will you ask this Gentleman what Religion he is of.

Mr. *Conway*. I am a *Roman* Catholick.

Oates. Pray, ask him where he lives.

L. C. J. Where do you live, Sir?

Mr. *Conway*. Where now at present, my Lord?

L. C. J. Where do you usually live?

Mr. *Conway*. I am a *Flintshire* Man, my Lord.

Oates. Pray ask him what Name he did go by at *St. Omers*.

Mr. *Conway*. By the Name of *William Parry*.

Oates. Pray ask him by what Name he gave his Evidence in at the five Jesuits Trial.

L. C. J. Were you a Witness at the Trial of the five Jesuits?

Mr. *Conway*. Yes, I was.

L. C. J. By what Name did you give your Evidence there?

Mr. *Conway*. By the Name of *Parry*.

Oates. Then I desire the Court to take notice he represented himself by a feign'd Name in a Court of Record.

Mr. *Conway*. I went by both Names, my Lord.
L. C. J. Well, make what Advantage you can of it by and by.

Oates. Pray, my Lord, ask him, if ever he heard of any Consult of the Jesuits held here in *England* in *April* 1678.

Mr. *Conway*. Yes, I did.

Oates. Pray, my Lord, ask him who inform'd him of that Consult.

Mr. *Conway*. I heard it among the rest of the Scholars, and seeing some of the Fathers go over to it, I was told so.

Mr. *At. Gen.* Is it an usual thing for them to have such Meetings?

Mr. *Conway*. They have a Congregation ordinarily once in three Years.

Mr. *Sol. Gen.* Does it go by the Name of a Consult, or what Name has it?

Mr. *Conway*. Some call it a Congregation, and some a Consult.

Mr. *Sol. Gen.* What is the end of such Meeting, as you have heard?

Mr. *Conway*. They say it was to chuse a Procurator to send to *Rome*, and give an account of the Province.

Oates. My Lord, I would ask him another Question, whether he is to have any Reward for giving this Evidence here.

Mr. *Conway*. No, nor that I know of, but what I expect from Almighty God.

Oates. Pray ask him how long he liv'd at *St. Omers*.

Mr. *Conway*. Five Years.

Oates. My Lord, I have done with him.

Mr. *Sol. Gen.* Then call Mr. *Haggerstone*, and swear him. *[Which was done.]*

Mr. *At. Gen.* Mr. *Haggerstone*, pray will you acquaint my Lord and the Jury, were you at *St. Omers* in the Year 1678, with Mr. *Oates*?

Mr. *Haggerstone*. Yes, I was, my Lord, I had the Honour to be of the same Bench with the Doctor of *Salamanca*.

L. C. J. You mean you were of the same Class with him.

Mr. *Haggerstone*. Yes, my Lord, of the same Class.

L. C. J. In what Year was it?

Mr. *Haggerstone*. In the Year 1678.

Mr. *At. Gen.* In what Form were you?

Mr. *Haggerstone*. In the same Bench with Dr. *Oates*, in the Rhetorick Form.

Mr. *At. Gen.* Do you remember Mr. *Oates* in *April* 1678.

Mr. *Haggerstone*. Yes.

Mr. *At. Gen.* What time?

Mr. *Haggerstone*. He spoke unto me on the 25th of *April*.

Mr. *At. Gen.* What Stile do you mean?

Mr. *Haggerstone*. New Stile, Sir; to avoid Confusion, I speak of the Stile of the Place where I was; he ask'd me concerning our School-fellow Mr. *Hillsley*, who was then gone from the College, whether I had heard any thing from him since he went away, and he spoke of an Indisposition he had, for which he prescrib'd him a Medicine of Poppy, and he thought it would do his Business effectually.

L. C. J. Who said so?

Mr. Haggerstone. The Doctor of *Salamanca*; he was call'd *Sampson Lucy* in the College: and likewise he forbid him to chew Tobacco, which he used to do very much; he was call'd *Titus Ambrosius*, he had twenty Names.

Mr. At. Gen. Was he there all *April*, Sir?

Mr. Haggerstone. Yes, he was, Sir.

Mr. At. Gen. Did you know him in *March* before?

Mr. Haggerstone. Yes, he was there all *March* before.

Mr. At. Gen. Was he there in *February*?

Mr. Haggerstone. Yes, as near as I can remember, he was absent but one Day, and then he went to *Watton* in *February*, or else in *January*.

L. C. J. Do you remember when he came thither first?

Mr. Haggerstone. Yes, my Lord, he came in *December* near *Christmas*, as I remember.

L. C. J. Was it about that time, upon your Oath?

Mr. Haggerstone. I speak it upon my Oath, it was.

L. C. J. When did he go away?

Mr. Haggerstone. About the latter end of *June*.

L. C. J. Was he absent any time between *December* and *June*?

Mr. Haggerstone. I do not remember that he was absent, save only in *January* or *February*, and that was not for above a Night, when he went to *Watton*.

L. C. J. Might not he be absent, and you not mind it, or know it?

Mr. Haggerstone. Sure if he had been absent, we could not but have known it.

L. C. J. How so, pray you?

Mr. Haggerstone. If any goes away, 'tis so publick, that it cannot be without notice being taken of it.

Mr. At. Gen. Can you remember by any particular Token he was there in *April* or *May*?

Mr. Haggerstone. He spoke to me on the 29th of *April* New Style, and told me, that there was a Craving *Englishman* had been there to beg an Alms, and there was a Collection made for him among the Scholars, but he said he would give him nothing, for he told me he had been cheated by such an one of some Pieces of Eight in *Spain*; this I remember was the 28th or 29th of *April* New Style. I saw him there the 1st of *May*; upon the 2d of *May* there was an Action of the Scholars, and he was present at it; the 5th of *May* I was at School with him, when Mr. *Pool* went away for *England*, and I heard him about that time preach a pleasant Sermon, for he would undertake sometimes to preach, and he said in it, That the late King *Charles II.* halted betwixt two Opinions, and a Stream of Popery went between his Legs.

L. C. J. Was this in *May*?

Mr. Haggerstone. Yes, just after Mr. *Pool* went away for *England*, and he had some pretty Reflections in his Sermon about *Toby's Dog* wagging his Tail.

L. C. J. Well, do you ask this Witness any Question, Mr. *Oates*?

Oates. Pray be pleas'd to ask him, my Lord, what Religion he is of?

Mr. Haggerstone. I am a Papist, my Lord, I am not ashamed of it.

Oates. Pray, my Lord, ask where he lives?

Mr. Haggerstone. At *London*.

Oates. Pray ask him what Countryman he is?

Mr. Haggerstone. I am a *Northumberland*-man; my Father is Sir *Thomas Haggerstone*, a Man better known than your Father, Dr. *Oates*.

L. C. J. Nay, nay, do not be in a Passion, Man, *Oates*. Pray ask him how long I was with him at *St. Omers*.

Mr. Haggerstone. For half a Year at least.

Oates. My Lord, I desire to know how long he staid there himself?

Mr. Haggerstone. I studied my whole Course of Humanity there.

L. C. J. How long were you there in all?

Mr. Haggerstone. Seven Years.

Oates. Pray, my Lord, ask him, whether he knows of any Consult held, or to be held here in *England* in *April* 1678?

Mr. Haggerstone. Yes, my Lord, I saw two of the Fathers go from *St. Omers* to the Congregation, and was there at their Return; but all that time I frequented Dr. *Oates's* Company, and he remained in the College.

Oates. Pray, who were these two Fathers?

Mr. Haggerstone. Mr. *Williams* and Mr. *Marsh*; and when they return'd, *Oates* asked me about it, whether they had been at the Consult, and I told him there was such a thing, but he never knew it till afterwards; but this I am sure of, he was never missing all the while, I sat on the same Bench with him.

Oates. Pray, my Lord, ask him what Name he went by at *St. Omers*.

Mr. Haggerstone. I went by the Name of *Harry Howard*, my Mother was a *Howard*, Doctor.

Oates. Pray ask him, whether he came into *England* when he went away from thence?

Mr. Haggerstone. No, I went and studied my Philosophy at *Doway*.

Oates. I desire to ask him one Question more.

Mr. Haggerstone. Twenty, if you please, Doctor.

Oates. I desire to know of him the occasion of Mr. *Hilsley's* coming away?

Mr. Haggerstone. I do know it, but truly I cannot tell whether it be fit for me to speak of it; it was upon some unhandsome account, but I must not blemish any Gentleman, I think.

Oates. My Lord, I will ask him one Question more, whether ever he was admitted into the Society?

L. C. J. I will not ask him that Question; how often have I told you no such Questions are to be ask'd? Must I make him liable to Penalty? No, ask Questions that are fair, and you shall have a fair Answer.

Oates. My Lord, I have done then with him.

Mr. Sol. Gen. Then swear Mr. *Robert Beeston*.

[Which was done.]

Mr. At. Gen. Pray, Sir, were you at *St. Omers* in the Year 77 and 78?

Mr. *Beeston*. Yes, my Lord, I was.

Mr. At. Gen. Did you see Mr. *Oates* there then? Do you know him?

Mr. *Beeston*. Yes, I know him very well, I did see him there.

Mr. At. Gen. What Months did you see him there?

Mr. *Beeston*. He came there in *December*, the beginning as I remember, and he staid there to *June* the latter end.

Mr. At. Gen. What Year was that in?

Mr. *Beeston*. He came in 77, and went away in 78. Mr.

Mr. *At. Gen.* Did you observe him to be there in April and May 78?

Mr. *Beefton.* The latter end of April, and the beginning of May, I did.

Mr. *At. Gen.* Tell the Court particularly how you remember it.

Mr. *Beefton.* My Lord, I faw him the firft of May at *St. Omers*, where he played at Nine-pins, and I laid a Wager upon the fame fide that he did, and loft my Money as well as he.

L. C. J. Do you remember any other time?

Mr. *Beefton.* I faw him the 2d of May, by the fame token that I met him in the College that Day, when our School exhibited an Action in the Hall, and I met him after Supper; now in this Action I had both acted and fung, and they came and congratulated me for my finging. Mr. *Oates* faid, If I had paid for learning to fing, I had been bafely cheated: and then in the Morning I was chofen Reader in the *Sodalitiy*, the 25th of April, or thereabouts, for a Fortnight, and Mr. *Oates* by his own Submiffion was admitted to read, only with this Condition, that if ever he were wanting, I was to read again: but this I fay, I never fupplied the Place; therefore I am fure he did continue there all the while, and if he had been out, I muft have been called upon to read.

L. C. J. Were you in the College all the time he was there?

Mr. *Beefton.* Yes, my Lord, I was.

L. C. J. Did you mifs him at any time?

Mr. *Beefton.* No, I never mifs'd him.

L. C. J. Are you fure he was not away all that time?

Mr. *Beefton.* I am fure, as much as a Man can be certain of one that is of the fame Family with himfelf; nay, I am as fure of it, as that I was there my felf.

L. C. J. Can you fpeak any thing particularly of his reading?

Mr. *Beefton.* My Lord, I was to have read, if he was abfent; but I was never called upon to read, and therefore I may well conclude he was there all the while.

L. C. J. He gives a material Evidence.

Mr. *Sol. Gen.* Was Mr. *Oates* fuch a remarkable Man that he muft be mifs'd?

Mr. *Beefton.* He was very particular, both for Age, and that he had a particular Table to eat at.

Mr. *Sol. Gen.* Can you remember any thing elfe?

Mr. *Beefton.* I remember too, that when Mr. *Burnaby* came firft, he was often with him; the 2d, 3d, and 4th of May, I faw him there with Mr. *Burnaby*, and I took particular notice of the Friendfhip between them, which I thought ftrange between Perfons that I fupposed never faw one another before.

L. C. J. Have you any Questions to ask this Man, Mr. *Oates*?

Oates. My Lord, I defire to ask this Gentleman what Religion he is of?

Mr. *Beefton.* I am a Roman Catholick.

Oates. Pray, my Lord, be pleas'd to ask him, when he went to *St. Omers*, and when he came away from thence, and how long he was resident there?

Mr. *Beefton.* I know not exactly what Year it was I came, but I ftaid the greateft Part of feven Years there.

Oates. Pray, my Lord, ask him, what Jefuits went from *St. Omers* to the Confult of April 78?

Mr. *Beefton.* There was fome that pafs'd by, I did not take much notice of them.

Oates. Pray, my Lord, ask him, who it was informed him of that Confult?

Mr. *Beefton.* I do not know who particularly, I only heard of fuch a Rumour.

Mr. *At. Gen.* Was it an extraordinary thing?

Mr. *Beefton.* No, it was but an ordinary thing, as they ufed to have once in three Years.

Oates. You fay you faw me every Day there?

L. C. J. He fays he believes he might, becaufe you were Reader in his ftcad; and if you had been abfent, he muft have been called upon to read, which he was not, he fays.

Oates. Very well, my Lord, I defire you would ask him, whether he does not remember fuch a thing as an Eight-day's Exercife, wherein thofe that perform the Exercife, are feparated from all Company during that time.

Mr. *Beefton.* Yes, my Lord, I do remember that he was once in that Eight-day's Exercife, and during the Eight Days I faw him walk in the Garden feveral times.

Oates. Pray, my Lord, ask him, if he were an Evidence at the Trial of the five Jefuits, or *Langborn*, and whether he gave this Evidence long ago?

Mr. *Beefton.* No, I did not, I was not there.

Oates. Pray, my Lord, ask him what Reward he is to have?

L. C. J. Are you to have any Reward for your Testimony, Mr. *Beefton*?

Mr. *Beefton.* No, my Lord.

Oates. My Lord, I defire to know of him, how he comes to be pick'd out among the reft of the Students there, to come here, and be an Evidence in this Cafe?

Mr. *Beefton.* My Lord, I was fubpœna'd by his Majesty, if I knew any thing of this Matter, that I fhould come here and testify my Knowledge.

Oates. Pray, by what Name did he go at *St. Omers*?

Mr. *Beefton.* By the Name of *Beefton*, as I do now.

Oates. And is that his own Name?

Mr. *Beefton.* Yes, my Lord.

L. C. J. Pray go on, Mr. Attorney.

Mr. *At. Gen.* Swear *Clement Smith*.

[Which was done.]

Mr. *Sol. Gen.* Pray, Sir, were you at *St. Omers* in the Year 77 and 78?

Mr. *Smith.* Yes, I was.

Mr. *Sol. Gen.* Do you remember Mr. *Oates* there at that time?

Mr. *Smith.* Yes, I was in the fame Clafs with him.

Mr. *At. Gen.* Pray when came he thither, and how long did he ftay there?

Mr. *Smith.* He came a little before *Chriftmas*, and ftaid till *June*.

Mr. *At. Gen.* Was he not abfent at any time all that while?

Mr. *Smith.* No, he was not, except one Day.

Mr. *At. Gen.* Do you remember *Watton's* Bufinefs, his going thither in *January*?

Mr. *Smith.* He told me of it, and that he defign'd to ask the Rector leave to go.

L. C. J. Was he abfent any other time till *June*?

Mr. *Smith.* No, my Lord, for I will tell you, I every Day dined with him, eat a Collation with him in the Afternoon, and breakfasted and fup'd in the fame Refectory, during all that time, except when he or I was in the Infirmary.

L. C. J. When ever he was absent, he was in the Infirmary, was he?

Mr. Smith. Yes, my Lord.

L. C. J. Did not he miss his Breakfast any time all that while?

Mr. Smith. If he did, we used to enquire after him.

Mr. At. Gen. Pray when were you in the Infirmary?

Mr. Smith. The 21st of *April* New Stile, I fell sick, and I remain'd sick till *May* the 7th, and was in the Infirmary, and then he visited me almost daily, or every other Day in the Infirmary; and on the 2d of *May* I saw him and one *Mr. Burnaby* together, and on the Day *Mr. Pool* departed, which I take to be the 5th of *May*, *Mr. Oates* came to me as soon as he was gone out of the House, and told me of it; and he did the same too that Day that *Mr. Hillsley* went away, which was the 24th of *April* New Stile.

Mr. At. Gen. Was not he in the Infirmary himself?

Mr. Smith. Yes, during this time he came into the Infirmary, and was sick there.

Mr. At. Gen. When was that?

Mr. Smith. A Day or two after *Mr. Hillsley* went away, and continued there two or three Days, and I remember it particularly by this Circumstance, that he propos'd a Question to the Physician about himself in *Latin*, and spoke a Solecism, which was this, he said, *Si placet Dominatio vestra*.

Oates. Who did say so?

L. C. J. You did, he says, speak that false *Latin* to the Doctor.

Oates. That's false *Latin* indeed!

L. C. J. We know that, but it seems it was your *Latin*.

Mr. At. Gen. When came he away from *St. Omers*?

Mr. Smith. About the 20th of *June*; something after the 20th of *June*, as I remember.

L. C. J. Are you sure he was not out of the College so long as to make a Journey to *London*, and back again?

Mr. Smith. No, I am sure he could not, without being mis'd; and going to School with him, and eating Dinner and Supper with him constantly always at the same place, I must needs know if he had gone.

Oates. When went I away from *St. Omers*, does he say?

Mr. Smith. After the 20th of *June* 78.

L. C. J. He is your old Acquaintance and School-fellow, *Mr. Oates*; you visited him when he was sick.

Oates. What Religion is this Gentleman of, my Lord, I would know?

Mr. Smith. I am a *Roman* Catholick.

Oates. I desire your Lordship to ask him how long he liv'd at *St. Omers*?

Mr. Smith. Above six Years.

Oates. Pray ask him, when he came away?

Mr. Smith. A little after *Dr. Oates* came away.

Oates. Did he come directly for *England*?

Mr. Smith. No, I did not.

Oates. Whither did he go then?

Mr. Smith. I went about a little—

Oates. Where, my Lord?

Mr. Smith. I went about to take some Turns in the Low-Countries; I went to *Watton*, and up and down.

Oates. He is a Jesuit, my Lord, and that the World knows, and must know.

L. C. J. I know nothing of it, I do assure you.

Oates. Pray, my Lord, be pleas'd to ask him, whether he did not hear of a Consult of Jesuits in *April* 78, and what Jesuits went from *St. Omers* to it?

Mr. Smith. I heard it as a Rumour in the College, that there was to be a Congregation at that time, but I know not where particularly it was to be kept; but I know that then there pass'd by *St. Omers* two Fathers, *Mr. Marsb*, and *Mr. Williams*.

Oates. What were they?

Mr. Smith. Jesuits.

L. C. J. He told you they were Fathers.

Mr. At. Gen. Pray, was it an extraordinary, or an ordinary Meeting that?

Mr. Smith. They used to say in the College, that it was an ordinary thing to have such a Congregation every three Years.

Mr. Sol. Gen. Pray, swear *Mr. Edward Price*.

[Which was done.]

Mr. At. Gen. Pray, *Mr. Price*, will you give my Lord and the Gentlemen of the Jury an account, whether you were at *St. Omers* in the Year 77, and 78.

Mr. Price. I was there both these Years.

Mr. At. Gen. Do you remember *Mr. Oates* there?

Mr. Price. Yes, my Lord, I do.

Mr. At. Gen. When did he come, and when did he go away?

Mr. Price. He came there about *December* 77, and he continued there till *June* 78.

Mr. At. Gen. Was he absent from *St. Omers* at any time all that while?

Mr. Price. Never, that I know of, but one Night at *Watton*, when he came back the following Day, and that was in *January*.

Mr. At. Gen. Do you remember particularly that he was there in *April* and *May* 78?

Mr. Price. I remember *Mr. Hillsley*, according to the foreign Stile, left *St. Omers* upon the 24th of *April* 78. I was told the following Day that *Mr. Oates* went into the Infirmary, which was *Monday* the 25th, and staid there a Day or two, and upon *Wednesday* the 27th I saw him going to Mass; then upon the Sunday following, which was the 1st of *May* New Stile, came *Mr. Burnaby* to *St. Omers*, and I saw him in *Oates's* Company that Day, and I saw him on *Monday* again the 2d of *May* in his Company; I saw him the 3d of *May* at the Table, which I particularly remember, because it was the Feast of the Invention of the Holy Cross: The 4th of *May* I have no Circumstance to remember him by; but the 5th of *May* I saw him take his leave of *Mr. Pool*, and I likewise saw him the 10th or 11th of *May* at another of our Actions, wherein *Mr. Watson* had a Quarrel with him, and beat him. I should have mis'd him above any other Man, because he was so noteda Man.

Mr. At. Gen. What was he noted for? For any thing else but his distinct Place in the Refectory?

Mr. Price. Yes, he was very absurd, and always quarrelling with the Students there.

L. C. J. Do you remember him read in the *Sodality*?

Mr. Price. I was not of that Bench that he was of.

Oates. My Lord, I desire to know what this Gentleman's Religion is?

L. C. J. What Religion are you of, Sir?

Mr. Price. If your Lordship please to know, I am a *Roman* Catholick.

Oates. My Lord, I desire to ask him, when he went first to *St. Omers*, and when he came away?

Mr. Price. I was six Years at *St. Omers*; I was there a twelve-month before *Mr. Oates* came thither, and came from thence about three Years ago.

Oates. Did you come directly to *England* when you came away?

Mr. Price. My Lord, I went to *Liege* to study Philofophy, and I live now with my Father at home.

Oates. My Lord, I desire to ask him, whether he did not hear of a Consult to be held in *April 78*?

Mr. Price. I did hear there was a Congregation which was their usual Triennial Meeting, and particularly I remember about that time there came *Mr. Williams*, and *Mr. Marsb*, and it was reported that they were going to the Congregation.

Oates. I desire to ask him, if he was not a Witness at the Trial of the five Jesuits, or at the Trial of *Langborn*?

Mr. Price. No, I was not.

Oates. Pray, what Name did he go by at *St. Omers*?

Mr. Price. By my own Name, which is *Edward Price*.

Mr. Sol. Gen. Then swear the next, that is, *Mr. James Doddington*.

Mr. At. Gen. Pray, Sir, were you at *St. Omers* in the Year 77, and 78?

Mr. Doddington. Yes, Sir, I was.

Mr. At. Gen. Did you know that Gentleman *Mr. Oates* there?

Mr. Doddington. I know him very well.

Mr. At. Gen. What time did he come to *St. Omers*, and how long did he stay there?

Mr. Doddington. He came about *Christmas*, and staid about the latter end of *June*.

Mr. At. Gen. How do you remember he staid there so long, what Circumstances have you to make you remember it?

Mr. Doddington. In general his Conversation and Canting Stories after Dinner and Supper, and Times of Recreation, made him so remarkable, that no body could miss him all the time he was there.

Mr. At. Gen. Did you observe him to be in the Hall, or at the Exercises?

Mr. Doddington. Yes, I saw him several times.

Mr. Sol. Gen. Do you remember the time *Mr. Hillsley* went away?

Mr. Doddington. Yes, it was a little after *Easter*, and I do remember that two or three Days after I went into the Infirmary, and saw *Mr. Oates* there, and had Discourses with him.

Mr. At. Gen. Do you remember *Mr. Burnaby's* coming to *St. Omers*, and when was it?

Mr. Doddington. Yes, the 1st of *May* *Mr. Burnaby* came to *St. Omers*, and the next Day I saw *Oates* with him, and for ten or twelve Days successively they were in one another's Company; and then of a sudden the Correspondence broke off, but I know not upon what account.

L. C. J. Was he Reader there, as you remember?

Mr. Doddington. I do remember he did read in the *Sodality*.

L. C. J. When was that?

Mr. Doddington. I remember he read at *Shrove-tide*.

Oates. Did you hear me read there?

Mr. Doddington. Yes, that I did, Sir.

Oates. Were you of the *Sodality*?

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Mr. Doddington. Yes, I was, Sir.

Mr. At. Gen. Do you remember the-time he came away from *St. Omers*?

Mr. Doddington. It was about *Midsummer*, my Lord.

Mr. At. Gen. Were you out of the College your self at any time when he was there?

Mr. Doddington. No, I was not.

L. C. J. Come, I will ask you a plain Question; Was he so long at any time out of the College as to come to *London* and stay here two or three Days, and come back again?

Mr. Doddington. My Lord, he was so remarkable by his Stories and ridiculous Actions, and falling out with every one of the College, that if he had been absent, we must needs have missed him.

L. C. J. Did you miss him at any time?

Mr. Doddington. My Lord, I never miss'd him but one Day.

L. C. J. When was that?

Mr. Doddington. They said he was gone to *Watton*.

L. C. J. What time was that?

Mr. Doddington. In *January*, about six Weeks after he came first.

Oates. Pray, my Lord, ask him what Religion he is of?

Mr. Doddington. I am a *Roman Catholick*.

Oates. And a Scholar of *St. Omers*.

L. C. J. Make your Remarks by and by.

Oates. Pray, my Lord, ask him what Name he went by at *St. Omers*?

Mr. Doddington. By the Name of *Hollis*, my Lord.

Oates. Pray, my Lord, ask him how long he was resident there?

Mr. Doddington. Near upon five Years.

Oates. Pray, my Lord, ask him the occasion of his coming over at first?

Mr. Doddington. I had Business in *England*, and I had a mind to see my Friends.

Oates. Pray, my Lord, ask him, whether he did not pretend at the five Jesuits Trial, that he came over upon the King's Proclamation, to call home those that were in the Seminaries?

L. C. J. Were you at the Trial of the five Jesuits?

Mr. Doddington. Yes, I was; but if I came over upon the King's Proclamation, what hurt is there in that?

L. C. J. None at all, as I know of.

Oates. Pray, my Lord, ask him, whether he did return again to *St. Omers*, or no?

Mr. Doddington. My Lord, I pass'd by *St. Omer* once, but I never staid a Day in the College since.

Oates. Pray, my Lord, be pleas'd to ask him, whether he ever heard of a Consult of the Jesuits in *April 78*?

Mr. Doddington. I did hear of a Congregation.

Oates. Call it a Consult or a Congregation, it is all one.

L. C. J. He says he did hear of it.

Oates. Ask him by whom he did hear of it?

Mr. Doddington. I saw the Provincial when he came back from *England*.

Oates. Who was that Provincial, what was his Name?

Mr. Doddington. *Mr. Whitebread*.

Oates. Was not *Mr. Whitebread* resident some time at *St. Omers*?

Mr. Doddington. Yes a while he was.

Oates. Pray, was not that House under his Government?

Mr. Doddington. My Lord, I can give no account of that, but it is generally under the Government of the Rector of *St. Omers*.

Mr. Hanfey. Pray, Sir, give me leave to ask you one Question: *Mr. Oates* speaks of *Mr. Whitebread*; pray, how did *Mr. Whitebread* use *Oates*, when he came back from *England*?

Mr. Doddington. I heard say, he did check him very severely for his many Mis-carriages.

L. C. J. He heard it, he says, but he does not know it of his own Knowledge; that is no Evidence.

Mr. Sol. Gen. Pray swear *Mr. William Gerrard*.
[Which was done.]

Mr. At. Gen. Were you at *St. Omers*, *Mr. Gerrard*, in the Years 77 and 78?

Mr. Gerrard. Yes, I was.

Mr. At. Gen. Did you know *Mr. Oates* there?

Mr. Gerrard. Where is he, Sir?

Mr. At. Gen. There he is in that Corner, do you know him?

Mr. Gerrard. Yes.

Mr. At. Gen. When came he to *St. Omers*?

Mr. Gerrard. He came to *St. Omers* in the Year of our Lord 77, and he went away in *June* 78.

Mr. At. Gen. Was he there all the time?

Mr. Gerrard. I never remember to have mis'd him, but only once when he went to *Watton* for a Night.

Mr. At. Gen. By what Tokens do you remember him at any time there in *April* or *May*?

Mr. Gerrard. The 2d of *May* we had a Play, and he was there then, and I remember the 26th of *May* he was confirmed, and so was I, it being *St. Augustin's* Day, and in the Refectory he had a Table by himself, and I used always at Meal-times to pass by that Table and make a Bow to the Fathers above before I sat down at Table; and I do not remember that ever he was absent, and if he had, I should surely have mis'd him.

L. C. J. When was *St. Augustin's* Day, that you say you and he were confirm'd?

Mr. Gerrard. It was the 26th of *May*.

Mr. At. Gen. Do you remember him in *April* there?

Mr. Gerrard. I cannot tell any particular Circumstance in *April*, but I do not remember to have mis'd him at all in *April*.

Mr. Sol. Gen. But you saw him there the 2d of *May*, you say?

Mr. Gerrard. Yes, I did so, and the 26th of *May*.

Oates. The 26th of *May* Old Stile I was there, my Lord.

L. C. J. Ay, but he says the 26th of *May* New Stile.

Oates. I was not there then, my Lord.

L. C. J. He swears you were.

Mr. Sol. Gen. Pray, between the 2d and 27th of *May* New Stile was he absent from *St. Omers* at any time?

Mr. Gerrard. I never remember to have mis'd him at all in that time.

Mr. At. Gen. Do you remember *Mr. Pool's* and *Mr. Hilsley's* going away?

Mr. Gerrard. I do remember *Mr. Hilsley's* and *Mr. Pool's* going away, but I cannot speak particularly and exactly what time that was.

L. C. J. Is it usual to have Scholars go away without being mis'd?

Mr. Gerrard. No, my Lord, and he had a particular Place by himself.

Oates. Pray, ask him, my Lord, how he came to know that I went away in *June*?

Mr. Gerrard. We mis'd him in his Place then, and 'twas discours'd of all over the Town, that when the Provincial came he was to be dismiss'd.

Oates. I desire to know what Religion this Gentleman is of?

Mr. Gerrard. My Lord I am a *Roman* Catholic.

Oates. Pray, my Lord ask him what Name he went by at *St. Omers*?

Mr. Gerrard. By the Name of *William Clovel*.

Oates. Pray, my Lord, ask him, when he went to *St. Omers*, and how long he was resident there?

Mr. Gerrard. I came there about two Years before he came, and was there about two Years after he went away.

Oates. Pray, my Lord, ask him, whether he came directly for *England* when he left *St. Omers*?

Mr. Gerrard. No, my Lord, I was four Years in *Low Germany* and *France*, and came into *England* the last Year.

Oates. Pray, Sir, were you a Witness at the five Jesuits Trial, or at *Langborn's* Trial?

Mr. Gerrard. No, I was not; I came but last Year to *England*, I tell you.

Oates. Pray, my Lord, ask this Gentleman, whether he did not know or hear of a Consult of Jesuits, that was to be in *April* 78, and from whom he heard it?

Mr. Gerrard. My Lord, I know it is the Custom of the Fathers of that Order to have a Congregation once in three Years, about the Affairs of their Society, but then no Person is admitted to be one of that Congregation, but them that have been eighteen Years Jesuits; and he not having been so much as a Novice, I know not how, if he had been here, he could have been present at it.

L. C. J. He says, that there used to be a triennial Congregation for the Business of the Society, but you could not be present at it, because you had not been eighteen Years a Jesuit.

Mr. Gerrard. *Ann. decimo octavo currente*, is the Word of the Rule.

Oates. Pray, my Lord, ask him this Question, how he knows that to be the Rule?

Mr. Gerrard. You or any Man may read them in their Books.

L. C. J. It seems he has read them, and he says, you must pass through eighteen Years before you be admitted of the Congregation; and he believes you were not there, for you were not capable of so much as a Noviceship.

Oates. I desire your Lordship to ask him, whether or no he heard me read in the Sodality?

Mr. Gerrard. Yes, I did.

Oates. Were you of the Sodality?

Mr. Gerrard. Yes, I was.

Oates. Pray, my Lord, ask him, what Oaths are there taken before they be admitted into the Sodality?

L. C. J. No, by no means, I will not do it.

Oates. Why, my Lord, may not I ask it, to shew what kind of Men these are?

L. C. J. No, indeed, it is but the same Question again, that I told you before is not to be asked, for it may make him liable to a Penalty; if you come to be a Witness, no man should ask you a Question that might make you obnoxious to a Penalty, no more must you ask them any such Questions.

Oates. I have done with him, my Lord.

Mr. Sol. Gen. Where is my Lord *Gerrard* of *Bromley*?

Lord Gerrard. Here I am, Sir.

Mr. At. Gen. Pray, my Lord, do you remember *Mr. Oates* at *St. Omers* in the Year 77, and 78?

Lord Gerrard. He was disguised in another Habit, and another colour'd Perriwig, the Hair was blacker than that he has on now; but I remember his Face very well, and know him again by the Tone of his Voice, which was very remarkable; but I never remember that he was absent from *St. Omers* after he came thither. I remember his coming exactly, which was about *Christmas*; nor did I ever hear that he was absent till *June* 78, *New Stile*, when he went away.

Mr. Sol. Gen. Do you remember, my Lord, when *Mr. Burnaby* came?

Lord Gerrard. I do remember *Mr. Burnaby's* coming, but what time it was, I cannot exactly tell.

L. C. J. Is my Lord *Gerrard* sworn?

Mr. Sol. Gen. I think so.

Lord Gerrard. No, my Lord, I am not sworn.

L. C. J. You must be sworn, my Lord. [*Which was done.*]

Now if you be pleas'd to ask my Lord any Questions, do.

Mr. At. Gen. My Lord, we desire to know of my Lord *Gerrard* of *Bromley*, whether he knew *Mr. Oates* at *St. Omers*?

Lord Gerrard. My Lord, I remember he came in 77, as I take it, it was the beginning of *December*; and never heard he was absent or mis'd till *June* 78. I remember particularly upon the 25th of *March*, there was a new Lector to be Reader of the Sodality; and *Mr. Oates* desiring it, he was appointed to read. I was there my self, and I never mis'd him; I heard him read, that I do remember, several *Sundays* and *Holidays*, and never knew him absent any one: however, for five or six Weeks he was constant at Reading; and I can the better remember it, because he had a particular Cant in his Tone, which all Men may know, who ever convers'd with him.

Mr. Sol. Gen. If *Oates* please to ask my Lord *Gerrard* any Questions, he may.

Lord Gerrard. Pray, my Lord let me speak a Word or two more.

L. C. J. Ay, my Lord, pray go on.

Lord Gerrard. I remember I heard *Mr. Oates* was at the Confirmation, which was upon *St. Austin's* Day; there was a Confirmation by a Catholick Bishop, about the 26th of *May* *New Stile*, I remember I heard *Mr. Oates* was there, and the Bishop did particularly note him as a Person of elder Years than the rest of the Students.

L. C. J. Do you know this, my Lord, of your own Knowledge?

Lord Gerrard. I do, my Lord.

L. C. J. Because you say, you heard it.

Lord Gerrard. My Lord, further I remember this, when the News of the Plot, being discovered by *Oates*, came to *St. Omers*, where he went by the Name of *Sampson Lucy*, and sometimes *Titus Ambrosius*, it was wonder'd by all the Scholars that knew him there, how he came to be so impudent to pretend he was at such a Consult the 24th of *April* 78, when all the College saw him every Day in *April* and *May* at *St. Omers*, as much as a man can be seen in a Family, and was never known to be absent so much as one Day; besides, my Lord, 'tis a thing as generally noted as a thing can be, that no

Scholar goes away from, or comes to the College of *St. Omers*, but it is particularly known to the whole House; it is the common News and Discourse as much as any new Occurrences are here about the Town.

Mr. Sol. Gen. If *Oates* be pleas'd to ask him any Questions, he may.

Oates. My Lord, I desire this noble Lord may be asked a Question or two; I do not remember his Lordship there.

Lord Gerrard. I do very well remember the Man by particular Remarks.

Oates. Yes, my Lord, you have occasion to remember me, and so have your whole Party. Pray, my Lord, let my Lord *Gerrard* be asked what Name his Lordship went by at *St. Omers*?

Lord Gerrard. *Mr. Oates*, I am not difficult in telling the Name I went by there. It was *Clovel*.

Oates. Pray, my Lord, I desire to know what Religion his Lordship is of?

Lord Gerrard. Neither am I ashamed to own my Religion, *Mr. Oates*; I am a Catholick.

Oates. Pray, my Lord, if you please, because this Noble Lord pretends he heard me read, I desire to know of him whether he was of the Sodality?

Lord Gerrard. I remember you particularly by your Voice, and that is one thing that particularly brings you to my Remembrance now.

Oates. Pray ask this Noble Lord, if he was a Witness at the Jesuits Trial?

Lord Gerrard. No, I was never a Witness in my Life before; by the Oath that I have taken.

L. C. J. 'Tis very well, my Lord.

Oates. Pray, my Lord, ask this Nobleman, whether he did not know of a Consult in *April* 78, and from whom he knew it?

Lord Gerrard. No, I know of none, nor heard of any but by Rumour, after that you pretended to discover such a thing.

Oates. Did his Lordship see me every Day, does he say?

Lord Gerrard. I cannot say every Day, but I saw him at the Refectory generally, and I remember it particularly, because he sat at a Table by himself; I believe he could not be absent without being mis'd, because we knew every Person that came in and went out.

Mr. Sol. Gen. Then swear *Mr. Samuel Morgan*.

[*Which was done.*]

Mr. At. Gen. *Mr. Morgan*, were you at *St. Omers* in 77, and 78?

Mr. Morgan. I was, my Lord.

Mr. At. Gen. Did you observe *Mr. Oates* to be there at that time?

Mr. Morgan. Yes, I did.

Mr. At. Gen. Pray give an account when he came, and when he went away.

Mr. Morgan. He came 14 or 15 Days before *Christmas*, as I remember, and went away in *June*.

Mr. At. Gen. What *Christmas* do you mean, *Mr. Morgan*?

Mr. Morgan. *Christmas* 77.

Mr. At. Gen. And when did he go away?

Mr. Morgan. In *June* 78, he went away.

Mr. At. Gen. Was he absent any time during that space?

Mr. Morgan. My Lord, I know not that he was ever absent above one Night in all that time.

Mr. At. Gen. What time was that one Night?

Mr. Morgan. Truly, my Lord, I cannot tell what Month it was very exactly.

Mr. *At. Gen.* Whither was he gone that Night?

Mr. *Morgan.* He went to *Walton*, three Miles off from *St. Omers*.

Mr. *At. Gen.* Do you remember the time when Mr. *Hillsley* came away, and when Mr. *Burnaby* came to *St. Omers*?

Mr. *Morgan.* Yes, I do, my Lord, very well.

Mr. *Sol. Gen.* Was Mr. *Oates* there when *Hillsley* went away?

Mr. *Morgan.* He was there then.

Mr. *Sol. Gen.* Was he there when Mr. *Burnaby* came?

Mr. *Morgan.* He was there when Mr. *Burnaby* came thither.

Mr. *Sol. Gen.* Was he there when Mr. *Pool* came away?

Mr. *Morgan.* Yes, my Lord, he was so.

Mr. *Sol. Gen.* I will ask you this short Question, do you believe in your Conscience that he was absent any particular time all that while?

Mr. *Morgan.* No, my Lord, I have no reason to believe so.

Oates. Pray, my Lord, ask him what Religion he is of.

Mr. *Morgan.* I am of the Church of *England*.

Oates. When were you reconciled to the Church of *England*?

Mr. *Morgan.* Five Years since.

Oates. I desire to know of him what induced him to be reconciled to the Church of *England*.

L. C. J. That is not a pertinent Question, nor fit to be ask'd. Is he to give an account of his Faith here?

Mr. *Just. Withins.* It seems Mr. *Oates* is angry when the Witnesses are Papists, and when they are Protestants too.

Oates. When was it that I came to *St. Omers*, do you say?

Mr. *Morgan.* You came thither in *December 77*.

L. C. J. So he told you before; why do you repeat things over and over again?

Oates. When was it I went away from thence, say you?

Mr. *Morgan.* In *June 78*.

Mr. *Sol. Gen.* Do you remember the 24th of *April* Old Stile that Year?

Mr. *Morgan.* Yes, my Lord, I do remember it very well.

Mr. *Sol. Gen.* Do you remember him to be at *St. Omers* that Day?

Mr. *Morgan.* Yes, I do, by this Circumstance.

Mr. *Sol. Gen.* Ay, pray tell my Lord and the Jury that Circumstance, how you come to remember it.

Mr. *Morgan.* We had the Trial of *Ireland* brought over to us soon after it was printed, and there we found mentioned, that Mr. *Oates* had depos'd, that the 24th of *April 78*, there was a Consult of the Jesuits, and they met at the *White Horse* Tavern, where they resolv'd to kill the King, and he carried that Resolution from Chamber to Chamber, and he did nominate the Day; and having it then fresh in my Memory, tho' he swore that he was the 24th of *April* Old Stile in *London* at that Consult, yet I found him to be at *St. Omers* by a very particular Circumstance. My Lord, I was playing at Ball that Day, and struck it over into a Court, into which I could not get over myself, but I saw Mr. *Oates* then walking in the Court, and I came and borrow'd his Key, and so went in, and there pass'd between us Words of Friendship.

L. C. J. When was this, do you say?

Mr. *Morgan.* The 24th of *April 78*, Old Stile.

Oates. I desire to let his Orders be seen.

L. C. J. No, he shall not be put to shew any such thing.

Oates. He is a Minister of the Church of *England*, my Lord.

L. C. J. Sir, we tell you we will not do it; what ado is here with your impertinent Questions, have not I told you, you shall not ensnare the Witnesses?

Oates. He was going to pull out his Orders himself.

Mr. *At. Gen.* My Lord, Mr. *Oates* may see them if he will, he is a Beneficed Minister of the Church of *England*.

L. C. J. Does he mean those Orders?

Mr. *At. Gen.* Yes, he does, and here they are.

L. C. J. Let him see them. *[Which was done.]*

Oates. My Lord, I desire to know of this Gentleman, what Name he went by at *St. Omers*.

Mr. *Morgan.* By the Name of *Morgan*.

Mr. *Sol. Gen.* Swear Mr. *Arundel*.

[Which was done.]

Mr. *At. Gen.* Pray, Sir, will you give an account in short, whether you were at *St. Omers* in 77 and 78, and the Time when *Oates* came thither, and when he went away?

Mr. *Arundel.* I was there when Dr. *Oates* came, and when he went away.

Mr. *At. Gen.* When was that?

Mr. *Arundel.* Sir, I cannot be positive to the time exactly, but I think it was about *January 77*, that he came there, and he went away about *June 78*. I cannot be positive to the time exactly.

L. C. J. He does not particularly remember the time, but he thinks it was about *January 77*, he came thither.

Mr. *Arundel.* I beg your Lordship's pardon, he came there about *December*.

Mr. *At. Gen.* Do you remember any particular Circumstances, that you saw him there at any particular time?

Mr. *Arundel.* Upon *St. Augustin's Day* I saw him confirm'd.

Mr. *Sol. Gen.* What Day is that?

Mr. *Arundel.* The 26th of *May* according to the foreign Account.

L. C. J. Did you know him there then?

Mr. *Arundel.* Yes, my Lord, I say I saw him confirm'd.

Mr. *Sol. Gen.* Do you remember Mr. *Hillsley's* going away?

Mr. *Arundel.* I do not remember the time particularly, but I do remember Mr. *Oates* was actually there then.

Mr. *Sol. Gen.* Do you remember when Mr. *Burnaby* came to *St. Omers*?

Mr. *Arundel.* No, I do not remember the time, but he was there then too.

Mr. *Sol. Gen.* Do you remember when Mr. *Pool* went away?

Mr. *Arundel.* No, I cannot tell what Day it was, but he was there at the time of his going away, upon my Oath.

Mr. *Sol. Gen.* Can you tell any other particular time?

Mr. *Arundel.* The 11th of *May* New Stile, there was an Action exhibited in the College.

L. C. J. Was *Oates* there then?

Mr. *Arundel.* To the best of my remembrance he was.

L. C. J. He does not affirm any Particular, but only speaks in general. *Oates.*

Oates. Are you a Protestant too, Sir?
Mr. Arundel. No, Doctor, I am not.
Oates. Pray, my Lord, I desire to know what Religion he is of?

Mr. Arundel. I am a Papist, my Lord.
Oates. Pray ask him by what Name he went at *St. Omers.*

Mr. Arundel. I believe you know that as well as I, *Dr. Oates.*

L. C. J. You must answer his Question.
Mr. Arundel. I went by the Name of *Spencer*, my Lord.

Oates. I do remember him, my Lord, to have been there.

Mr. Arundel. Sir, your humble Servant.
Oates. It is almost seven Years ago, my Lord, and I may not so well remember them as they do me; but I desire to know when he went to *St. Omers* first, and how long he was there.

Mr. Arundel. I was there seven Years.
Oates. Pray, my Lord, ask him whether he was of the Sodality.

Mr. Arundel. Yes, my Lord, I was.
L. C. J. Was he Reader of the Sodality?
Mr. Arundel. Yes, my Lord, in my time he was Reader.

Oates. Then, my Lord, I desire to ask him whether he ever heard of a Consult of the Jesuits, that was to be held in *England*, in *April 78*; and from whom he heard it.

Mr. Arundel. Yes, my Lord, I did hear in the College of a Congregation.

Mr. Sol. Gen. Was that an extraordinary one, or of course?

Mr. Arundel. It was only of course, as they told us; once in three Years they have one.

Oates. Pray, my Lord, be pleas'd to ask this Gentleman what Studies he follow'd at *St. Omers.*

L. C. J. He was of the Sodality, he says.
Mr. Arundel. My Lord, I studied to the end of Rhetorick.

Oates. My Lord, I desire to know whether when he came from *St. Omers*, he did come directly for *England.*

Mr. Arundel. No, I went from thence to *Paris*, my Lord.

Mr. Sol. Gen. Swear *Mr. Christopher Turberville.*

[Which was done.]

Mr. At. Gen. Pray, *Mr. Turberville*, will you acquaint my Lord and the Jury whether you were with *Mr. Oates* at *St. Omers*, and when?

Mr. Turberville. Yes, my Lord; he went by the Name of *Sampson Lucy* there, and there I saw him, and there I was with him all the time; I was there before him, and I remain'd there after he went away.

Mr. At. Gen. What time did he come to *St. Omers*, I pray you?

Mr. Turberville. Before *Christmas.*

L. C. J. In what Year?
Mr. Turberville. In the Year 77.

Mr. At. Gen. What time was it he went away?
Mr. Turberville. In *June 78.*

L. C. J. Were you there all that while at *St. Omers*?
Mr. Turberville. Yes, I was.

L. C. J. And to the best of your Apprehension, you think he was there all that while.

Mr. Turberville. Yes, I do so, my Lord.

Mr. Sol. Gen. Can you speak of any particular Days you can remember?

Mr. Turberville. Yes, I do remember him upon the fourth, fifth, and sixth of *May*, for two or

three Days together; for, my Lord, I do remember this Circumstance, *Mr. Pool* about that time went away, and that very Day *Mr. Pool* went from the College, I chang'd my Lodging, and went into his Lodging, and that Day I saw *Dr. Oates* in the Chamber, and by the Chamber-Door.

Mr. At. Gen. Did he continue in the College from the time he came about *Christmas*, to the time he went away in *June*?

Mr. Turberville. Yes, he did, all the while, except it were one Night in *January*, when he went to *Watton.*

L. C. J. What time in *June* did he go away?

Mr. Turberville. I am not positive, but I am morally sure he went away the 23d of *June*, as near as I can remember.

Oates. I was there in *June*, that is very well known.

L. C. J. What do you remember of his reading in the College?

Mr. Turberville. I do remember he was Reader there on *Sundays* and *Holidays* for a great while; I cannot swear upon what *Sunday* he began, but he left off the *Sunday* before he went away.

L. C. J. As near as you can remember, when did he begin to read?

Mr. Turberville. It was the beginning of *April*, or latter end of *March*, I cannot justly swear which it was.

Mr. Molloy. Did he read on *Holidays* as well as *Sundays*?

Mr. Turberville. Yes, he did.

Oates. I must ask this Gentleman one Question, if your Lordship please, and that is this, what Name he went by at *St. Omers.*

Mr. Turberville. I went there by the Name of *Farmer.*

Oates. Pray you, my Lord, ask him what Religion he is of?

Mr. Turberville. It is a hard Question to answer that.

Oates. Nay, my Lord, I desire to know what is his Religion.

Mr. Turberville. I am, my Lord, a *Roman Catholic.*

Oates. Ask him when he went to *St. Omers* first, and how long he staid there.

Mr. Turberville. I was there seven Years very near.

Oates. I desire to know whether he did come away directly to *England*, when he came from *St. Omers.*

Mr. Turberville. No, my Lord, I went into *Italy.*

Oates. Pray you, my Lord, I desire to know whether he did go to *Rome.*

L. C. J. What if he did, what then? that is not at all to the purpose, he went into *Italy.*

Oates. Pray, my Lord, be pleas'd to ask him this Question further; was he a Witness on the behalf of the five Jesuits, or of *Langborn* at their Trials?

Mr. Turberville. No, my Lord, I was not.

Oates. Pray, my Lord, be pleas'd to ask him then what Reward he has been promis'd, or is to have for giving this Evidence.

Mr. Turberville. None at all, my Lord.

Oates. Pray, my Lord, ask him whether or no he heard of any Consult of the Jesuits in *April 78*, and from whom.

Mr. Turberville. There was a Congregation, as I heard, but I do not remember that any of the Fathers went from the College to it; several came by

by there, and lodg'd there as they went, and as they came back.

Oates. Pray, my Lord, ask him how he came here to be a Witness in this Cause.

Mr. Turberville. I was subpoena'd.

Oates. Who serv'd the Subpœna upon him?

Mr. Turberville. The Managers; it was sent to me by the King's Counsel, I suppose; a Man brought it to me.

L. C. J. 'Tis no matter who brought it you, you were subpoena'd, that's enough.

Mr. Sol. Gen. Swear *Mr. Anthony Turberville.*

[Which was done.]

Mr. At. Gen. Were you at *St. Omers* in 77 and 78?

Mr. A. Turberville. Yes, my Lord, I was.

Mr. At. Gen. Did you observe the Defendant *Mr. Oates* there at that time?

Mr. A. Turberville. Yes, I observ'd him all the while he was there.

Mr. At. Gen. When did he come to *St. Omers*?

Mr. A. Turberville. In the Year 77, about *Christmas*.

Mr. At. Gen. When went he away?

Mr. A. Turberville. A Gentleman who was formerly sworn (*Mr. Thornton*) and I were at Breakfast with him the self-same time when he went away.

L. C. J. When was that?

Mr. A. Turberville. I suppose about the latter end of *June* 78.

Mr. At. Gen. Did you observe him to be there in *April* or *May* 78?

Mr. A. Turberville. He was not absent above one Night in *January* that I can remember, from his first coming thither, for it was impossible he should be absent and not miss'd, he sitting at a distinct Table by himself, and his Conversation being so remarkable for a great many ridiculous Actions, and a great many pretty Jestings that he us'd; so that he was like a silly Person, as I may call him, that us'd to make sport, and no body could be miss'd so soon as he: And I saw a little Boy in the College beat him up and down with a Fox's Tail. Indeed, my Lord, all his Actions were very remarkable: I saw him very much abusive to Persons that liv'd with him in the College; and *Mr. Oates* could not be a Person of this Note, but all the World must take notice of him, and all that knew him must miss him, if he were away.

L. C. J. You hear him, *Mr. Oates*; he gives you a particular Character; he says you were a very notorious Person in many Instances.

Mr. A. Turberville. My Lord, I was a Person then the youngest in the whole Company, and *Mr. Oates* being very abusive to me, I did what became me to right myself upon him.

Oates. Pray, my Lord, be pleas'd to ask this Gentleman what the Name was he went by at *St. Omers*.

Mr. A. Turberville. By my Grandmother's Name, which was *Farmer*.

L. C. J. Do you remember the time when *Mr. Hilsley* went away from *St. Omers*?

Mr. A. Turberville. He went away upon a Sunday. *Mr. Oates* remain'd afterwards there: I am positive I saw him several days after.

L. C. J. Do you remember when *Mr. Burnaby* came thither?

Mr. A. Turberville. Yes, my Lord, and *Mr. Oates* was there then.

L. C. J. Will you ask him any Questions? If you are not ready, I will ask him some for you. Come, what Religion are you of?

Mr. A. Turberville. I am a *Roman* Catholick, my Lord.

L. C. J. Well, and how long were you at *St. Omers*?

Mr. A. Turberville. Six Years and upward, my Lord.

L. C. J. When you came away from thence, did you come directly for *England*?

Mr. A. Turberville. I took a Circumference round.

Oates. My Lord, I do find my Defence is under a very great Prejudice.

L. C. J. Why so? because we won't let you ask impertinent Questions, or such as may render the Witnesses obnoxious to a Penalty.

Oates. No, my Lord, it is not fit they should, for there is a Turn to be serv'd.

L. C. J. What do you mean by that? Ay, and a good Turn too, if these Witnesses swear true: 'Tis to bring Truth to light, and perjur'd Villains to condign Punishment.

Oates. Good, my Lord, be pleas'd to hear me.

L. C. J. If you behave not yourself with that Respect to the Court as you ought, pray get you gone. Do you think you shall give such Language as this in a Court of Justice?

Oates. My Lord, I did not design—

L. C. J. If you behave yourself as you should, you shall have all due Regard; but if you fly out into such abusive Extravagancies, we'll calm you as you ought to be calm'd.

Oates. I would vindicate myself, I meant it not of the Court.

L. C. J. So you had need. Don't think we sit here to let you asperse the Justice of the Court and of the Nation, as if the Judges sat here to serve a Turn.

Oates. I say these Men do come to serve a Turn; but I laid no Asperision upon the Court, nor meant it of them.

L. C. J. Behave yourself as you ought, and you shall be heard with all the Fairness can be desir'd.

Oates. I did perceive your Lordship and the Court made yourselves pleasant with my Questions.

L. C. J. I did not make myself pleasant with your Questions, but when you ask impertinent ones you must be corrected: You see we do the same thing with them; I find fault with nothing but what is not to the purpose.

Oates. My Lord, I desire it may be observ'd, that these Men that come now, are the same Witnesses that appear'd at the *Old Bailey*, and were not believ'd there.

L. C. J. Observe what you will by and by.

Mr. At. Gen. No, they are other Men, but they bear the same Testimony indeed.

Mr. Sol. Gen. Swear *Mr. Clavering*.

[Which was done.]

Mr. At. Gen. Come, Sir, I'll ask you a short Question; were you at *St. Omers* with *Mr. Oates*, and when?

Mr. Clavering. Yes, I was: I came the 10th of *December* 77, to *St. Omers*; he told me he came thither that Day too, and I liv'd there all the time that he was there, which was till towards the middle of *Summer*: I do not remember that he ever was absent, but once at *Walton*.

Mr. At. Gen. Do you remember *Mr. Burnaby*'s coming thither?

Mr. Clavering. *Mr. Oates* was there when *Mr. Burnaby* came there.

Mr. Sol. Gen. Was he there when *Pool* came away?

Mr. *Clavering*. He was there when Mr. *Pool* went away, and likewise I remember his being there at the time of the Congregation.

Mr. *At. Gen.* Pray tell the Circumstance how you know he was there then.

Mr. *Clavering*. There came a Gentleman there that desir'd a Charity of the Students, and I was the Person that made the Collection for him in the House; and I remember he did ask if there was any one that was a Student there that had been in *Spain*: We told him there was one, and describ'd him; upon which he knew the Gentleman in *Spain*. Upon that I told Mr. *Oates*, that there was one there that knew him, but he deny'd to come and speak with him. Now I remember that it was the time of the Congregation, for some made Enquiry why he got so little Money at *Watton*, and it was said it was because the Fathers were gone to the Congregation in *England*. And he ask'd me particularly, what was done at the Congregation in *England*?

L. C. J. Did *Oates* ask that Question?

Mr. *Clavering*. Yes, my Lord, he did.

L. C. J. Whom did he ask it of?

Mr. *Clavering*. Of me.

L. C. J. When was that?

Mr. *Clavering*. I think it was about the time of the Congregation.

L. C. J. How came he to enquire after it?

Mr. *Clavering*. I was talking with him, and said he to me, *Know you nothing what the Business is that they are to do at the Congregation*? Said I, Mr. *Lucy*, I know not what they do; I think not much: For I hear at those Meetings many times they stay an hour or two, and have done when they have chosen their Procurator.

Mr. *Sol. Gen.* And you believe he was there all the time?

Mr. *Clavering*. Yes, my Lord, I do believe it.

Oates. Pray, my Lord, let me ask him a Question or two.

L. C. J. Ay, what you will.

Oates. What Religion is this Gentleman of?

Mr. *Clavering*. I am a Catholick.

Oates. A Roman Catholick you mean, I suppose?

Mr. *Clavering*. Yes, I always understood it so, Mr. *Oates*.

Oates. My Lord, I desire to know how he came not to be produc'd at the Jesuits Trial, to give this Evidence he gives now?

Mr. *Clavering*. I can give a very good Reason perhaps: I was then, my Lord, in *Germany*.

L. C. J. That's Reason good enough of all conscience.

Mr. *Just. Withins*. That was a new Question, and you have a satisfactory Answer, I think.

Mr. *Sol. Gen.* Swear Mr. *John Copley*.

[Which was done.]

Mr. *At. Gen.* Were you at *St. Omers* in 77 and 78?

Mr. *Copley*. Yes, I was.

Mr. *At. Gen.* Was *Oates* there then?

Mr. *Copley*. I saw him all the time he was there.

Mr. *Sol. Gen.* When did he come thither?

Mr. *Copley*. He came a little before *Christmas*, to the best of my Remembrance.

Mr. *Sol. Gen.* When went he away?

Mr. *Copley*. In 78.

Mr. *Sol. Gen.* In what Month in 78?

Mr. *Copley*. In *June* 78.

Mr. *Sol. Gen.* Was he absent any part of that time?

Mr. *Copley*. I was there, and he was there too.

Mr. *Sol. Gen.* Was he absent any part of the time from *Christmas* to *June*?

Mr. *Copley*. Nay, I am sure he was there all the time, except that Night that he was absent at *Watton*, and that was in *January*.

Oates. Pray, my Lord, ask him what Religion he is of?

Mr. *Copley*. Does your Lordship ask me that Question?

L. C. J. Yes, I do ask you; Mr. *Oates* would know it.

Mr. *Copley*. I am a Roman Catholick, my Lord.

Mr. *Sol. Gen.* Swear Mr. *Cook*. [Which was done.]

Mr. *At. Gen.* Did you know Mr. *Oates* at *St. Omers*, and when?

Mr. *Cook*. He came there a little before *Christmas* 77.

Mr. *At. Gen.* How came you to know him there?

Mr. *Cook*. I liv'd in the House then.

Mr. *At. Gen.* Was he there all *April* and *May*?

Mr. *Cook*. Yes, he was till the latter end of *June*.

Mr. *At. Gen.* Did you see him every day?

Mr. *Cook*. Yes, I did.

Mr. *At. Gen.* Can you tell any particular time?

Mr. *Cook*. I am positive he was there the 30th of *April*.

Mr. *At. Gen.* What Stile?

Mr. *Cook*. New Stile.

L. C. J. How do you know he was there then?

Mr. *Cook*. It is a remarkable time; there is a Procession that they keep there on that Day from the Sodality to the Church, and I saw him go among the rest at the latter end among the Rhetoricians.

L. C. J. What say you, was he there on that Day Mr. *Hilfley* went away?

Mr. *Cook*. I do not remember that.

L. C. J. Do you remember *Burnaby*?

Mr. *Cook*. I was there when Mr. *Burnaby* went away.

L. C. J. But when he came, was *Oates* there?

Mr. *Cook*. I cannot speak particularly to that.

Mr. *At. Gen.* What was your Place in the College?

Mr. *Sol. Gen.* My Lord, he is a Lay-man, be sure.

Mr. *Cook*. I was a Servant in the House.

Oates. In what Place do you serve?

Mr. *Cook*. I was a Taylor.

Oates. I do not remember him.

Mr. *Cook*. But I remember you.

Mr. *Sol. Gen.* Swear *Jo. Wright Esq;*

[Which was done.]

Mr. *At. Gen.* Do you remember *Oates* at *St. Omers*?

Mr. *Wright*. Yes, I do.

Mr. *At. Gen.* When was it?

Mr. *Wright*. The Winter before the notice of the Plot was.

Mr. *At. Gen.* What Year was it in?

Mr. *Wright*. In the Year 77.

Mr. *At. Gen.* What Month in that Year did he come thither?

Mr. *Wright*. I cannot tell, it was Winter-time.

Mr. *At. Gen.* When did he go away?

Mr. *Wright*. He went away in Summer, I cannot tell just the time.

Mr. *At. Gen.* Was he absent at any time, from his coming in Winter, to his going away in Summer?

Mr. *Wright*. The Scholars said he was once at a Place called *Watton*.

L. C. J. Come, this says nothing to the purpose. Mr. *Sol. Gen.* My Lord, we leave it here.

L. C. J. What say you to it then, Mr. *Oates*?

Oates. Has Mr. Attorney done?

Mr. *At. Gen.* Yes, we have done for the present.

L. C. J. Then are you to make your Defence.

Oates. My Lord, here is an Indictment brought against me for Perjury; and this Indictment sets forth, *That I should upon the 17th of December appear at the Old Bailey, and there swear, That there was a Treasonable Consult of the Jesuits met at the White-Horse Tavern in the Strand, and that this Treasonable Consult did divide itself into lesser Companies and Meetings, and that I carried about a certain Resolution, which the Jesuits came to, concerning killing the King, from Chamber to Chamber to be sign'd.* My Lord, I have a great Exception to make to this Indictment, and that is, my Lord, as to the Form. For, by your Lordship's Favour, I think the Perjury is not well assign'd, and according as I am advised, I offer this to your Lordship's Consideration. It says in the Assignment of the Perjury, *Ubi revera & in factò prædictus Titus Oates non præsens fuit ad aliquam Consultationem Jesuitarum apud le White-Horse Tavern prædictæ in le Strand in Com' Midd' prædictæ super viceßimum quartum diem April' anno Dom' Millicesimo.*

L. C. J. How, *Millicesimo*!

Oates. My Lord, it is Law-Latin, I suppose it may serve in a Court?

L. C. J. No, it is true Latin there.

Oates. I cannot tell how to read it better.

L. C. J. I do believe that.

Oates. It is written in such a Hand, I cannot read it; but the Substance of it is, it says here, That I did not carry any Resolution from Chamber to Chamber sign'd. Now the Evidence charged upon me to be given, is, that I did not see it sign'd: So that the Assignment of the Perjury does not pursue the Oath as it is set forth; for if it be sign'd in the Evidence that was given, it ought to be sign'd in the Perjury that is assigned; and I humbly crave the Opinion of your Lordship and the Court upon this Point.

L. C. J. Look you, Mr. *Oates*, that you offer'd before, and I gave this Answer, which I must now repeat, That now we are upon the Fact, and this Exception will be sav'd to you for its proper time, if you be convicted. It is not proper now; but suppose there were that thing which you say is an Objection, yet you must know, that there are two Perjuries that are assign'd; the one is upon the first part of your Oath, which was, that you were present at a Consult of the Jesuits the 24th of April 78, at the *White-Horse* Tavern in the Strand, *Ubi revera* you were not there. Now, do you admit in the first place, that you were forsworn in that particular?

Oates. No, my Lord, I do not.

L. C. J. If the Jury find that you were forsworn in that first Point, that you were not there, it will be easily believed you swore false in the other Point, that you did not carry the Resolution from Chamber to Chamber.

Oates. But, my Lord, it is not well assign'd, I think.

L. C. J. That will be sav'd to you after the Verdict, I tell you, if there be occasion for it.

Oates. My Lord, I suppose the Proof ought to be according to the Record, and the Record makes he Perjury differ from the Oath.

L. C. J. I tell you, that is to the Form, and that will be sav'd to you after the Verdict one way or the other.

Oates. Then will your Lordship be pleas'd to consider there was a Record brought in, which is almost the same with that I am to offer to be read on my behalf, and which is the first Proof that I have to offer of the Consult that was held in London in April 78. And I desire Mr. *Percivile* may be call'd, I forget his Christian Name, and Mr. *Vaughan* who is my Solicitor: But pray, my Lord, let me first have the Opinion of the Court, whether they did prove the Words that I am said to swear, as they are laid in the Indictment.

L. C. J. Yes, very fully, we think so; but the Jury are to try that, that is a Point of Fact: but if you will, you shall have our Thoughts about it; We think they are fully proved.

Cryer. Here is Mr. *Percivile*.

Oates. Pray swear him.

[Which was done.]

L. C. J. What do you ask him?

Oates. Mr. *Percivile*, you examin'd the Conviction of Mr. *Ireland*, pray put it in: Is it a true Copy?

Percivile. Yes, it is.

Oates. My Lord, I desire that the Conviction and Attainder of Mr. *Ireland* may be read.

Mr. *At. Gen.* It has been read already.

Oates. My Lord I will not take up the Court's time any more than is necessary for my Defence.

L. C. J. Nay, do as you will, as long as you offer things pertinent and decent, the Court will hear you with all Patience, and you may take what time is necessary for you.

Oates. I thank your Lordship: I design'd nothing at all of Reflection upon the Court, but a Reflection on the Witnesses that came in against me.

Cl. of Cr. This is a Copy of the same Record that was before read.

Oates. Well, if that be allowed for Evidence for me, I am contented to spare the time of the Court, not to read it again; but, my Lord, I offer this, and desire to have Counsel assign'd me to argue this Point in Law; that is, whether or no the Convictions and Attainders of *Ireland*, *Whitebread*, and the rest of them, of a Treasonable Consult of the 24th of April 78, where it was resolv'd to murder the late King, ought not to be taken as a sufficient Legal Proof of the Fact, so long as those Attainders remain of force? And whether the Averment of that being false, is to be received against those Records?

L. C. J. There is no difficulty in that at all in the World, Mr. *Oates*.

Oates. My Lord, I do not know the Law, and therefore I pray I may have Counsel assign'd to argue that Point.

L. C. J. There is no question in it. God forbid, if a Verdict be obtain'd by Perjury, that that Verdict should protect the perjurd Party from being prosecuted for his false Oath. There were no Justice in that; nor is it an Averment against a Record, for this is not a Writ of Error in Fact that will reverse it, but the Record remains a good Record and unimpeached still: But tho' it be a good Record, yet it is lawful to say this Verdict was obtain'd upon the Testimony of such an one, that forswore himself in that Testimony, and for that particular Perjury he may surely be prosecuted.

Oates. Is not that Attainder an uncontrollable Evidence of the Fact, till it be revers'd?

L. C. J. Yes, it is against the Party attainted; but if that Attainder was founded upon a Verdict that was obtain'd by Perjury, God forbid but he should be told so that did perjure himself.

Oates. Well, my Lord, if your Lordship rules that for Law, then I will go on; and I must now observe to the Jury in the opening the Evidence two things. First, That the Indictment upon which *Ireland* was try'd, was found the 16th of *December 78*, and on the 17th of *December*, the next Day *Ireland* was tried at the *Old-Bailey*; and then I find this Indictment brought against me for Perjury, is found at the *Old-Bailey* six Years after the Fact, by special Commission. Now, I submit it to your Lordship's and the Jury's Consideration, why the Presentment and the finding of this Bill for Perjury has been so long delay'd, since it appears by the Evidence, that the Witnesses that have been produc'd to prove the Perjury, were either at the Trial of the five Jesuits, or might have been produced then; and tho' they are not all the same Persons, yet they all bear the same Testimony that was then offered, but were not credited; and I hope when my Evidence is heard, they will have the same Reputation with this Jury that they had with those others. My Lord, I must acquaint your Lordship and this Court, That in this Indictment for which *Mr. Ireland* was convicted, *Mr. Whitebread* and *Mr. Fenwick* did undergo part of the Trial, and did hear the whole Body of the Evidence that the Witnesses testified against them; but there being but one Witness against them two at that time, which was my self, (*Mr. Bedloe* being then upon an Intrigue, as your Lordship may remember) my Lord Chief Justice *Scroggs*, who was then the Mouth of the Court, did discharge the Jury of *Mr. Whitebread* and *Mr. Fenwick*, and remanded them to Prison, which *Mr. Whitebread* six Months after did remark to the Court, and urg'd it as a Plea for himself to be discharged; but that being over-ruled by the Court, he was tried. Now, he had six Months time to provide himself with new fresh Evidence to asperse me, and to endeavour to falsify that Testimony I gave in against *Whitebread* and *Fenwick*, when *Ireland* was tried, and so he knew what it was. I must further observe to you, my Lord, and Gentlemen of the Jury, That my Case is very hard, that since the Substance of my Testimony was with Credit receiv'd, and the Jury upon convicting them were acquainted, "That they had found an unexceptionable Verdict; " That all the Objections against the Evidence " were then fully answer'd; That there was no " thing that the Prisoners had been wanting in to " object, which could be objected; and that the " thing was as clear as the Sun." And yet after six Years time, I must come to be called to an account for Perjury in my Testimony of that part of the Popish Plot, with which the King and Kingdom, four successive Parliaments, all the Judges of the Land, and three Juries were so well satisfied. I shall therefore offer to your Lordship and the Jury's Consideration the unanimous Votes of three Houses of Commons; I shall offer the Proceedings of the House of Lords, that is the highest Judicature in the Kingdom; I shall prove what I have open'd by the Testimony of several Noblemen that are here, who will testify this for me. My Lord, I shall prove, that several Attempts have been made to baffle this Testimony, as that of the Murder of *Sir Edmundbury Godfrey*, who took my Depositions, the Contrivance of *Paine*, *Farewell*,

and *Thompson*, made in the Year 81 or 82, I forget which; I shall then produce Evidence that I was actually here in Town at the time in question; and then upon the whole I shall submit it to your Lordship and the Jury. But to prepare your Lordship and the Jury the better for my Evidence, I would again urge the strangeness of this Prosecution, and the Hardship that is put upon me, to be tried for Perjury in an Evidence given six Years ago, and formerly very industriously, tho' not successfully, endeavoured to be falsified by sixteen *St. Omers* Youths, that were produced and examined before all the Judges in the Kingdom, and that not only once at *Whitebread's* Trial, but a second time at *Langborn's* Trial; in neither of which would the Jury believe them, because of their Religion and Education, and the Persons under whom they were educated, who were Men of known Artifice. Then, my Lord, I would argue thus: If at that time my Evidence were true, it must be true still, for Truth is always the same; and if it were then true, and I can prove it to be true, 'twill be thought a hard thing without all doubt, that this should be put upon me. Then, my Lord, I would fain know from my Prosecutors, why this Indictment of Perjury has been deferred so long? Why these Witnesses that come now to testify this matter, and could then have been brought, did not come before, to justify at the Trials of these Persons what they now say, which might have sav'd their Lives, if true, and had it been credited. Then I shall offer to your Lordship what I desire you and the Jury would please to observe, That tho' the King's Counsel are now against me, yet they are also against themselves, for they were of Counsel for the King in those Cases; particularly *Mr. Solicitor* at *Langborn's* Trial, *Sir Robert Sawyer* at *Sir George Wakeman's* Trial; they were of Counsel before for the Truth of my Testimony; they are now against it: I only mention that, and pass it over. But this is not the first Attempt that has been made to discredit the Testimony of the *Popish Plot*, as I told you before. Now, can it be supposed that the Love and Desire of Publick Justice can be the Cause of this Attempt to falsify my Evidence after so many Trials, in which it has been credited and confirmed? Can any thing, my Lord, more plainly tend to destroy and subvert the Methods of Justice, to frighten all Witnesses from henceforth from ever appearing to discover any Conspiracies? And does it not tend to expose and vilify the known Understanding and Justice of the late King of Ever-blessed Memory, to arraign the Wisdom of his Privy Council, his great and noble Peers, his loyal Commons in three successive Parliaments, his twelve Judges, and all those several Juries that were upon those Trials? Had not those Juries Sense? Had they not Honesty? Had they no Consciences? And the Judges before whom those Conspirators were tried, were they Men of no Justice, nor Honour, nor Integrity, nor Conscience, nor Understanding? Shall those Juries be said to have drawn the innocent Blood of these Men upon their own Heads and the Nation? As, if I were perjur'd, it must be innocent Blood that was shed upon it.

L. C. J. No, no, that goes a great deal too far, *Mr. Oates*: The Jury have no share, nor the Judges neither, in that Blood which was shed by your Oath.

Mr. Just. Withins. No, that is your own most certainly, and not theirs.

Oates. But this, I say, makes it most plain: The Evidence was then true, and I hope I shall make it

as evidently plain, 'tis as true now; and I do not question, but upon the Evidence I shall now give, both positive and collateral, the Jury will believe me, and acquit me of this foul Accusation. Pray, my Lord, be pleas'd to consider, that when the Jury brought in *Ireland* guilty of the High Treason, of which he was accused, and convicted him, *Pickering*, and *Grove*; says my Lord Chief Justice *Scroggs* (that then was) to them: *Gentlemen, you have done like very good Subjects, and very good Christians, that is, like very good Protestants; and now much good may do them with their thirty thousand Masses; as I shall prove he did say.* Then I insist, in the second place, that *Whitebread's* Conviction does reinforce the Conviction of *Ireland*, because of the Attempt by the *St. Omers* Witnesses to have overthrown my Evidence: But since I am attack'd again in the same kind, by the Violence of the Popish Interest, and by the Malice of my Popish Adversaries, I am contented to stand the Test with all my heart. And then, to conclude all, I shall shew the Court, that 'tis in vain for the Popish Party to expect and think to wipe their Mouths, with *Solomon's* Whore, and say, *they have done no Wickedness.* No, I question not but thousands of Protestants in this Kingdom are fully satisfied and convinced of the Truth of the Popish Plot, all and every Part of it. Now, my Lord, if you please to give me leave to proceed on in my Evidence, I shall beg that these Records of Conviction may be read, which are my first Proof of the Consult; and I shall then bring Witnesses, *viva voce*, and shall make it appear, that what I did swear at those Trials was true.

L. C. J. Not to interrupt you in your Defence, or the Method you will take for it, I would put you upon that which is proper for you to apply yourself to, because the Question now is not, whether there was a Consult or Congregation of the Jesuits here upon the 24th of *April 78*? but the Question that toucheth you is, whether you were present at any such Consult here in *London* the 24th of *April 78*? These Gentlemen, some of them, do say, there was a Consult, and others that they heard of it, and believe there was such a one, because it was usual to have a Triennial Congregation for some particular Purposes: But the Question is, whether you have sufficient Proof to prove yourself to be here on the 24th of *April 78*, at which time it is agreed on all hands there was a Consult?

Oates. But will your Lordship be pleas'd to take notice of the drift of the Evidence, how they are consistent one with another? These Gentlemen that have now been sworn to prove that I was not at this Consult, do attempt to prove that I was at *St. Omers*: Now to answer this, I shall not go about to prove that I was not then at *St. Omers*, but that I was actually then, and about that time, here in *London*; and then all that Proof that Mr. Attorney-General has brought, must be laid aside.

L. C. J. You say well; prove that.

Oates. Now, my Lord, to introduce and prepare the Jury for this, it will be necessary, I humbly conceive, to read the Records of the Conviction of *Whitebread* and *Ireland*.

L. C. J. Well, go your own way; we are not to direct you: I only tell you where the Question lies.

Oates. Sir *Samuel Astrey*, pray be pleas'd to read them in *English*, that the Jury may understand them. First read *Ireland's* Record.

[Which was done.

Oates. Now read *Whitebread's* Record: Read but the Attainder, I will not trouble the Court with the whole Record.

Cl. of Cr. " *Thomas White* alias *Whitebread*, *William Harcourt* alias *Harrison*, *John Fenwick*, *John Gaven*, and *Anthony Turner*, were found guilty of High Treason, and attainted, and Execution awarded against them upon that Attainder."

Oates. Does not the Record say, the Jurors say upon their Oaths they are guilty.

L. C. J. Yes, I'll warrant you.

Cl. of Cr. It is *dicitur super sacramentum suum.*

Oates. Very well. These, my Lord, I do produce as my first Evidence, to prove that there was a traitorous Consult, held upon the 24th of *April 78*, at the *White-Horse* Tavern in the *Strand*, it having been believed and affirmed by two Verdicts. Now give me leave to offer but this to the Court, that at the Trial of Mr. *Ireland* I gave so full and ample a Testimony against *Whitebread* and *Fenwick*, accompanied with all the Circumstances of Time and Place, that my Lord Chief Justice *Scroggs* said, *The Evidence might be sufficient to have satisfied a private Conscience, tho' it was not a legal Proof then to convict him, there being but one Witness against them:* And for this I call Mr. *Robert Blayney*.

Mr. At. Gen. Pray swear Mr. *Blayney*.

[Which was done.

L. C. J. What do you ask Mr. *Blayney*?

Oates. Mr. *Blayney*, have you your Notes of *Ireland's* Trial here?

Mr. *Blayney.* Yes, Sir, I have.

Oates. Pray will you look into what my Lord Chief Justice *Scroggs* said when he discharg'd the Jury of *Whitebread* and *Fenwick*.

Mr. *Blayney.* Whereabouts is it, Sir, in the printed Trial?

Oates. It is Page 55.

Mr. *Blayney.* I have found the Place, what is it you would ask me about it?

Oates. Whether my Lord Chief Justice *Scroggs* did not use these Words to the Jury? *I do acknowledge that Mr. Oates has given a very full and ample Testimony, accompanied with all the Circumstances of Time and Place, against them all; that may go far with you, all things consider'd, to believe there is a Plot: Yet I do not think they have proved it against Whitebread and Fenwick by two Witnesses; tho' the Testimony be so full as to satisfy a private Conscience, yet we must go according to Law too. It will be convenient from what is already proved, to have them stay till more Proof come in; 'tis a great Evidence that is against them, but it not being sufficient in point of Law, we discharge you of them. It is not a legal Proof to convict them by, whatsoever it may be to satisfy your Consciences.*

Mr. *Blayney.* I have look'd upon my Notes, and I cannot find exactly those Words.

L. C. J. He says he cannot find that Passage as it is there.

Mr. *Blayney.* There is something to that purpose, my Lord.

Oates. Pray, Sir, will you look into your Notes in the very same Place, what my Lord Chief Baron said: *You must* (speaking to the Jailor) *understand they are no way acquitted: The Evidence is so full against them by Mr. Oates's Testimony; that there is no Reason to acquit them; it is as flat as by one Witness can be.*

Mr. *Blayney.* There is such a Passage, I find, in my Notes.

L. C. J. He says there is such a Passage.

Oates. Then I desire Mr. *Blayney* would look into his Notes, what my Lord Chief Justice *Scroggs* said in his summing up the Evidence against *Ireland*. He mentions the Evidence of Sir *Dennis Ashburnham*, who was produced to discredit me, and then he adds, *When the Matter is so accompanied with so many other Circumstances which are material things, and cannot be evaded or deny'd, it is almost impossible for any Man either to make such a Story, or not to believe it when it is told.*—It is *Ireland's Trial*, Page 72.

Mr. *Blayney*. My Lord, I do find such a Passage in my Notes.

L. C. J. He says there is such a Passage in his Notes.

Oates. Then I would ask Mr. *Blayney* another Question at the bringing in the Verdict of the Jury against *Ireland*, *Pickering* and *Grove*, my Lord Chief Justice *Scroggs* (that then was) had this Expression: *You have done, Gentlemen, like very good Subjects, and very good Christians, that is to say, like very good Protestants; and now much good may their 30,000 Masses do them.*

Mr. *Blayney*. Yes, my Lord, there is in my Notes such an Expression of my Lord Chief Justice *Scroggs*.

Oates. Pray you, Mr. *Blayney*, have you *Whitebread's Trial*? The Trial of the five Jesuits, I mean.

Mr. *Blayney*. My Lord when I receiv'd a Subpœna from Mr. *Oates* to be here this day, and to bring my Notes of *Ireland*, *Whitebread*, and *Langborn's* Trials, I did (as I did before upon another occasion) make a Search for all my Notes, but could not find any but those of the Trial of *Ireland* and *Langborn's* and those I have brought here, but have not *Whitebread's*.

L. C. J. He says he has not the Notes of *Whitebread's Trial*; he cannot find them.

Oates. Then I must desire, my Lord, that the Printed Trials may be read.

L. C. J. No, they are no Evidence: If you can prove what was said at any of them, you may by Witnesses, but not by the Printed Books.

Oates. Then will your Lordship be pleas'd to give me leave to mention what was said by your Lordship at that time, when you were Recorder of *London*, about your Satisfaction with the Evidence.

L. C. J. Ay, with all my heart; and whatever I said, I will own, if I can remember it.

Oates. Will your Lordship be pleas'd to be sworn then?

L. C. J. No, there will be no need for that; I will acknowledge any thing I said then.

Oates. Then, if your Lordship pleases, I will read those Passages out of the Books.

L. C. J. Ay, do so.

Oates. Says Mr. Recorder of *London*, (in particular to that Part of the Prisoners Defence, at the Trial of the five Jesuits, and the full Scope given them of making Objections to the Evidence) when he gave Judgment of Death upon these five Jesuits and *Langborn* (for I now speak of your Lordship in the third Person.) *Your several Crimes have been proved against you; you have been fully heard, and stand convicted of those Crimes you have been indicted for.*

L. C. J. I believe I might say something to the same purpose as you have read now.

Oates. I thank your Lordship for that Acknowledgment.

L. C. J. Ay, I'll own any thing I did say.

Oates. My Lord, I have one Passage more to urge, and that was, my Lord, after the Jesuits had been convicted, when the Jury brought in their Verdict, and found *Whitebread*, *Fenwick*, *Harcourt*, *Gaven* and *Turner* guilty, your Lordship applying yourself to the Jury, said thus to them: *Gentlemen, you of the Jury, there has been a long Evidence given against the Prisoners at the Bar; they were all indicted, arraigned, and tried for High Treason, depending upon several Circumstances: They can none of them say the Court refus'd to hear any thing they could say for themselves; but upon a long Evidence, and a patient Hearing of the Defence they made, they are found guilty; and for any thing appears to us, it is a just Verdict you have given.*

L. C. J. I believe I might say something to that purpose too at that time; and no doubt the Jury did (as the Case then stood) find an unexceptionable Verdict.

Oates. There is another place, my Lord, that I would instance in, for your Lordship's Opinion of the Evidence of the Popish Plot, and that is this: Now, my Lord, I bring your Lordship as you were of Counsel for the King at Mr. *Colledge's Trial* at *Oxford*, the 17th of August 81. There you, my now Lord Chief Justice, directing yourself to the Jury, had this Expression; *We come not here to trip up the heels of the Popish Plot, by saying that any of them who suffer'd for it did die contrary to Law; for if Mr. Dugdale was not a Person fit to be believ'd, or if the rest of the Judges who try'd Gaven were out in the Law, then that Man died wrongfully; for he had as much right to be try'd according to Law, as any other Person whatsoever.* This was your Lordship's Opinion of the Matter then, and your Lordship, as Counsel for the King, did there deliver the Law as well as Fact to the Jury. If then they went against Law, that would go to trip up the heels of the Popish Plot—

Mr. *Just. Withins*. We are got into an endless Wood of Sayings of People, I know not where and when; and when all is done, it is to no purpose.

Oates. My Lord, it is a Part, and a great Part of my Defence, to shew what credit has been given to the Evidence of the Popish Plot.

L. C. J. Ay, but what Counsel says at the Bar, or what Judges say in the Court of their Opinion, is no Evidence of a Fact, of which the Jury are Judges only.

Oates. My Lord, every Judge is upon his Oath, and delivers his Judgment according to his Oath.

L. C. J. Not as to the Fact, but only in Points of Law, so as to tell the Jury what the Law is, if the Fact be so and so.

Oates. My Lord, it goes a great way with the Jury to have the Judge's Opinion.

L. C. J. Mr. *Oates*, deceive not yourself; all this you have insisted on hitherto, has not been to the purpose, nor is any sort of Evidence in this Case; and therefore do not run away with an Opinion of this as Evidence; a Judge's Opinion is of value in Points of Law that arise upon Facts found by Juries, but are no Evidence of the Fact: for Judges only do presume the Fact to be true, as it is found by the Jury; and therefore say they, out of that Fact so found, the Point of Law arising is thus or thus. Then in case, after a Jury has given a Verdict of the Fact, a Judge's Opinion of the Fact (which may be perhaps contrary to the Verdict) should be an Evidence as to that Fact, that would be to overthrow and nullify the Jury's Verdict: No, that is not the Judge's Province. Surely you would

would not have a Judge's private Opinion, that twelve Men have found a Verdict against the Fact, to be an Evidence as to that Fact: No; but admit the Fact to be so or so, then the Person convicted of the Fact ought to suffer so or so. And by the same reason as this, a Jury of honest Gentlemen here, when I tell them here is a plain Fact either to convict you, or to acquit you upon this Indictment, are not bound to go by what I say in point of Fact, but they are to go according to their own Oaths, and according to the Evidence and Testimony of the Witnesses: It is not my Opinion that is to weigh at all with them, whether you are guilty of this Perjury, or are innocent, but the Evidence that is given here in Court. Therefore what my Lord Chief Justice *Scruggs* said at any of those Trials, or what I said, or any other Person, that either was of Counsel, or a Judge on the Bench, said as our Opinions, is but our Opinions on the Fact as it occur'd to our present Apprehensions, but is no Evidence nor binding to this Jury. I must tell you, there is no doubt, but that those Juries did every one of them believe the Evidence you gave, or they would not have convicted the Prisoners. Do you think they would have found a Verdict against their own Belief, and being upon their Oaths to make true Deliverance between the King and the Prisoners, have perjured themselves to hang others? If they had so done, they had committed wilful Murder, and the worst of Murders too, being under Colour of the Process of Law; but yet all this is no Evidence. I do not discommend you for insinuating these things, as introductory and preparative to what Evidence you have to offer; but it is no Evidence one way or other. Alack-a-day! how many times have we Causes here in *Westminster-Hall*, wherein we have Verdict against Verdict? and yet no Imputation to either of the Juries, which might give different Verdicts upon different Grounds. There was a notable Case lately of my Lady *Ivies* at this Bar: We all thought upon the first Trial, that she had as good a Title to the Land as could be; all the Judges and the Counsel went away (I believe) satisfied with the Jury's Verdict for her: But when the Cause came to be heard again, we found all the Witnesses to prove her Title, were guilty of notorious Perjury, and the same Persons which did believe before that she was in the right, and the Jury had done well; when they heard the second Trial, did believe she was in the wrong, and accordingly the second Jury found it so; and we believe that last Verdict to be good, without any Reflection on the Credit of the first Jury, because the Evidence was as strong on her side then, as it was afterwards against her. In these Cases we give our Opinions always according to the present Testimony that is before us.

Oates. Then, my Lord, I offer this to your Consideration, that those Men that were thus charged by me with High-Treason, were Priests and Jesuits most of them, and particularly Mr. *Ireland*, in whose Trial I am said to have committed this Perjury; and you shall find him to have been by others proved a Priest and a Jesuit, and actually engaged in a Design against the Life of the King. If I then do prove that *Ireland* was engaged in a Design against the late King's Life, and was a Priest and a Jesuit, I desire to know, whether this be not a Collateral Evidence to render me of Credit sufficient, and support my Testimony?

L. C. J. By no means upon this Indictment. It's true it may give some Credit to your Testimo-

ny, but it is not of itself sufficient: Nay, I'll go a great way further than that; I will suppose that there was a Consult of the Jesuits upon the 24th of April 78, at the *White-Horse* Tavern in the *Strand*, where those you say were present, were all present; *Ireland*, and *Whitebread*, and *Pickering*, *Grove* and *Fenwick*, were all there, and that they did there come to a Resolution to destroy the late King: Suppose all this to be true, and yet you all this time are not innocent of the Fact imputed to you, because you swore directly, *That you were there at that Consult too*, which you were not, if these Men swear true, for then you were at *St. Omers* at that time; and therefore give us some sort of Testimony to satisfy us that you were here, and then you will set all right again. If the Jesuits and Priests did plot, that is nothing to make your Evidence true, if you swore that which you did not know of your own Knowledge.

Oates. Shall it be allow'd then, that *Ireland* was a Jesuit and a Papist?

L. C. J. If it should, that will be to very little purpose for your Turn.

Oates. There is the Evidence of a Record for it, my Lord; but if that be not sufficient, I can call Witnesses to prove it. Pray, call Mr. *Miles Prance*.

[Which was done, but he did not appear.]

Cryer. He is not here.

Oates. He was subpoena'd, my Lord, to come hither.

L. C. J. I can't help it, if he will not come; but I'll tell you, for method's sake, not to prescribe to you, but to tell you what I think may be more for your advantage than any of these Inferences that you are making. If you did call two or three Witnesses to prove that you were in Town the 22d, 23d, or 24th of April, it would be the best Defence you can make, and would give the best Answer to all that is objected against you.

Oates. I will do that, my Lord, then, and follow your Directions.

L. C. J. Do so, that's the best way.

Oates. *Cryer*, call *Cecilia Mayo*.

Cryer. Here she is.

Oates. Swear her.

[Which was done.]

L. C. J. Well, what do you ask this Witness?

Oates. Pray, Mrs. *Mayo*, give my Lord and the Jury an account, whether you did see me in *London* the latter part of April, or the beginning of May 78? For that is the Question now before the Court.

L. C. J. Ay, what say you? When did you see him in 78?

Mrs. Mayo. My Lord, I saw him the latter end of April: He came to Sir *Richard Barker's* House, where I did then live, and afterwards he came again thither within a few days. By this Circumstance I remember it; Sir *Richard Barker* my Master was sick all the Month of April, and in the Country, only he came now and then home for a little while, and went again: Now Mr. *Oates* came there when he was absent, and a young Man that lived in the House came to me, and told me, there was one Mr. *Oates* in the strangest Disguise that ever was. Says he, I think he is turn'd Quaker. No, said I, he is no Quaker, for they wear no Perriwigs, and I rebuked the young Man for saying so. As for Mr. *Oates*, I never saw his Face before that time, that I know of.

L. C. J. How do you know that to be Mr. *Oates* then?

Mrs. Mayo. The Family knew him, and they told me it was he: That is the Gentleman there.

I speak now nothing but that which I testified seven Years ago, and it is all Truth, and nothing but the Truth.

L. C. J. Ay, no doubt of it, thou swearest nothing but the Truth.

Mrs. Mayo. My Lord, he came three or four days afterwards again to the Houfe, and then the Young-man came to me, and told me, that Parfon *Oates* was turn'd Jesuit; and thereupon I said to him, Good Lord! Why dost thou concern thy self with him? Can't not let him alone? I look'd upon him, and saw him at that time: At last, when he came that time, he went to Sir *Richard's* Lady's Sister, who is now in *Wales*, and coming to her, said she, *Mr. Oates, I hear you are turn'd Jesuit, and we can have no Society with you now:* At last, he staid to Dinner with them, and staid most of the Day there. Then he comes the latter end of *May*; *Whitsuntide* was in *May* that Year, and I know he came before *Whitsuntide* by this Token; I speak of the second time of his coming: Our Custom in the House was to wash and scour before the time, and I was sending for a Woman to come and help to wash and scour, and then he was walking in the Garden; and the Young-man came and told me *Oates* was there: He came into the Pantry to me, Look said he, he is come again, and he is turn'd Jesuit by his Disguise. Why, *Benjamin*, said I, what hast thou to do with the Man? Can't not let him alone?

L. C. J. What was the Name of that Young-man you speak of?

Mrs. Mayo. Truly, my Lord, he is dead, or he would have testified the same thing.

L. C. J. But what was his Name?

Mrs. Mayo. *Benjamin*; I can't tell his other Name.

L. C. J. Well, go on.

Mrs. Mayo. Said I to him, Why dost thou scorn this Man? Prithee get out of the Room, I am not able to hear it: So he walk'd the space of an Hour in the Garden.

L. C. J. Is Sir *Richard Barker* living?

Mrs. Mayo. Yes, my Lord, he is, but he is not well.

L. C. J. Was he at home when *Oates* was there?

Mrs. Mayo. No, my Lord, I think not.

L. C. J. Who din'd with him, do you say, when he din'd there?

Mrs. Mayo. My Lady's Sister.

L. C. J. What is her Name?

Mrs. Mayo. Madam *Thurrel*.

L. C. J. And who else?

Mrs. Mayo. And her Sons.

L. C. J. Where are they?

Mrs. Mayo. They are both dead.

L. C. J. And who else was there?

Mrs. Mayo. One Dr. *Cocket*.

L. C. J. Where is he?

Mrs. Mayo. He is in *Wales* too, my Lord.

L. C. J. 'Tis a great Misfortune to have so many dead, or so far remote.

Oates. My Lord, six Years time makes a great Alteration in a Family.

L. C. J. Was there any body else there?

Mrs. Mayo. There were two of the Daughters, and they could all come and testify the same thing.

L. C. J. Where are they, and what is become of them? Why are they not here?

Mrs. Mayo. They are living in *Lincolnshire*, my Lord, I think.

L. C. J. What else have you more to say?

Mr. At. Gen. Pray, *Mrs. Mayo*, let me ask you a Question: What coloured Clothes had he on when you saw him first?

Mrs. Mayo. He had a whitish Hat, and coloured Clothes.

Mr. Sol. Gen. What time of the Day was it you saw him?

Mrs. Mayo. In the Morning.

L. C. J. Did he go publickly?

Mrs. Mayo. Yes, he went publickly.

Mr. Sol. Gen. Did he come often to the House?

Mrs. Mayo. He was there frequently, my Lord.

Mr. Sol. Gen. Then it seems he was so disguis'd that he could walk publickly in the Streets of *London* at Noon-day, and was frequently in the Family?

Mrs. Mayo. Yes, my Lord.

L. C. J. Now tell me who was in the Family?

Mr. At. Gen. *Mrs. Mayo*.——

L. C. J. Pray, give me leave to ask her the Question: Who was there at that time?

Mrs. Mayo. Sir *Richard Barker's* Lady's Sister, Madam *Thurrel*, and his two Daughters, and two of his Kinsmen, and two of the Servants, one is here a Witness now.

L. C. J. Who is that, that is a Witness now?

Mrs. Mayo. One that belongs to Sir *Richard Barker*, and the other is now dead, and those two Kinsmen are dead.

L. C. J. What is become of the two Daughters, say you?

Mrs. Mayo. They are in *Lincolnshire*, as I take it, my Lord.

L. C. J. When did you hear from them?

Mr. At. Gen. My Lord, it is half a Year ago almost since *Mr. Oates* had notice of this Trial.

L. C. J. Where is Sir *Richard Barker* himself?

Mrs. Mayo. I was with Sir *Richard Barker*, and he purpos'd to have come hither; but being a crazy Man, and antient, it seems he could not, and desired to be excus'd, for he had a bad Night, and was not well; but he desired that the Court should know, if he were well, he would be there.

Mr. At. Gen. Were you sworn at a former Trial about this Matter, *Mrs. Mayo*?

Mrs. Mayo. Yes, Sir, I was.

Mr. At. Gen. Do you remember what you swore then?

Mrs. Mayo. The same I do now.

Mr. At. Gen. Then I ask you this Question, How long before *Whitsuntide* was it that you saw *Mr. Oates* at Sir *Richard Barker's*?

Mrs. Mayo. A pretty while before, twice.

Oates. *Mrs. Mayo*, I'll put you a fair Question, Whether or no it might not be a Fortnight before *Whitsuntide*, you think?

Mrs. Mayo. The last time I saw you was a Week before *Whitsuntide*.

L. C. J. How can you tell it was but a Week?

Mrs. Mayo. 'Twas but a Week, because at that time I had sent the Boy for the Woman to scour and wash there.

L. C. J. Was that the last time you saw him?

Mrs. Mayo. Yes; I saw him several times before, and it was all before *Whitsuntide*.

L. C. J. How long before that, was the first time that you saw him?

Mrs. Mayo. He would be away for three or four Days, and come again.

L. C. J. But how long before the last time, was the first time you saw him?

Mrs. Mayo. He came still to and again.

L. C. J. When was the time that you saw him next before the Week before *Whitsuntide*, which, as you say, was the last time you saw him?

Mrs. Mayo. I am not able to say that.

L. C. J. Did you believe it was within the compass of a Week before?

Mrs. Mayo. To the best of my remembrance it was.

L. C. J. When was the first time you saw him?

Mrs. Mayo. 'Twas in the beginning of *May*.

L. C. J. You said at first it was at the latter end of *April*.

Mrs. Mayo. Pray, my Lord, let me a little think; I am unwilling to be mistaken, I would say nothing but the Truth.

L. C. J. No, I would not have thee; but for God's sake, let us have the Truth, that is that we look for.

Mrs. Mayo. I say, the Coach-man saw him there as well as I, and he can tell you better than I.

L. C. J. But I ask you this Question positively, Was it in *May* or *April*?

Mrs. Mayo. To the best of my remembrance it was the beginning of *May*.

L. C. J. Was it within a Week of *May*?

Mrs. Mayo. I believe it was, I cannot tell exactly to a Day.

Mr. Sol. Gen. Was it so or not?

Mrs. Mayo. I cannot be positive to a Day; it is now six Years time since I was first examined about it.

Mr. At. Gen. But you can remember what you swore then, can't you?

Mrs. Mayo. I declare it, I speak not a Syllable, but I will aver to be true, before the great God.

Mr. Sol. Gen. Can you swear it was within the first seven Days of *May*?

L. C. J. You see, Mr. Solicitor, she says she cannot.

Mr. At. Gen. Did not you say at that Trial, that you did never see his Face till a Week before *Whitsuntide*, or a little after?

Mrs. Mayo. I did swear the same that I do now, to the best of my remembrance, and that is the Truth.

Mr. At. Gen. But did not you swear so?

Mrs. Mayo. I never saw him before that first time he came to Sir *Richard Barker's*, and after the last time that he came, I saw him not till after the Plot was discovered.

Mr. Sol. Gen. How long was that after he had been at your Master's House?

Mrs. Mayo. It was a good while, I cannot tell how long.

L. C. J. Was it within a Month, or two Months?

Mrs. Mayo. It was more, my Lord.

L. C. J. Where was Sir *Richard Barker* at that time?

Mrs. Mayo. He was at *Putney*.

L. C. J. Then he did not see him?

Mrs. Mayo. Not then he did not.

L. C. J. Did he afterwards?

Mrs. Mayo. Yes, he did see him afterwards.

L. C. J. How long afterwards was it?

Mrs. Mayo. I can't tell how long afterwards it was, my Lord.

L. C. J. About what time was it?

Mrs. Mayo. After the Plot was discovered he was up and down in the Family.

L. C. J. You never knew Mr. *Oates* before that time he came in a Disguise, and you did not know him then, but as they told you it was he?

Mrs. Mayo. No, I did not, but as they told me then; and this is the Man, I'll swear it.

Oates. Call *John Butler*.

Cryer. Here is *John Butler*.

Oates. Swear him.

[Which was done.]

My Lord if you please I will propose my Questions to your Lordship; and my first Question is this, I pray your Lordship would ask him, whether he gave in any Evidence at the five Jesuits Trial, or *Langborn's* Trial, about my being in Town in *April* or *May* 78?

L. C. J. Did you give any Evidence at the five Jesuits Trial?

Butler. Yes, I did.

L. C. J. Did you give any Evidence at *Langborn's* Trial?

Butler. Yes, my Lord, I was a Witness there.

Oates. My Lord, it is so long ago, that ignorant People that come innocently without design, may not be so ready in their remembrance, as those that conn'd their Lesson for so long time together.

L. C. J. Well, well; what do you ask him next, whether he will stand by that Evidence he gave then?

Butler. That is all I have to say, my Lord: I did testify the Truth then, and will abide by it.

L. C. J. But he must give the same over again here, or it will signify nothing.

Oates. My Lord, it is now six Years since, and this Question was not thought to be stirr'd so long after: Therefore I beg so much Favour, that the Evidence he did give at Mr. *Langborn's* Trial may be read to him.

L. C. J. O by no means.

Oates. My Lord, it is such a distance of time—

L. C. J. Look ye, if he has any Notes himself, he may look on them to refresh him.

Oates. My Lord, he comes raw hither, without any Instruction at all.

L. C. J. So should every Witness: God forbid we should countenance the instructing of Witnesses what they should swear.

Oates. I beg your pardon, my Lord, I did hope this Favour might be granted: I will then ask him some Questions.

L. C. J. Ay, ay, do, refresh his Memory by Questions as much as you can. Come, I'll ask him some Questions for you: Do you remember you saw Mr. *Oates* at any time in the Year 78?

Butler. If it please your Lordship, as near as I can remember I saw him in *May* before the Plot was discovered.

L. C. J. That was the Year 78.

Butler. I am sure I did see him about that time.

L. C. J. Where did you see him?

Butler. I was a Servant to Sir *Richard Barker*, and Mr. *Oates* I had been acquainted with before he went to Sea; he used to come to my Master's House frequently, and divers times he din'd at the Table, and I waited upon my Master there.

L. C. J. When was it that he din'd there at the Table?

Butler. A Year before that time in *May* that I spoke of before: It was before he went to Sea.

L. C. J. When did you see him again?

Butler. After he came from Sea, I saw him at my Master's House.

L. C. J. When was it that he went to Sea?

Butler. It was a Year or two before the *May* that I saw him disguis'd coming to my Master's House.

Mr. At. Gen. Ay, what Disguise did he come in?

Butler.

Butler. His Hair was cut off, close cropt to his Ears, and an old white Hat over his Head, and a short gray Coat over like a Horse-man's Coat.

L. C. J. How came you to take such notice of him at that time, as to be able to swear when this was?

Butler. I was call'd presently after for a Witness.

L. C. J. How long after this was it, that you were call'd to be a Witness?

Butler. It was when the Trials were at the *Old-Bailey*.

L. C. J. Was this the first time you had recollected these Circumstances?

Butler. Yes, my Lord, that was the first time.

L. C. J. Then how came you a Year and an half's time afterwards to remember the precise Month of *May*, when you did not know you should be call'd to question about it, and yet you cannot remember the time particularly when *Oates* went to Sea, but take the Compass of a Year or two?

Butler. I guess it was a Year before, I cannot exactly tell.

L. C. J. When you can but guess at the time of such a remarkable Passage, within the Compass of a Year or two, how can you pitch upon the very Month for such a thing as this is, a Year and a half's time after?

Oates. No, my Lord, it was not so long as a Year and a half.

L. C. J. Pray, Sir, have patience.

Oates. My Lord, the Records shew, that *Ireland's* Trial was the 17th of *December* 78, and the five *Jesuits* Trial was the 15th of *June* 79.

L. C. J. Then it is a full twelve-month's time and more from the *May* that he says he saw you at *Sir Richard Barker's*, to *Whitebread's* Trial, in which he was examin'd the first time. Now that which I desire of him, is, to give me a reason why he remembers it was in the *May* was twelve-month before?

Butler. My Lord, the Lady whom I did serve, died in *February* before, that Year.

L. C. J. But give me some reason of your Remembrance so long after.

Butler. My Lord, I do as well as I can.

L. C. J. Well, what is it?

Butler. My Lady was buried in *February*, and he comes into the Yard where I was cleaning my Coach, in *May* following that *February*, which was *May* before the Discovery of the Plot. He ask'd me what Alteration was in the Family? I told him my Lady was dead, and the Escutcheon was over the Door for her. He ask'd for Dr. *Tongue* when he came first in the House.

L. C. J. Why should he ask for Dr. *Tongue*?

Butler. My Lord, Dr. *Tongue* lodged there, and he did ask for him: I come to justify the Truth; upon my Salvation what I say is true.

L. C. J. Well, when he ask'd whether Dr. *Tongue* was within, what said you?

Butler. I told him, no; but he went into the Room where Dr. *Tongue* us'd to lie, but found him not there: so he went out again. That was the same time Mrs. *Mayo* saw him.

L. C. J. But, Friend, prithee mind what I ask thee, because thou must give me satisfaction how thou com'st to remember this, so as to be able to swear it; for his going to ask for *Tongue*, or the Escutcheon being over the Door, neither of those can be a Reason for you to remember that this was in *May*, for the Escutcheon may be up in *June*, or in *July*, or in *August*, or in any other Month after

the time you speak of: But how came you to take notice of this Business that it was in *May*?

Butler. Sir *Richard Barker* my Master was then sick at *Putney*, which was in *May*, tho' I cannot speak to a Day or a Week particularly.

L. C. J. Then prithee let me ask thee this Question, how long had your Master been sick before that?

Butler. He had never been well since my Lady died.

L. C. J. When was it that your Lady died?

Butler. In *February* before.

L. C. J. How long after that did your Master *Sir Richard Barker* continue sick?

Butler. Half a Year, I believe.

L. C. J. Why then, suppose your Master fell sick immediately after your Lady died, and he continued sick half a Year after, yet all this while *Oates* might come during his Sickness even in the Month of *June* or *July*, when 'tis acknowledg'd he was in Town, and not be here in *February*, which is testified by a great many Witnesses.

Butler. My Lord, I tell your Lordship the Truth, it was in *May*.

L. C. J. But how dost thou come to take notice it was in the Month of *May*, so as to be able to swear it?

Butler. My Lord, I tell your Lordship my Lady was dead, and the Escutcheon was over the Door.

L. C. J. So it might be, tho' he came in *June* or *July*, I tell ye.

Butler. My Master was sick at *Putney* at that time.

L. C. J. How long did he lie sick at *Putney*?

Butler. He was sick there a Fortnight, my Lord.

L. C. J. Then prithee when did thy Master go to *Putney*?

Butler. I cannot tell to a Day.

L. C. J. In what Month was it that he went?

Butler. It was the latter end of *April*, my Lord, as I remember.

L. C. J. How long continued he sick at *Putney*?

Butler. The matter of a Fortnight.

L. C. J. Was not your Master sick, when your Lady died, at *Putney*?

Butler. No, he was not there then.

L. C. J. When did he go to *Putney*, say ye?

Butler. He went not thither till the latter end of *April*, my Lord.

L. C. J. And did he continue at *Putney* but a Fortnight?

Butler. Not at a time, but he continued going and coming a quarter of a Year.

L. C. J. But this was the first time of his going, was it?

Butler. Yes, as I do remember.

Oates. My Lord, he is my Witness, and I desire I may examine him.

L. C. J. Hold there, Mr. *Oates*; he is mine too. All the Witnesses are mine to satisfy me in the Truth of the Fact.

Oates. And to satisfy the Jury too, my Lord.

L. C. J. Yes, and to satisfy the Jury too; but I must and will sift out the Truth, for both our Satisfaction.

Oates. My Lord, it is now, come the next Month, six Years ago since the Evidence of this Matter was first given by these Witnesses.

L. C. J. Then, Mr. *Oates*, I'll come a little rounder to you, and I'll put you into a certain way of clearing this Business. I'll tell you what you shall do; you had a Lodging in Town, as

well as Diet, and as well as you did eat at Dr. *Barker's* sometimes, so you eat and lay sometimes elsewhere. You were here in Town a great while together, if your own Assertions be true; for you were from *April* till *June* in Town: Now come and give us account by some Witnesses, if you can, where did you lodge at that time, and where did you diet? For it seems you had but one Meal at Sir *Richard Barker's*.

Oates. Is that the Question, Sir, here in hand?

L. C. J. Ay indeed is it, and the main one too.

Oates. I beg your Lordship's pardon if I mistake, but I think that is not now in question; for these *St. Omers* Men do swear, That I was all *April* and *May* at *St. Omers*: Then if I do prove that in *April* and *May* I was not at *St. Omers*, but here in *London*, it is Argument good enough against them that their Evidence is false. And indeed, can your Lordship or the Jury expect, that I being then engag'd among and for the Papists, and afterwards an Evidence against them to discover their Treasons, can bring any of them to testify for me now? No, they will as certainly forswear themselves, as these young Fellows have all done.

L. C. J. Let me ask you a shorter Question: Did you always lie in a Papist House all the two Months you say you were here?

Oates. My Lord, I lay at several Houses.

L. C. J. Tell me the Names of those Houses, or any of them.

Oates. It is not to the Point in question here, my Lord.

L. C. J. Yes it is very much; but I perceive it is a Secret, and let any body judge why.

Oates. My Lord, they that have by the Principles of their Religion, Liberty to affirm or deny any thing, and can have Dispensations for the Violations of Oaths and Sacraments, certainly are not to be admitted as Witnesses in such a Case as this.

L. C. J. Talk not to me of Dispensations, and I know not what; I speak from a plain demonstrative Proof: Can it be believed that you should be here in *England* so long, and as they say, publicly, and no Person living see you that we can hear of, but an old Woman that never saw you, nor knew you before, and a Coachman that tells a wild Story without reason? If you will not tell me where you lay, can you tell me where you did eat all that time?

Oates. I can tell where I did lie that time.

L. C. J. Do so then. Let us hear it, that will be your best Defence.

Oates. Is that the Point, my Lord, in question?

L. C. J. Ay, upon my Word is it the main Point in this Case.

Oates. If it should go upon that foot, my Lord, it is impossible for me now to prove it; for 'tis well known, I lay sometimes with Mr. *Whitebread*, and sometimes with Mr. *Mico*, neither of which can I have to testify for me; and besides, I must insist upon it, these things were in question at *Whitebread's* Trial, nor do I believe that Mr. *Whitebread*, if ask'd at his Death, would have justified, and stood by it, that I was not here then.

L. C. J. Well, this I must certainly say, I cannot help it, but it will stick with me till better answered, I can never be satisfied, that if you were here so long, there should no better Evidence be produced to prove you here.

Oates. My Lord, nor can I help your Dissatisfaction, but I am to satisfy all that hear me this

Day, that it is a very hard Case that is put upon me; I have taken the most effectual Course that I could, to provide for Evidence to make my Defence; and I think, by your Lordship's good Leave, those that I have produc'd, do prove me here in Town in *April* and *May* 78. And if your Lordship has done with this Witness, I'll call another.

L. C. J. Well, go on as you will. I tell you what sticks with me.

Oates. Pray call Mr. *Philip Page*.

Mr. Sol. Gen. Hold, Sir, a little; I would ask these Witnesses a few Questions before they go away. You *Butler*, let me ask you, pray, the first time you saw Mr. *Oates* at the time you speak of, was it in *April* or *May*?

L. C. J. He swore it was the beginning of *May*.

Butler. To the best of my knowledge it was the beginning of *May*.

Mr. Sol. Gen. Who did you tell first, that there was Mr. *Oates* at that time?

Butler. I told it Mrs. *Mayo*.

Mr. Sol. Gen. Consider, Friend, what you say now, you are upon your Oath, and consider what you said at the former Trial, when you were upon your Oath too.

Oates. Pray, my Lord, I desire my Witnesses may be examined without Threatnings.

L. C. J. It is not a Threatning, it is an Admonition not to go beyond the Truth.

Mr. Sol. Gen. Be sure you be in the right in what you say, and now I ask you upon your Oath, when was the first time you saw Mr. *Oates* when he came in that Disguise you speak of?

Butler. I told you it was in *May*, Sir.

Mr. Sol. Gen. How far in *May*, consider well what you say.

Butler. To the best of my Remembrance, it was the beginning of *May*.

Mr. Sol. Gen. Do you think it was within a Week, or the first ten Days of *May*?

Butler. I cannot tell that, as well as I remember, it was the beginning of *May*.

Mr. Sol. Gen. When you saw him first in *May*, who else, as you remember, was by?

Butler. Mrs. *Mayo*.

Mr. Sol. Gen. And no body else?

Butler. Yes, one *Benjamin Turbet*, who is since dead.

Mr. Sol. Gen. But consider your Oath, Friend, once more, and recollect yourself; Do you swear positively Mrs. *Mayo* was by, and did see him at the same time?

Butler. I saw her look out of the Window into the Yard, and I believe she did see him.

Mr. Sol. Gen. Well then, let us examine her Evidence and yours together, and see how they agree.

Oates. My Lord, these are not Questions tending to satisfy the Jury at all, as to the Point in question.

L. C. J. Are they not? methinks they are, whatsoever you think.

Oates. After six Years time, to ask such poor ignorant People such trifling Questions!

L. C. J. Pray, Sir, be contented, and let the King's Counsel examine the Witnesses.

Oates. My Lord, he says I was here in *May*, that's enough.

L. C. J. Well, Sir, I know what he says.

Mr. Sol. Gen. And you shall hear Mr. *Oates*, how your Witnesses agree.

L. C. J.

L. C. J. Go on, Mr. Solicitor, and do you sit fill and be quiet.

Mr. Sol. Gen. Then, my Lord, I would ask him this Question more; the first time you saw *Oates* come to Sir *Richard Barker's*, what Habit, pray you, was he in?

Butler. He was in a Disguise.

Mr. Sol. Gen. Ay, what Disguise?

Butler. He had a white Hat flapping over his Ears; his Hair cut short, close to his Ears, and a grey short Coat.

Mr. Sol. Gen. Had he never a Perriwig on?

Butler. No, his Hair was cut short to his Ears.

Mr. Hanses. Was he in such a Disguise, that a Man might not ordinarily know him, that had known him before?

Butler. Truly, my Lord, I did not know him when he first came in, till he spoke to me, and asked me, how do you, *John?* and then I recollected who he was, that it was *Mr. Oates*.

Mr. Sol. Gen. Was he always in the same Habit, when he came thither?

Butler. The next time he came he had a Cinnamon-coloured Suit, and a long black Perriwig that was curl'd down thus far, and a black Hat, with a green Ribbon and green Cuff-strings about his Wrists.

L. C. J. Did you ever see *Oates* dine there?

Butler. Yes, I did.

L. C. J. When was that?

Butler. After my Master came home from *Putney*.

L. C. J. Who was there besides?

Butler. One Sir *William Thurrel* and Madam *Thurrel*.

L. C. J. How often did he dine there?

Butler. Several times.

L. C. J. Who else was there?

Butler. My Master and his Daughter.

L. C. J. And who else?

Butler. Mrs. *Mayo*.

L. C. J. What is become of your Master's Daughter?

Butler. I beg your pardon for that, my Lord.

L. C. J. Where is she, Man?

Butler. She is at home, I suppose.

L. C. J. What dost thou beg my pardon for then?

Butler. My Lord, I call to mind she did not dine with them.

L. C. J. Did she dine at any time with him there?

Butler. Yes, I remember several times; but not then.

L. C. J. When did you see your Master's Daughter last?

Butler. I have not seen her this Quarter of a Year.

L. C. J. Where is she now?

Butler. At home at *Putney*, my Lord, I believe.

L. C. J. And she was several times there when he din'd there?

Butler. Yes, she was at home.

L. C. J. Did Mrs. *Mayo* see him at Dinner there?

Butler. Yes, I believe she did.

L. C. J. How often did he dine there about this time you speak of?

Butler. Several times.

L. C. J. Do you think seven times?

V O L. IV.

Butler. I do think he might have din'd there seven times.

L. C. J. Did he more than seven times, do you think?

Butler. I cannot number how many times it was.

L. C. J. Now come in Mrs. *Mayo* again.

Mrs. *Mayo.* Here I am, my Lord.

L. C. J. Mrs. *Mayo*, give me leave to ask you a Question or two.

Mrs. *Mayo.* Yes, my Lord, what you please.

L. C. J. You say (if I do not misremember; if I do, I beg your pardon, and you'll correct me) a Week in *May* was the first time you saw Mr. *Oates*, and that was at Sir *Richard Barker's*.

Mrs. *Mayo.* I think it might be about the beginning of *May*.

L. C. J. Had he been in the House before?

Mrs. *Mayo.* Not at that time that I know of, but as they told me.

L. C. J. Who told you?

Mrs. *Mayo.* That Coach-man there, *John Butler*, and one *Benjamin* who liv'd in the House.

L. C. J. Then you did not see him the first time he came; what say you, *Butler*?

Butler. She did see him out of the Window in the Yard.

L. C. J. Well, let that pass then: come I'll ask you another Question upon your Oath, How often have you seen him dine there?

Mrs. *Mayo.* I saw him dine that time that I spoke of.

L. C. J. Did not he dine there above once?

Mrs. *Mayo.* No, he did not.

L. C. J. What say you, *Butler*?

Butler. He did dine there several times with them.

L. C. J. Then one of you two must be mistaken, I am sure.

Oates. My Lord, if your Lordship would please to give me leave to speak, I would set it right.

L. C. J. Good Sir, let them set themselves right if they can, we need none of your Instructions.

Oates. My Lord, I desire —

L. C. J. Why, how now; pray, Sir, be at quiet. Mrs. *Mayo*, pray what Habit had *Oates* when you saw him first?

Mrs. *Mayo.* He was in a grey Hat and a grey Coat.

L. C. J. Was his Hair short or long?

Mrs. *Mayo.* He had on a kind of a short Wigg.

Mr. Sol. Gen. Are you sure it was a Wigg?

Mrs. *Mayo.* Yes, a kind of a brown Perriwig.

L. C. J. And he says his Hair was cut short to his Ears.

Oates. These things are very lean stuff to perjure a Witness upon.

Mr. Sol. Gen. When he came the second time, what Clothes had he on?

Mrs. *Mayo.* Afterwards he came in black Clothes and a long Perriwig.

Mr. Hanses. What coloured Perriwig was that, a black or a white one?

Mrs. *Mayo.* Not a black, but a brown.

Mr. Sol. Gen. You say it was long.

Mrs. *Mayo.* Longer than his other, yet not very long neither.

L. C. J. Here are I know not how many Contradictions in these Witnesses Testimonies.

Oates. Truly, my Lord, I do not find in the Examination of the *St. Omers* Witnesses, you were

so strict, or bore half so hard upon them, as you do upon my Witnesses; what does it signify, my Lord, whether the Wigg were long or short, black or brown?

L. C. J. We have no other way to detect Perjuries, but by these Circumstances; and 'tis the Duty of a Judge to enquire into all Particulars; as in a Controversy about Words, were they spoken in *Latin* or in *English*, and so to all Places and Postures of sitting, riding, or the like; as you know the Perjury of the Elders in the Case of *Suffanna*, was by their different Testimony in particular Circumstances discovered.

Oates. My Lord, I will ask her but one short Question; by the Oath you have taken, *Mrs. Mayo*, to speak the Truth, the whole Truth, and nothing but the Truth, as you expect the Face of God with Comfort in another World; did you see me at *Sir Richard Barker's* at any time in *May* 78? the *May* before the Plot was discovered, for that is the main Question.

Mrs. Mayo. Yes, I did, and I speak nothing here, but what I speak as in the Presence of the Lord.

L. C. J. Prithee, Woman, dost thou think we ask thee any thing that we think thou dost not speak in the Presence of the Lord? We are all of us in the Presence of the Lord always.

Mrs. Mayo. And shall answer before him for all that we have done and said, all of us, the proudest and the greatest here.

L. C. J. But I would not have so much to answer for, as thou hast in this Business, for all the World.

Mr. Sol. Gen. Well, we have done with her now, she may go away.

L. C. J. Where does she live now?

Cryer. *Mrs. Mayo*, where do you live now?

Mrs. Mayo. In *Leaden-ball-street*, my Lord.

L. C. J. When did you see *Sir Richard Barker's* Daughter?

Mrs. Mayo. About a Fortnight ago.

L. C. J. Where?

Mrs. Mayo. In *Barbican*, in *London*.

L. C. J. Do you live with *Sir Richard Barker* now?

Mrs. Mayo. I do not live with him now.

L. C. J. Did his Daughter use to be at the Table at Dinner?

Mrs. Mayo. She was often in the Country, my Lord.

L. C. J. Did she eat at his Table at that time when *Oates* was there?

Mrs. Mayo. I am not able to say whether she did or not; she used to be in *Wales* at *Sir Thomas Middleton's* sometimes, and with *Madam Thurrel* her Aunt, who was her Mother's Sister, and her two Daughters.

L. C. J. In *Wales*, dost thou say, where?

Mrs. Mayo. My Lord, in your own Country, at one *Dr. Cocket's*; I know your Lordship, tho' your Lordship does not know me.

L. C. J. I am very glad of it, good Woman; but prithee did ever *Sir Richard Barker* dine with *Mr. Oates*?

Mrs. Mayo. I cannot say he did, he went to and fro.

L. C. J. Well, have you any more Witnesses?

Oates. *Cryer*, call *Philip Page*.

Cryer. Here he is, Sir.

Oates. Pray swear him. (*Which was done.*) Pray be pleas'd to give my Lord and the Jury the best account you can of my being in *Town*. But, *Mr. Page*, the Question that I first ask you, is,

whether I was here in *April* or *May*, and in what Year it was that you did see me at your Master's Houfe?

L. C. J. When did you see *Mr. Oates* at your Master's Houfe? You mean *Sir Richard Barker* to be his Master, I suppose.

Oates. Yes, my Lord.

L. C. J. What do you say to it?

Page. Truly, I cannot be positive to the Year, but to the best of my Remembrance it was 78.

Oates. Pray tell my Lord and the Jury some Circumstances in that Year that did happen to you, that makes you believe it was 78.

Page. Sir, I'll give you the best Satisfaction I can to the best of my knowledge; he came to *Sir Richard Barker's* one Evening, and there he enquired for *Dr. Tongue*: He was in a Disguise, in a light-colour'd Coat, something like to Frize, but it was not Frize; the Term that they give it, I cannot so readily tell. He had his Hair cut short, almost to his Ears, and he had a broad-brim'd Hat on, and a small Stick in his Hand, walking melancholy about the Hall: I happening to be the first body he met with, as I suppose, he ask'd me if *Dr. Tongue* was within. I told him no, I had not seen him of a considerable time. He then ask'd me where *Sir Richard Barker* was? I told him he was ill now at *Putney*. Says he, when will he be here? I told him, I could not tell.

L. C. J. Did he see any body there but you?

Page. That I cannot tell, my Lord; not that I know of.

L. C. J. What time of the Year was it?

Mr. At. Gen. And what Month?

Page. What Year and what Month it was, I am not able to say, my Lord.

L. C. J. What became of him after that?

Page. He went out of our Gates then, Sir; he was walking up and down melancholy, and not finding any one, as I suppose, to answer him, he continu'd walking in the Patients Hall, where they used to wait on *Sir Richard Barker*, that came to discourse with him about Physick; and upon my Answer to his Question, he went away.

L. C. J. Did you ever see him any other time near to that time?

Page. No, I did not.

L. C. J. Did you use to wait at Table?

Page. No, I did not.

L. C. J. What Service were you then engaged in at *Sir Richard Barker's*?

Page. I made up the Physick, my Lord.

L. C. J. Did you not acquaint the Coachman, nor *Mrs. Mayo*, nor *Sir Richard Barker* with it?

Page. I think *Sir Richard Barker* was in *Town* soon after, and I did acquaint him with it.

Oates. But can't you tell what time this is, Sir?

Page. I can say no other than I have said; I believe it was in 78.

L. C. J. Was this in *June*, *July*, or *May*, or when?

Page. I cannot say punctually what Month it was, my Lord; but, to the best of my Knowledge and Remembrance, it was in the Beginning of *May*.

Oates. Had not your Master a Patient at *Islington* at that time, that was sick of a Fever?

Page. Yes, he had.

Mr. Just. Withins. Why, would *Mr. Oates* have give the Patient Physick?

Page. No, my Lord, but 'twas about that time that the Patient was under my Master's Cure.

Oates.

Oates. Indeed the *St. Omers* Men do swear thorough-fitch, but my honest Witneſſes are cautious, it being ſo long ago; and he that is a Miniſter of the Church of *England* (as they ſay) ſpeaks to a very Day, upon a much ſlighter Circumſtance. Pray call Mr. *William Walker*.

Cryer. Here he is.

Oates. Swear him. (*Which was done.*) Be pleas'd, *Walker*, to give my Lord to underſtand, when 'twas you ſaw me here in *London* in Diſguiſe, and when it was you ſwore ſix Years ago at the *Old Bailey*, that you ſaw me here in *London*: Sir, the time in Controverſy is this: I came here to diſcover a Plot of the Papiſts againſt the King's Life and the Religion, and I ſwore—

L. C. J. You muſt not aſk Questions in that manner. It is propereſt for you to propoſe your Questions to the Court, and they will aſk the Witneſſes.

Oates. Then I will not aſk him, but propoſe it to your Lordſhip.

L. C. J. Ay, propoſe what Questions you pleaſe, and if they are fair, I'll aſk them.

Oates. Then, my Lord, I would aſk Mr. *Walker* this Queſtion; when 'twas he met me with a Diſguiſe, in what Year and what Month?

Mr. Walker. My Lord, I have been interrogated in former Times upon this Point, ſix or ſeven Years ago; and I do confeſs I did ſee the Man, and met him between *St. Martin's-Lane* and *Leiceſter-fields*; and truly, my Lord, I think I may ſay it was my Unhappineſs to meet with him; for I have had a great deal of Trouble by it ſince, Subpœna upon Subpœna, Trouble after Trouble, that I am even weary of it; for I am an old Man. But I do ſay I did meet him at that end of the Town, between *St. Martin's-Lane* and *Leiceſter-fields* in a ſtrange Diſguiſe; he was juſt like a Vagrant, a very Raſcal, and that's true, I believe, my Lord.

Mr. At. Gen. Did you know him before?

Mr. Walker. Yes, or I had not known him then.

L. C. J. When was this?

Mr. Walker. My Lord, I'll tell you; my Lord Chief Juſtice *Scroggs*, when I was at the *Old Bailey*, aſk'd me if I knew what time I ſaw him thus; ſaid I, my Lord, 'tis almoſt a Year and an Half ſince I ſaw him; and I being an old Man, little thought it worth the while to lay up the particular time in my Memory: but I'll caſt about in my Thoughts to make the beſt Conjecture I can; for now I will not be upon my Oath, it being but Conjecture.

L. C. J. But now you are upon your Oath, remember that, Man.

Mr. Walker. My Lord, I am ſpeaking what I ſaid to the Court at that time.

L. C. J. Pray do not tell us an old tedious Story of the Questions and Answers in the *Old Bailey*, but mind what is ſaid to you here; my Queſtion is now, what time you ſaw *Oates* diſguiſed between *St. Martin's-Lane* and *Leiceſter-fields*, as you ſay you did.

Mr. Walker. My Lord, I cannot preſcribe the time; but I'll gueſs as near as I can with the beſt probability, and that is, upon this Circumſtance; when I went forward into *Leiceſter-fields*, in the Court before the Houſe, I ſaw the Elm-Trees budded forth as big as an Hazle-Nut; ſo that I did conjecture by that Token, it might be between *Lady-day* and the latter end of *April*; that was the time as near as I could gueſs.

L. C. J. In what Year was it?

Mr. Walker. I cannot very well tell what Year it was.

L. C. J. Was it in 77 or 78?

Mr. Walker. Truly, my Lord, I never thought it worth ſo much taking notice of, to fix the particular time in my Memory.

Oates. Whether was it that Year the Plot was diſcover'd, or the *Michaſmas* following?

Mr. Walker. I cannot tell when the Plot was diſcover'd, or whether it be found out yet or no.

Oates. But was it the Year before you were examin'd?

Mr. Walker. To answer you, Mr. *Oates*, when it was exactly, I cannot ſay; truly I would give you the beſt Satisfaction I could, and do you as much Right as I would do myſelf. I think if that time when I was examin'd were in 77 or 78, it was near a Year and a Quarter before I did ſee you.

L. C. J. Well, what can you make of this?

Oates. 'Tis not to be ſuppoſed he is a very willing Witneſs; but yet he ſays, 'twas a Year and a Quarter before the Trial in which he was examin'd, which muſt be in *April* 78.

L. C. J. I would know this Queſtion of you: Were you preſent at the *Old Bailey*, when the five Jeſuits were tried?

Mr. Walker. I was there, my Lord.

L. C. J. Were you at any Trial but one?

Mr. Walker. I was not examin'd at any time but one.

L. C. J. Have you any more Questions to aſk him?

Mr. Walker. My Lord Chief Juſtice that then was, did aſk me, if I knew any of the Priſoners at the Bar; and I look'd upon all of them, and I ſaid I knew not either of them.

Oates. Pray, my Lord, aſk him whether he was not produc'd, when the *St. Omers* Men were produc'd, and gave his Evidence as to my being in Town at that time.

L. C. J. He hears the Queſtion, let him answer it.

Mr. Walker. I am not able to answer you, becauſe you put ſeveral Queſtions together; but this I ſay, I was never examin'd but once, though I have been ſubpœna'd often, to my great Torment and Trouble.

Oates. Did you give Evidence at that Trial, that you ſaw me in *April* 78?

Mr. Walker. I teſtified that I ſaw you, and by ſuch Circumſtances, it muſt be about ſuch a time as well as I could ſuggeſt; but I could not, nor cannot ſpeak poſitively.

Oates. Now, my Lord, I ſhall go on to another Part of my Evidence, and call ſome other Witneſſes; and firſt of all, I come to Mr. Serjeant *Maynard*, and I deſire he may be ſworn.

[*Which was done.*]

L. C. J. What do you aſk my Brother *Maynard*?

Oates. I call Mr. Serjeant *Maynard* to give an account of the Proceedings of the Houſe of Commons upon my Diſcovery of the Popiſh Plot.

L. C. J. We will not admit that to be any Evidence at all; nor can it be by Law.

Oates. My Lord, Mr. Serjeant *Maynard* was one of the Committee of the Houſe of Commons that managed the Impeachment, and can give an account of the Evidence and Records that were produced at the Trial of the late Viſcount *Stafford*.

Mr. Serj. Maynard. I know nothing truly, nor can remember any thing of it now.

L. C. J. He ſays he remembers nothing.

Mr. Serj. Maynard. If Mr. *Oates* had told me before-hand, when he ſubpœna'd me, what time, and

and what particular things he would have examin'd me to, probably if I was there, I have Notes that I then took; but I can never swear to my Memory, for any Cause so long ago.

Oates. My Lord, I am very sorry Mr. Serjeant *Maynard's* Age should so impair his Memory.

L. C. J. I dare say, you are not more sorry than he is for his Age.

Oates. Well, my Lord, I cannot help it: Then I desire Mr. *Blaney* may be ask'd whether he has his Notes of my Lord *Stafford's* Trial.

Mr. *Blaney.* No, my Lord, I have them not here; Mr. *Oates* by his Ticket of his Subpœna, desir'd only the Notes of *Ireland, Whitebread,* and *Langborn's* Trial.

L. C. J. But I must tell you, Mr. *Oates*, if those Notes were here, they could be of no use to you, without the Record of my Lord *Stafford's* Attainder; if you ask any thing upon another Trial, you must produce first the Record of that Trial, and then you may examine to what was given in Evidence at the Trial.

Oates. My Lord, it is of Record in the House of Lords.

L. C. J. But that we are not to take notice of, without the Record be brought in Evidence before us: We must go according to the Course of Law in all Cases.

Oates. Then, my Lord, I must betake myself to another Part of my Defence; and that is, to prove the frequent Attempts made to baffle the Discovery of this Popish Plot, and to stifle the Murder of Sir *Edmundbury Godfrey*, and to sling it upon a Protestant Peer.

L. C. J. But that is no Evidence neither.

Mr. *Just. Holloway.* Surely that is very collateral Evidence.

L. C. J. Nay, it is no Evidence at all in this Case; we must not admit of any such Evidence to be given.

Oates. Good, my Lord, if this had not been true, which was sworn by Witnesses that had discover'd the Plot, why should these Men appear to suborn Witnesses (and they have been convicted of Subornation, and endeavouring) to baffle the Discovery, particularly as to Justice *Godfrey's* Death?

L. C. J. Mr. *Oates*, I must keep you to Evidence that is proper; we are upon our Oaths to go according to Law, and the Jury are upon their Oaths to try this Cause according to their Evidence; and we are bound to give them this Advice in point of Law, that nothing must weigh, or have any Consideration with them, that you offer, if it be not legal and proper Evidence. If you can say and prove, that any of the Witnesses that have been produc'd this Day against you, have been tamper'd with; or that they have tamper'd with any of the former Evidence, that is a good Evidence against them; but it must not be by any means admitted, that the Time of the Court be taken up, or the Jury inveigled by that which has not a natural Tendency to the Business before us.

Oates. But if your Lordship please, this Consult in *April 78*, was discover'd to the House of Commons, among the other Parts of the Discovery of the Treasons of several Noblemen and Gentlemen: Now upon the Discovery of the Plot, I desire that I might give in Proof the Proceedings of the House of Commons.

L. C. J. No, no, you cannot.

Oates. Pray, my Lord, is not the Journal of the House of Commons Evidence?

L. C. J. No, we say it is not at all.

Oates. Is that the Opinion of the whole Court, my Lord?

L. C. J. Yes, undoubtedly, there is no Question of it.

Oates. Is any Record of the House of Lords Evidence?

L. C. J. Yes, I tell you it is, and that because it is a Record; but there is a vast Difference between the Records of the House of Lords, and the Journals of the House of Commons.

Oates. The Journals have been deliver'd in as Evidence before now.

L. C. J. I cannot tell what they have been, but I am sure they ought not to be, and whatever they have been elsewhere, they cannot be here; and I'll tell you a plain Reason for it, because they have not so much Power in the House of Commons, as to give an Oath: But the House of Peers is a Court of Record, and therefore their Proceedings are Evidence, as the Proceedings of the *King's-Bench* here, or any Court of Record are.

Oates. Then, my Lord, if that part of my Evidence be over-rul'd, before I come to sum up my Evidence, I desire to offer this thing: My Lord, I can produce several Members of the House of Commons in the several Parliaments, that can remember how they proceeded against the Lords in the Tower, and the Popish Traitors upon my Discovery, and what Credit I had in the House of Commons; will that be Evidence, pray my Lord?

L. C. J. No, it will not, if you will produce any one that you told this to before the publick Discovery, that may be Evidence such as it is, and is often allow'd; but what the House of Commons did upon the Discovery, that's not any Evidence at all.

Oates. Then, my Lord, suppose I can prove, that I gave an early and timely Account to any of the House of Lords of this Conspiracy, and did acquaint them with the Consult in *April* as Part of it; I desire to know whether in producing any of those Lords, I shall give that which is Evidence.

L. C. J. Call whom you will that you told any thing to, that is a sort of Evidence, I tell you.

Oates. Then I call my Lord of *Devonshire*.

L. C. J. Here is my Lord of *Devonshire*.

Oates. My Lord, I beg your pardon for the trouble I put your Lordship to; but your Lordship sees the Necessity of it: It is for the Justification of the Truth, to which I will give my Blood for a Seal if I be call'd to it.

L. C. J. My Lord of *Devonshire*, your Lordship must be sworn. *[Which was done.]*

Oates. Will your Lordship please to acquaint the Court and the Jury (your Lordship being at that time a Member of the Commons House) what Account I gave there of this particular Consult (to keep to that Point that is here in question) before the Court this Day, and with what Credit I was received in all these Parliaments; for my Credit and the Credit of the Parliament is now in question.

Earl of *Devonshire.* My Lord, all I can say to it is this; you Mr. *Oates* gave a long Account of a Consult and Conspiracy among the Jesuits: But I cannot remember any Particular, it is so long ago.

L. C. J. Every body knows this, you gave a long Narrative into the House of Commons and House of Lords too.

Oates. Ay, and it was a true one; but my Lord of *Devonshire*, I desire your Lordship would be pleas'd

pleas'd to give the Court and the Jury an Account, with what Credit I was received in those three Parliaments your Lordship sat as Member in.

Earl of *Devonshire*. I remember that the two *Westminster* Parliaments after the Long Parliament, were so satisfi'd with the Discovery, that they pass'd a Vote in the House of Commons—

L. C. J. The Votes of the House of Commons are no Evidence at all.

Oates. They show what Opinion the Parliament was of.

L. C. J. Many Votes that have been made of late, I hope will neither be Evidence for, nor put in practice again.

Earl of *Devonshire*. My Lord, it is well known to all the World the Vote I speak of.

L. C. J. Nay, my Lord, I speak not to your Lordship; for we all know those Votes that I speak of were not according to your Lordship's mind: But we only say thus in general, that because the House of Commons cannot give an Oath, therefore what is done there, is not an Evidence here, or in any Court of Record.

Oates. But, my Lord, that I must urge; I do perceive that in the time of Parliament, and during the sitting of the House of Commons, Votes have been brought in as Bars to the Proceedings of Inferior Courts; and this Court does not look upon itself as superior to the great Court of Parliament: and then if they may be brought—

L. C. J. Which they cannot be, nor never were, nor I am sure ought to be; nor I hope never will be as long as there is any Justice in the Nation.

Oates. But, my Lord, you will allow the Records of the House of Lords to be Evidence?

L. C. J. Yes, I tell you, I will, and for that reason, because they are Records out of a Court of Record: An Order of Court-Baron is no Evidence, because it is no Court of Record; but a Judgment of a Court-Leet is Evidence, because it is a Court of Record; and there's the difference.

Oates. My Lord, I call in the next place my Lord of *Anglesey*, if he be in Court.

L. C. J. No, he is not here.

Oates. Pray, will you give me leave to call my Lord Keeper then?

L. C. J. See in the Court of Chancery, whether my Lord Keeper be there.

Cryer. No, my Lord, he is not; he's gone.

Oates. He was *subpœna'd*, my Lord, and I can have Affidavit made of it: He was a material Witnesses for me.

L. C. J. I cannot help it; he is not here.

Oates. Pray call my Lord Chief Baron.

L. C. J. Go one of you into the Exchequer, and see if my Lord Chief Baron be there, and tell him, Mr. *Oates* calls for him as a Witness.

Oates. And Mr. Justice *Levinz*.

Cryer. The Courts are both up; and they are all gone.

Oates. They were *subpœna'd*, I am sure, to be here; well, go and see, whether they are or no.

L. C. J. In the mean time do you call some other Witnesses.

Oates. I call my Lord Chief Justice *Jones*.

L. C. J. The *Cryer* is gone to look for the Judges.

Oates. Then I call my Lord of *Clare*.

L. C. J. Here is my Lord of *Clare*.

Earl of *Clare*. My Lord, I can remember nothing, it is so long time ago.

L. C. J. My Lord of *Clare* says, he can remember nothing.

Oates. I only call my Lord of *Clare* to ask him one Question, which I hope his Lordship will remember.

L. C. J. Swear my Lord of *Clare*.

[Which was done.

Well, what is it you ask my Lord?

Oates. My Lord of *Clare*, the Question I would ask your Lordship is, with what Credit I was received in the House of Lords upon my Discovery; and that you will, to the best of your Memory, give my Lord and the Jury an Account, how the House of Peers proceeded upon my Evidence?

Earl of *Clare*. Truly, my Lord, I cannot give any Account, it is of so long standing.

Oates. It is a great while ago, my Lord, and therefore it is hard measure, that I must be brought to this Trial so long after.

L. C. J. If it be a long time, we cannot help it: We cannot force People to prosecute sooner than they will do.

Oates. I desire Mr. Baron *Gregory* may be called.

L. C. J. He is not here, but see and call my Brother *Gregory*; I hear they are all together in the Treasury.

Oates. Then I call Mr. *Williams*, that was Speaker in the House of Commons.

L. C. J. Here is Mr. *Williams*. [He was sworn.

Oates. I desire, Mr. *Williams*, because you were then Speaker of the Commons House of Parliament, you would be pleas'd to tell what you remember concerning the Credit I received in that Parliament, in which you were Speaker, upon the Discovery I made of the Popish Plot; and particularly as to the Consult of Jesuits to kill the late King in the Month of *April* 78?

Mr. *Williams*. My Lord, my Memory is never very good; but especially in a Case that is at such a distance of time, and which consists of so many Particulars as this, I mean Mr. *Oates's* Discovery. But this, my Lord, I do remember; he was examin'd at the Bar of the House of Commons, and gave a long account: But it is more than any Man can do, to tell every Particular that is said in that House.

L. C. J. Was he upon his Oath, Mr. *Williams*, at the Bar of the House of Commons?

Mr. *Williams*. My Lord, he was as other Men are, that are examined in the House of Commons.

L. C. J. We all know it could not be upon Oath, they have not Power to give an Oath.

Mr. *Williams*. What Reputation he was of, I cannot say so well, as what their Proceedings did testify.

L. C. J. Nor in case they did believe him never so much, is it any thing to this Question; which is, whether he swore true or false at *Ireland's* Trial.

Mr. *Williams*. My Lord, when a Person is brought to the Bar, there to be a Witness in any Cause, every body is silent, and the Witnesses is heard what he has to say; and so was Mr. *Oates*. When he had done, he withdrew; but what the Opinion of the House was upon it, I must submit to their Votes and Resolutions.

L. C. J. Which you know, Mr. *Williams*, are no Evidence.

Mr. *Williams*. That I must submit to the Court.

Oates. I desire my Lord of *Clare* would be pleas'd to tell, if he remembers, what Credit the House of Lords gave me upon my Discovery.

Earl of *Clare*. My Lord, I do not well hear Mr. *Oates's* Question.

Oates. My Lord, my Question is this, When I was brought to the Bar of the Lords House, whether I did not receive the Thanks of the Lords House for my Discovery?

Earl of *Clare*. Truly, Sir, at the beginning of the Discovery of the Popish Plot, I was not in Town, nor in the House.

L. C. J. But now, Mr. *Oates*, I hope you are satisfied by the Answer that is given by your own Witnesses, that what is done in the House of Commons, is no Evidence; and I would have you remember that is the Reason of it, because they are no Court of Record, and because they cannot so much as give an Oath.

Oates. My Lord, I see my Lord of *Huntingdon* is here; and though I did not subpoena his Lordship, nor design'd to have troubled him, yet being here, I desire his Lordship would give an account what Credit I had in the House of Lords upon my Discovery.

L. C. J. Swear my Lord of *Huntingdon*.

[Which was done.]

Earl of *Huntingdon*. I do believe, my Lord, Mr. *Oates's* Discovery found a good reception in the House of Lords; but it was grounded upon the Opinion, that what he said was true, and that he was an honest Man; for so the House then accounted him to be: and upon this it was their Lordships gave credit to his Testimony. And indeed had the matter been true, it was of high importance to have it thoroughly examined: But since that time it being apparent there were so many and great Contradictions, Falsities, and Perjuries in his Evidence, upon which so much innocent Blood hath been shed; I believe a great many Persons who were concern'd in the Trials of those unfortunate Men, are heartily afflicted and sorry for their share in it: And I do believe most of the House of Peers have altered their Opinion, as to this Man's Credit; and look upon his Evidence as I do, to be very false.

L. C. J. Do you hear him, Mr. *Oates*?

Oates. No, my Lord, I do not very well.

L. C. J. Then, my Lord of *Huntingdon*, turn your Face to the Jury; and say what you said to us over again.

[Which his Lordship did to the same effect.]

Oates. Very well, my Lord.

Mr. Just. *Withins*. There's your Credit with the House of Lords, Mr. *Oates*.

Oates. My Lord, I call'd you in to answer my Question, as to somewhat that is past, and not to give your Judgment how you are inclined to believe now.

L. C. J. Nay, but with your Favour, it was to declare what Opinion the House of Lords had of you; and he says very well, and that this is in truth the same Answer that must be given, for the Judges and the Juries that tried the People upon your Evidence. Says my Lord of *Huntingdon*, at first truly I did believe Mr. *Oates* did swear true, and he had Credit with me, and so he had with others; but now upon further Examination into things, and in process of time Discoveries have been made of the Truth, and that what he swore is false; so that now I believe in my Conscience he is actually forsworn, and has drawn innocent Blood upon the Nation; and no body will believe a Word he says.

Oates. Well, my Lord, I have done with my Lord of *Huntingdon*.

Mr. Just. *Withins*. And he has done with you, as I perceive.

L. C. J. Yes, truly, methinks ye shake hands, and part very fairly.

Mr. Just. *Holloway*. There's my Lord Chief Baron; what say you to him, Mr. *Oates*?

L. C. J. Is my Lord Chief Baron sworn?

Cryer. Yes, my Lord, he is.

L. C. J. Then what do you ask him?

Oates. My Lord, I call'd your Lordship, because your Lordship sat as a Commissioner of *Oyer* and *Terminer* in the *Old Bailey*, at *Ireland*, *Whitebread* and *Langborn's* Trials; and that which I call your Lordship for, is to give an account to my Lord and the Jury, of the Satisfaction your Lordship received concerning the Fulness and Fairness of the Evidence then deliver'd by me in those Trials?

L. C. Baron. My Lord, I cannot charge my Memory with it.

L. C. J. He says he cannot remember.

L. C. Baron. No, not in particular; but in general I remember there were a great many Persons that gave Evidence in those Trials on the one side and the other: There were a great many Persons that came from *St. Omers*, that gave Evidence there of Mr. *Oates* being at *St. Omers*, when he said he was in Town.

Oates. And what Credit were they of, at that time, pray, my Lord?

L. C. Baron. I think they were Persons of very good Credit; they were Gentlemen of good Families many of them.

Oates. Did the Jury believe them at that time?

L. C. Baron. I cannot tell what the Jury did.

L. C. J. Nor is it any matter at all what they did: But I would ask you, my Lord, but one Question; Have you heard this Evidence that has been given here to-day?

L. C. Baron. No, my Lord, I have not.

L. C. J. If you had, I would then have asked you, whether you believe him now or not?

L. C. Baron. Truly, my Lord, I never had any great Faith in him, I do assure you, as to my self.

Mr. Just. *Withins*. You hear what he says, Mr. *Oates*; you had never any great Credit with him.

Oates. My Lord, I am not at all concerned at this; I value my self more upon my own Innocency and Integrity, than any Man's good or bad Opinion whatsoever.

L. C. J. Ay, your Innocency is very great!

Oates. Then, my Lord, I will conclude my Evidence.

Mr. *At. Gen.* My Lord, before Mr. *Oates* goes to sum up his Evidence, we have some other Evidence to give.

L. C. J. What say you, Mr. *Oates*? Will you call any other Witnesses to this Point?

Oates. My Lord, if they bring any other Evidence, I hope I may have my turn to answer it.

L. C. J. Ay, truly, if they bring any new Evidence that you have not applied to already, God forbid that you should not be heard; but if it only gives an Answer to the Evidence that has been given, then you must not retort on them; for they are to have the last Word: but it is not fit withal, that you should be denied any thing that is necessary or really of advantage to you.

Oates. If they offer any new Evidence to my Disreputation, the Question is, whether I may have a time allotted me to make my Defence against that Evidence?

L. C. J. Ay, ay, in God's name, by all means.

Mr. At. Gen. This is the usual Method of Proceedings; but I would know if *Mr. Oates* has any more Witnesses to examine to this Point, that he has examin'd to already?

Oates. My Lord, I think I have no further Evidence at present, till I hear what they further say.

Mr. At. Gen. Then may it please your Lordship, and you Gentlemen of the Jury——

Oates. I hope when your Lordship sums up the Evidence, you'll remember what has been said by the Witnesses.

L. C. J. You may assure your self, I will remember whatsoever has been said on the one side and t'other, as near as I can: The Gentlemen of the Jury are Men of Understanding, and I see they take Notes, and I'll give them all the Assistance I can.

Oates. Truly, my Lord, I have some more Witnesses to the same purpose, if your Lordship please to spare time to hear them.

L. C. J. Ay, ay, we sit here to hear the Witnesses, call whom you will.

Oates. Is my Lord *Lovelace* here?

L. C. J. I cannot tell, I do not see him here; but you did call my Brother *Gregory*, there he is, what say you to him?

Oates. *Mr. Baron Gregory* was Speaker of the House of Commons in one of the *Westminster* Parliaments.

L. C. J. Swear my Brother *Gregory*.

[Which was done.]

Oates. I desire your Honour would be pleas'd to give this Court and the Jury an account, you being Speaker of the House of Commons, what Credit I received there in that House upon my Discovery of the Popish Plot?

Mr. Bar. Gregory. My Lord, that is a pretty general Question, it is not possible for me to remember the Proceedings in the House of Commons so long ago.

L. C. J. But, Brother, I tell you what he means by it: He would have you to answer this Question, whether he was of good Credit in the House of Commons or not?

Mr. Bar. Gregory. I know not what Answer to make about the Credit he there had; any Member of the House of Commons may give as good and better an account in that matter than I; and truly I do not remember that *Mr. Oates* was before the Bar of the House when I was Speaker: I believe it was before I was Speaker, that he was examined at the Commons Bar.

L. C. J. Well, he can remember nothing of it.

Oates. Is my Lord *Lovelace* there?

Cryer. He has been called, but he is not here.

Oates. Call my Lord of *Stamford*.

Cryer. He is not here.

Oates. Call Sir *Francis Winnington*.

Cryer. He is not here.

Oates. Call *Silas Titus*, Esq;

Cryer. He is not here.

Oates. Call Sir *George Treby*.

Cryer. He is not here.

Oates. Call Sir *Francis Pemberton*: These have been all subpoena'd.

Cryer. He is not here.

Oates. Is my Lord Bishop of *London*?

L. C. J. Here is my Lord Bishop of *London*, pray swear my Lord Bishop of *London*. [Which was done.]

Oates. I beg your Lordship, if you can, would give an account of your Remembrance in this matter: Your Lordship was often in Committees of

the House of Peers about this Business, and from first to last you were in the Committee for further Examination of the Popish Plot; and you were not only of the Committee, but you also sat as a Baron in the House. I humbly beg your Lordship would please to tell as far as you can charge your Memory, what Reputation I had in the House of Lords, where I was upon my Oath; and in particular, whether your Lordship remembers that I received the Thanks of the House for the Service I had done for the King and Kingdom in the Discovery.

Mr. Just. Holloway. It is a long Question, my Lord.

L. B. of London. It is so, my Lord; but my Answer will be very short: For it is a very little I can remember after so great a distance of Time, and the Transactions have been publick; nor can I acquaint the Court with any thing, but what is known already; and that is this, I remember that the Plot was discovered by him, and his Discovery was receiv'd as Evidence at the Bar of the House of Lords, and believ'd, and the Thanks of the House were given him at that time for it.

L. C. J. There's Sir *George Treby*; what do you ask him? But first let him be sworn.

[Which was done.]

Oates. Pray be pleas'd to ask Sir *George Treby*, who was Chair-man of the Committee of Secrecy, and was Manager in the Trial of the Lord Viscount *Stafford*, that he will be pleas'd to tell what Credit I had in both Houses upon that Trial.

L. C. J. I told you before, you must urge nothing of that Trial, unless you have the Record here.

Oates. Then, my Lord, I desire Sir *George* may give an account what he knows of the Correspondencies between *Mr. Coleman* and the *See of Rome*?

L. C. J. No, that will not be any Evidence at all in this Case; for that is not at all here in question.

Oates. Then, my Lord, I desire Sir *George Treby* may speak what he knows of my Credit in the House of Commons.

L. C. J. Ay, what says he to that?

Sir *George Treby.* My Lord, I can answer for nothing but my own Judgment; I cannot tell what Credit he had with any particular Member of the House of Commons; I do remember indeed, he was there several times at the Bar, but not upon Oath, but as others usually are there: and concerning the Discovery, there was a Vote all the Kingdom knows of, that they were satisfied there was a Plot, but whether that Vote was grounded altogether upon his Evidence, or how far upon his Evidence, I cannot tell, nor what any Man thought of it besides my self.

Oates. I desire *Mr. Serj. Pemberton* might be call'd again.

Cryer. He is not here.

Oates. Then pray call Sir *William Dolben*.

Cryer. He is not here neither.

Oates. Then I call Sir *Edward Atkins*.

Cryer. He is not here.

Oates. Call *Mr. Richard White*.

Cryer. He is not here.

Oates. My Lord, these were all subpoena'd, but they will not come; they are frighted away.

L. C. J. We know nothing of that, they may come if they will.

Oates. Call *Mr. Thomas Cox*.

Cryer. He is not here; but here is *Mr. White*.

Oates. I pray he may be sworn. [Which was done.] I desire to know of him, whether he were not a Jury-man upon the Trials of *Ireland* and *Whitebread*?

Mr. *White*. No, I was not.

Oates. Then I am mistaken; I beg your pardon for this trouble.

L. C. J. Well, there's my Brother *Dolben* come now. What say you to him? Swear my Brother *Dolben*. [*Which was done.*]

Oates. May it please you, Sir *William Dolben*, you sit as a Judge upon the Trials of Mr. *Ireland*, Mr. *Whitebread*, and Mr. *Langborn*; and I call you, Sir *William Dolben*, to give an account to my Lord and the Jury, what Credit my Evidence had at those Trials, and how the Jury was satisfied with it.

L. C. J. There is the Verdict, Man, that finds the Persons you speak of, guilty.

Oates. If that be Evidence enough, I am satisfied, my Lord.

L. C. J. Is not that better than his Opinion to shew how the Jury was satisfied? Ay, certainly; better than the Opinion of all the Twelve Judges for that point; they would not have convicted them, except they had been satisfied with the Evidence.

Sir *William Dolben*. Have you done with me, Sir?

Oates. I have, Sir.

L. C. J. Have you called all your Witnesses, or will you call any more?

Oates. No, my Lord, I will call no more at present.

Mr. *At. Gen.* Then, my Lord, we'll go on with another part of our Evidence. Gentlemen, you see Dr. *Oates*, to support his Credit, has given two sorts of Evidence; the one is, some Records of Trials at the *Old Bailey*, wherein he had the good hap to be believed; the other is, several noble Persons, and other Gentlemen, as to the Credit he has had given to his Evidence before. What they have said I shall not meddle with at all at this time, but leave the Observations that are to be made thereupon, till we come to sum up the Evidence for the King. But as to the first part of his Evidence, that is, as to the Records produced, and the Verdicts therein given, and the Opinions of the Judges, we have this to say in point of Evidence as an Answer. First, we shall produce to you several Records, wherein he has not been believed; as that of Sir *George Wakeman*, and my Lord *Castlemain*: and not only so, but we shall actually prove that he was perjur'd in them; that what he swore against them was utterly false, and you will hear this was not the first time that he had sworn false; for in an Accusation that he gave at a Trial at *Hastings*, we shall prove he swore Buggery upon a Person, which was prov'd false.

Oates. Can you produce any such Record, Mr. Attorney?

Mr. *At. Gen.* Yes, we shall.

L. C. J. Do not interrupt the King's Counsel; let them go on; you shall be heard quietly in your time.

Mr. *Hanfes*. Nay, Mr. *Oates* need not be so haughty as to ask for the Records, by degrees we shall produce Records enough against him.

Mr. *At. Gen.* We shall prove also by the Journals of the Lords House, that he did forswear himself; for after he had there made a long Narrative of the Plot, being ask'd whether he had any more to accuse, than those Persons that he had nam'd, and this upon his Oath; he did there swear that he had no more Persons to accuse.

Oates. That were Members of that House, it was.

L. C. J. Sir, you must be quiet till they have done.

Mr. *At. Gen.* But soon after he bethought himself, and accuses the Queen and his Royal Highness the Duke, our now present Sovereign, of being in the Plot.

Oates. What Plot did I accuse them of?

L. C. J. Nay, you must sit down and be quiet; how now, will you not let the King's Counsel speak? You were heard quietly, and so shall they be too.

Oates. Well, my Lord, I will be quiet.

Mr. *At. Gen.* These things, my Lord, will shew what Credit he was of at that time. Another thing we say to these Records, is this; There were two other Witnesses, Mr. *Clay* and Mr. *Smith*, besides those that were now produced, which were the Home-Witnesses, that did positively swear, that in *April* and *May* 78, *Oates* was here in Town; he did then indeed make use of those other canting Witnesses, for I cannot call them any otherwise, that beat so about the Bush, and speak of Uncertainties, and contradict one another; but those that I name, *Clay* and *Smith*, were Home-Witnesses; and there lay the Credit of his being in town, when the Witnesses which came from *St. Omers*, say he was beyond Sea.

Oates. My Lord, I beg I may ask one thing; whether my Lord Bishop of *London* be there still?

L. C. J. No, my Lord of *London* is gone.

Oates. I am sorry for it, because he could have given an account of this *Smith*, for he knows him.

L. C. J. I cannot help it, you should have desired him to stay while he was here; go on, Mr. Attorney.

Mr. *At. Gen.* I will, my Lord; and this which I am going to say, as an Answer to his Evidence, will give a full Answer to that other Objection which he made; which was, what was the Reason, when he had given such an Evidence so long ago, it should be delay'd so long e'er it was prosecuted. I'll give your Lordship a Reason, and a satisfactory one: Till those Discoveries were made that have lately been made, the Evidence these Witnesses gave, carried a Probability of Truth in it; and Sir *Richard Barker* himself added his Testimony to it, tho' he does not think fit now to come and confirm it: I say hitherto it had some semblance of Truth, and so did ballance the other Testimony of them that came from *St. Omers*. But when we had discover'd that it could be testified by twenty Persons, that had not been at any of the former Trials, that he was certainly all that time at *St. Omers*; and when we had discover'd the Tampering and Practices of Mr. *Oates*, in suborning these Witnesses to swear as corruptly as he swore at first, which we shall shew you palpably to be true that he did so; that gave us Encouragement to go on to make Enquiry into the Matter: but this was not discover'd till half a Year ago, or thereabouts. Now as to one of those Witnesses, that is Mr. *Clay*, the Case stands thus: indeed I expected he would have brought the same Witnesses he did then, for I presume they are all about Town, but he has not thought fit to do that: This *Clay* was then a Priest, and a Prisoner in the Gate-House for that very reason, as being accused for being a *Romish* Priest. While he was there a Prisoner, Mr. *Oates* comes and threatens him, and solicits him to swear that he was here in town in *May* 78, that he might be provided with Proof against what the Boys of *St. Omers* (as he call'd them) would come to testify; and threaten'd him, if he did not, he would hang him, for he could swear him to be

a Priest; and this was about three or four Days before the Trial of the five Jesuits: At length they came to a Bargain and Agreement, as you will hear, that he should come and swear this; when Mr. *Oates* cannot pretend that the Evidence of *Clay* was known at all by any of the Committees that were concern'd in the Management of his Discovery; or that he was so much as thought of for a Witness. But we shall prove how it came to pass; and I believe, if Mr. *Oates* would call him now, (as I do not question he knows where to have him) *Clay* would not be so hardy now, as to affirm his former Testimony. Then as for Mr. *Smith*, his Case stands thus: Mr. *Oates* had sworn him into the Plot, as you will find in his Narrative that he gave in upon Oath, which is upon Record, and enter'd in the Journals of the Lords House. He was a School-matter in *Issington*, and *Oates* swears High Treason against him, and thereupon Warrants went out to take this *Smith*, and Mr. *Oates* was very violent in the pursuit of him but two or three Days before the Trial; and then, when all these Witnesses from *St. Omers* were come, as he knew very well, he was in some doubt his Design would have fail'd, and then does he prevail with *Smith* to become a Witness for him. And 'tis evident he did tamper with him, from that which was done by him at that time: For now he gives him under his Hand (to shew the Impudence, as well as Villany of the Man, as it has been evident enough in all his Carriage) a Paper that should give him authority to go free from all Procefs and Arrests upon any Warrants; and this Protection under Mr. *Oates's* Hand, is directed to all the King's Officers, thereby commanding them to take notice that this Mr. *Smith*, whom before he had accus'd of being in the Plot, was an honest Man, and employed in great Service for the King at that time. This Paper, when produc'd, will shew the Time when it was made; and then it will appear, that two Days after *Smith* comes and swears that he din'd with him the first Monday in May 78. This was what *Smith* swore then; and upon my mentioning of this Practice, if he have any shame in him, it must put him in some confusion; for we are prepared to prove by undeniable Testimony, that Mr. *Oates* did not dine with this Mr. *Smith* that Day; we shall prove it by the whole Family: but the first time ever Mr. *Oates* came there, was in July after, when he came into England from *St. Omers*, which these Witnesses say, was the latter end of June. Then it was that he was with Mr. *Smith*, and came to his House, and not before. And we shall prove by several Witnesses, that upon the Question being asked of Mr. *Smith*, how he came to testify such a thing, his Answer was, I must have died for it, if I had not done it; 'twas only a Mistake in point of time: But he threatened me, and so did some others too, that he would have me hang'd for being in the Plot, if I did not comply with him, and swear this for him. My Lord, I shall offer this Evidence that I have open'd, and then I hope we shall satisfy the Jury, and all that hear this Trial, that he is one of the most notorious Villains that lives upon the Earth; to be sure that ever was known in this Kingdom.

Mr. *Sol. Gen.* First, my Lord, we'll produce our Records: Where is the Record of Sir *George Wakeman*?

Mr. *Swift.* This is the Record of Sir *George Wakeman*, and this is a true Copy; I examin'd it.

Mr. *Sol. Gen.* Pray, Sir *Samuel Astry*, read a Word or two of it.

Cl. of Cr. Here is an Indictment against Sir *George Wakeman* for High Treason; he pleaded not guilty; and here is an Acquittal by the Jury.

Mr. *At. Gen.* He being acquitted, I desire he may be sworn. *[Which was done.]*

Mr. *Sol. Gen.* Pray, Sir *George Wakeman*, was Mr. *Oates* sworn against you at the Trial?

Sir *George Wakeman.* Yes, Mr. Solicitor, he was.

Mr. *Sol. Gen.* Do you remember what he swore against you at that Trial?

Sir *George Wakeman.* Yes, I do, Sir.

Mr. *Sol. Gen.* Was that true that he swore, by the Oath you have taken?

Oates. Is that a fair Question? I desire the Opinion of the Court?

L. C. J. Ay! why not?

Oates. He was legally accus'd; he cannot swear himself off.

L. C. J. But he is legally acquitted too; we have a Record for that here.

Oates. Ay, my Lord, he was acquitted; it's well known how.

Mr. *Sol. Gen.* Come Sir, was that he swore against you at your Trial, true?

L. C. J. What do you say, Sir?

Sir *George Wakeman.* 'Twas false upon my Oath, my Lord.

Mr. *Sol. Gen.* What Particulars did he swear against you?

Mr. *Pollexfen.* Ay, pray tell the Particulars as near as you can what he swore against you.

Sir *George Wakeman.* My Lord, if your Lordship please, I will give a little Account what he swore against me before the King and Council.

Mr. *Sol. Gen.* That will not do, Sir *George Wakeman*; we do not ask you that.

L. C. J. No, it must be only the Evidence that was given upon this Acquittal, which is the Record here produc'd before us; what did he swear against you then?

Sir *George Wakeman.* He swore at that Trial, as near as I can remember, that I undertook for a certain Sum of Money, 15000*l.* as I think it was, to poison the King, and I was to do it by the means of the Queen. I was to provide this Poison for her, and she was to give it to the King. This he swore at my Trial, which God forbid it should be true; nothing can be more false.

L. C. J. I ask you by the Oath you have taken, you are now acquitted, and so in no danger; and being upon your Oath, ought to speak the Truth, without Malice or Ill-will to him that did accuse you; was that he swore true or false?

Sir *George Wakeman.* False, false, upon my Oath; I speak it without any Malice against the Man in the World.

Mr. *At. Gen.* Then swear my Lord *Castlemain.* *[Which was done.]*

Sir *George Wakeman.* My Lord, I'll be bound to make it appear, that all he swore against me was false.

Mr. *At. Gen.* And so was it he swore against my Lord *Castlemain*, and others that were acquitted at the same time with Sir *George Wakeman.*

Mr. *Sol. Gen.* First, read the Record of my Lord *Castlemain's* Acquittal.

Cl. of Cr. Here is the very Record itself: it was in this Court, my Lord *Castlemain* was indicted of High-Treason, and tried and acquitted.

Mr. *At. Gen.* My Lord *Castlemain*, pray what did *Oates* swear against you at your Trial? And

pray tell the Court, whether that was true or false.

Earl of *Castlemain*. My Lord, as near as I remember, Mr. *Oates* did swear at my Trial, that he met me in *Lincolns-Inn-Fields*, and that he went with me somewhere to Mr. *Fenwick's* Chamber in *Duke's-freet* in *Covent-garden*, where he said I did talk a great deal of Treason, and a great Discourse of that kind he said there was, and he swore that I was in several Cabals in relation to the King's Death. I was afterwards acquitted by the Jury that tried me, as appears by the Record; and here I do declare, as in the Presence of God, and with all the Imprecations of divine Vengeance to fall upon me, if I speak any thing but the Truth, that not only that which he swore, was false, but that I never had any Thoughts in my Heart, much less did ever declare in my Words, of any injury or hurt against the late King. And besides, that I never saw the Face of *Oates* in my Life, till after I was put in Prison upon his Accusation of me.

Oates. My Lord, I desire to know what Religion that noble Lord is of?

Earl of *Castlemain*. I am a *Roman* Cartholick, my Lord.

L. C. J. We all know what Religion my Lord is of, you need not ask that Question.

Oates. That's not the Point, my Lord, I must have it declared in Evidence.

L. C. J. I wonder to see any Man that has the Face of a Man, carry it at this rate, when he hears such an Evidence brought in against him.

Oates. I wonder that Mr. *Attorney* will offer to bring this Evidence, Men that must have Malice against me—

L. C. J. Hold your tongue; you are a shame to Mankind.

Oates. No, my Lord, I am neither a shame to my self or Mankind: What I have sworn is true, and I will stand by it to my last Breath, and seal it if occasion be with my Blood.

L. C. J. 'Twere pity but that it were to be done by thy Blood.

Oates. Ah! Ah! my Lord, I know why all this is, and so may the World very easily too.

L. C. J. Such Impudence and Impiety was never known in any Christian Nation.

Oates. But this will not do the Work to make the Plot to be disbelieved; Things are not to be done by great Noises: I will stand by the Truth.

L. C. J. Can you think to out-face such Evidence as this with your Impudence?

Oates. But I hope you'll give me leave to make my Defence.

L. C. J. Then carry yourself as becomes you in the Court.

Oates. My Lord, I will do so.

L. C. J. If you do not, we know how to make you do it, you shall not think to domineer here.

Oates. My Lord, I hope I do behave myself as I ought.

L. C. J. No, you do not.

Oates. Ill Language may provoke any Man's Passion, my Lord.

L. C. J. Keep yourself within Bounds, and you shall be heard; but we'll suffer none of your Extravagancies.

Oates. My Lord, if I had been aware of this, I could have produc'd Evidence that would have supported my Testimony in these Matters.

L. C. J. Go on with your Proofs, Mr. *Attorney*.

Mr. *Attorney*. We will do so, my Lord.

Earl of *Castlemain*. Have you done with me, Sir?

L. C. J. Have you any other Questions to ask my Lord *Castlemain*?

Mr. *At. Gen.* No, my Lord.

L. C. J. Then your Lordship may sit down again where you were.

Mr. *At. Gen.* Now my Lord, we shall show the Lords Journal where it is recorded, that he swore he could accuse no body else but those that he nam'd, and then we shall give an Account, that soon after, he accus'd our present Sovereign, and the Queen Dowager.

Mr. *Sol. Gen.* Where is the Clerk of the Parliament?

Mr. *Swift*. Here he is; Mr. *Walker*!

Mr. *At. Gen.* Swear him. [*Which was done.*]

Mr. *Sol. Gen.* Mr. *Walker*, is that the Journal of the House of Lords?

Mr. *Walker*. Yes, my Lord, it is.

Mr. *Sol. Gen.* Deliver it in to the Clerk, and let him read it.

L. C. J. Then you must direct to the time, or else it will be to no purpose.

Mr. *Swift*. Sir *Samuel Astry*, pray turn to *Friday* the 29th of *November* 78.

Cl. of Cr. Reads. *Die veneris decimo nono Novembris* 1678. *Titus Oates* being call'd in at the Bar, desired to be heard a few Words before he was sworn—

L. C. J. Mr. *Attorney*, I doubt this will not be Evidence: It is only a Paper of what he said, taken before the Lords; but now whether that was upon Oath or no, is the Question: nay it appears it was not upon Oath; but says, it was before he was sworn.

Mr. *At. Gen.* My Lord, I desire it may be read all out.

Cl. of Cr. Reads. *Titus Oates* being called in at the Bar, desired he might be heard a few Words before he was sworn to speak to the main Business: which being granted to him, he complained of the Restraint he is under, and being debarr'd of the liberty of his Friends coming to him, and of conversing with any body in private, and that no *Englishman* ought to be restrained, unless accused by one or more Witnesses; and pray'd that the Restraint might be taken off, that he might be enabled to give his Evidence more cheerfully, and that the House would be pleas'd to address the King for that purpose, and that his Pardon may be renewed, because he is under Misprison of Treason. To which the Lord Chancellor told him, that the House would take his Condition into Consideration: And then being sworn, he was told by the Lord Chancellor, that the Lords have received an Address from the House of Commons in part upon Evidence by him given there, and that the House expects he should give an Account what that is, which has begot such Astonishment in the House of Commons as is expressed in the Address. Upon which, *Titus Oates* said, that in *July* last, he saw a Letter from Sir *George Wakeman*—

L. C. J. Is this Evidence, Mr. *Attorney*?

Mr. *At. Gen.* My Lord, the use we make of it is to prove that he did accuse the Queen.

L. C. J. What is the Accusation of the Queen to this purpose?

Mr. *At. Gen.* My Lord, we say he had sworn several Days before that he had no other Persons to accuse.

L. C. J. You should produce that first, that he swore so.

Mr.

Mr. *At. Gen.* My Lord, we should so, I think, and I thought it had been so done.

L. C. J. This is no Evidence, for it is not upon Oath; it does not say so.

Mr. *At. Gen.* Yes, it does, my Lord; but we will go on in order.

L. C. J. Come then, let us see what was sworn about his having no more Persons to accuse.

Mr. *At. Gen.* Pray Sir *Samuel Astry*, look the 30th of *October* 78.

Cl. of Cr. Reads. *Die Mercurii* 30 *Octobris* 1678, *Titus Oates*, being called in, was sworn at the Bar, and required to answer to what he is now called in for, concerning his Discourse with the Lord *Annesley* last Night, about the Duke of *York*.

L. C. J. I doubt this will not be Evidence neither; for we are now speaking only about what shall be Evidence: We are not now meddling with the methods of the House in their Examination of Witnesses, but what is Evidence here; suppose an Oath be administered to me for a particular purpose in the House of Lords, that I shall answer to what is asked me concerning a Discourse that I had with a third Person.

Mr. *At. Gen.* Pray Sir *Samuel Astry* look the next Day; for there, my Lord, he is examin'd upon the general.

Sir *Samuel Astry* Reads. *Die Jovis* 31 *Octobris* 1678.

Mr. *At. Gen.* But first read the latter end of the former Day's Proceedings, beginning at those Words, *Upon Consideration*.

Cl. of Cr. Reads. Upon consideration of what *Titus Oates* had said, he was call'd in again, and told by the Lord Chancellor that the House has directed he shall be heard again to-morrow at Nine a-clock, and the Lords do expect that by the Oath he hath now taken, he should go thorow with what he hath to say, and therefore he should prepare himself to deliver the whole Truth of what he knows concerning the Design against the King's Person, and the Government of this Kingdom.

L. C. J. But still, Mr. *Attorney*, we are but where we were; for supposing upon my Examination upon Oath given me in the House of Lords to a particular purpose, that my Lord Chancellor should tell me here, my Lords intend to-morrow, that you by virtue of the Oath now given you, should come and give them Satisfaction as to other Questions, I doubt that would not be Evidence in *Westminster-Hall*: Let us not stretch any thing further than it should be upon any account whatsoever. For suppose I give you an Oath to make true Answer to such Questions as I shall ask you concerning what was said at the Sessions-house at such a Trial, and then I come after and ask you upon the Oath you have taken, what do you say concerning such a Business seven Years ago, would that be Evidence?

Mr. *At. Gen.* With Submission, my Lord, if a Man be told he is upon his Oath, to say all he knows of such a Design, what he says upon that Oath, is Evidence.

L. C. J. You say very true, Mr. *Attorney*, if I give him a general Oath; but what he says concerning any other Matter than that particular Thing which he was sworn to give an Account of, can never be Evidence.

Mr. *Sol. Gen.* Truly, my Lord, I think we need not labour in such a thing as this.

L. C. J. Truly, Mr. *Sollicitor*, I think it is no Evidence at all; if you can prove he was sworn to

his whole Narrative, and can bring any thing out of that, you say something.

Mr. *At. Gen.* We desire that my Lord of *Berkeley* may be sworn. [Which was done.]

L. C. J. What do you ask him?

Mr. *At. Gen.* Pray, my Lord, will you give the Court and the Jury an Account, whether Mr. *Oates* was not sworn to his Narrative, and delivered in his Evidence at your Lordship's Bar upon Oath.

L. C. J. My Lord of *Berkeley*, let me ask you this Question, Was every thing that he gave an Account of at the Bar of the Lords House, given in upon Oath?

Earl of *Berkeley*. I cannot remember that, my Lord.

L. C. J. It is impossible that he should.

Earl of *Berkeley*. All I can testify is but what I answered to the Question which was asked me at my Lord *Stafford's* Trial.

L. C. J. But that is not material now, my Lord, because the Record of that Trial is not here.

Earl of *Berkeley*. The same thing is entered here particularly.

Mr. *At. Gen.* My Lord, we desire it may be read again.

L. C. J. Read it again with all my heart.

L. C. J. This is a particular Oath to a particular purpose; and shall I help it by intendment, that he was afterwards sworn to the general Matter? No, I will not: Suppose any thing had happened afterwards that it should have been thought fit to prosecute *Oates*; could the Man have been convicted of Perjury for this? Certainly he never could.

Mr. *Sol. Gen.* Well, my Lord, we submit it to you; but we will now go on to prove that which Mr. *Attorney* opened, that *Oates* did suborn these Witnesses to swear what they did swear: You have had one part of the Evidence that was then given; now we shall prove that *Clay* was sworn at *Whitebread's* Trial, and what he did there testify about *Oates's* being in Town.

Oates. I own it, he was sworn then.

Mr. *At. Gen.* Do you own that you suborned him?

Oates. No, I think not, Mr. *Attorney*.

Mr. *Sol. Gen.* Then we will prove that you did tamper with him, and by threatnings prevail'd with him to swear for you.

Mr. *At. Gen.* Nay, we will prove that he was mistaken in what he did swear a whole Year. Pray call Mr. *Charles Howard*.

Oates. My Lord, I desire I may have leave to ask the Court a Question, and I beg the Opinion of the Court in it, whether a Popish Reculant convicted, may be a good Witness?

L. C. J. We are not bound to answer your Question; for we see no ground why you should ask it: If you have any occasion to object against any Witnesses, and can produce any Record against him; then we will tell you more of our Minds.

Oates. Pray then let me ask you another Question, my Lord.

L. C. J. Prithee do not trouble us with thy Questions, let them go on with their Evidence.

Oates. My Lord, I desire to know, whether a Man confessing himself a Popish Priest——

L. C. J. We do not fit here to answer every idle Question; 'tis nothing at all to the purpose: When you ask a proper Question, we will answer it.

Oates. Yes, it is my Lord, and you are of my Counsel in Matter of Law.

L. C. J. I am not so.

Oates. Yes, my Lord, the Court is always of Counsel for the Prisoner.

L. C. J. That were well, indeed, if we were bound to give Advice in every Case, where a Man is prosecuted at the King's Suit: indeed in those Cases where a Man can have no Counsel allowed him, the Court is of Counsel for him; but where he may have Counsel, the Judges are not of Counsel for him.

Mr. Just. Holloway. Besides, we are not here putting of Cases, but trying of a Cause.

Mr. Sol. Gen. Here is Mr. *Charles Howard*, swear him. *[Which was done.]*

Mr. At. Gen. My Lord, we bring this Gentleman *Mr. Charles Howard* only to this part of our Evidence, to prove that *Mr. Clay* was mistaken a whole Year, mistook 78, for 77.

L. C. J. But, *Mr. Solicitor*, if you take this confused Method, we shall never be at an end, and for my part I cannot make any thing of it; it is impossible for me to retain these things in Memory, so as to give any Direction to the Jury, if there be not a Method used: for do you think that it is possible for a Man to retain in his Head a hundred things huddled up and down without any Order?

Mr. Sol. Gen. We beg your Lordship's Patience but a little while, and we shall have it in very good Order. Swear *Higgins*. *[Which was done.]*

L. C. J. Pray what do you ask him?

Mr. At. Gen. The Matter we examine him to, is this; for I would open to you the Nature of our Evidence: first he swore *Smith* into the Plot, and then gave him a Certificate, that he was an honest Man.

L. C. J. Is that *Oates's* Hand?

Mr. At. Gen. We shall prove it to be so.

L. C. J. You must first prove what he swore of *Smith*.

Mr. At. Gen. My Lord, we desire that we may read his Narrative.

L. C. J. But first prove it, *Mr. Attorney*.

Mr. At. Gen. It is upon Record in the House of Lords.

L. C. J. Was that delivered in upon Oath to the House of Lords? Or else we shall be but where we were.

Mr. At. Gen. For Proof of that, we call my Lord *Bridgewater*.

L. C. J. Here he is. Swear my Lord. *[Which was done.]*

Mr. At. Gen. My Lord *Bridgewater*, do you remember the Narrative that *Oates* gave in to the House of Lords, and was it upon Oath? But first of all, if you please, I desire my Lord may see the Book, whether any thing be there under his Hand, and then, whether it be enter'd to be upon Oath, and whether this be the Journal agreeing with the Paper deliver'd him?

L. C. J. This is a Narrative, my Lord, that he himself deliver'd in, and I would ask my Lord *Bridgewater* this one Question: Was not this Journal compared with the Narrative given in upon Oath by Order of the Lords House?

Earl of Bridgewater. Yes, I must say I was one of the Committee appointed to take care of the Journal, and here is my Hand to it among other Lords, and that is a Copy of what *Mr. Oates* did deliver in as his Narrative, which was insert'd upon a Report of the Committee into the Journal-Book by Order of the Lords, and we did examine the Narrative with the Book.

L. C. J. But what is all this to our purpose now? Do not mistake me, my Lord *Bridgewater*, I do not speak to you now, but to *Mr. Attorney*: What does this prove as to the Matter in hand?

Mr. At. Gen. Pray, my Lord *Bridgewater*, did you see the Narrative brought in by *Oates*?

Earl of Bridgewater. That Narrative was deliver'd to us by the Clerk of the Parliament.

L. C. J. But, my Lord, do you know that Narrative was given in upon Oath?

Earl of Bridgewater. I know no other, but that the Clerk of the Parliament brought it to us.

Mr. At. Gen. Here is the Clerk of the Parliament will tell you that *Oates* was sworn to it.

L. C. J. Prove it if you can; but hitherto I see nothing that looks like Evidence.

Mr. At. Gen. Really, my Lord, I should take it to be as much Evidence as any that ever was offer'd in the World.

L. C. J. Pray, *Mr. Attorney*, let us reason the Point a little: Suppose you bring an Answer in Chancery, except the Man be sworn to it, can you read his Answer? and yet I ever look'd upon an Answer in Chancery as Evidence.

Mr. At. Gen. In that Case the Record proves it self, and so it should here; and therefore we desire it may be read.

L. C. J. But surely you would not allow an Answer to be Evidence, unless you prove it to be sworn.

Mr. At. Gen. Truly, my Lord, I always took it, that we need not come to prove a Man was actually sworn to his Answer; but if it be once enter'd upon Record in Chancery, it proves itself.

L. C. J. It is true, *Mr. Attorney*, if it appears upon Record that the Answer was sworn.

Mr. At. Gen. My Lord, if this Journal of the House of Lords is a Record, then that which is enter'd into it, is a Record; 'tis a thing recorded as a Deed enrolled is, and proves itself.

L. C. J. *Mr. Attorney*, either we mistake one another, or we do not differ in Opinion. If you could make it appear that *Oates* brought this thing in the House of Lords, and deliver'd it upon Oath, that were Evidence; otherwise I cannot see how you can make Evidence of it.

Mr. At. Gen. I always thought, my Lord, that a Record out of a Court of Record, would have that Credit in another Court of Record, as to be read.

L. C. J. My Lord *Bridgewater* tells you, it was deliver'd to them by the Clerk of the Parliament.

Mr. At. Gen. Pray, my Lord, let the Clerk read what is at the end thereof.

Cl. of Cr. Reads. Hitherto examined the 3d of December, 1678. The Narrative and Examination of *Titus Oates* being first insert'd, according to the Order of the House, of the 21st of November last, by us *Anglesey*, &c.

Mr. At. Gen. Pray read the Order of the 21st of November.

Cl. of Cr. Reads. *Die Jovis* 21st of November, 1678. Upon Report made by the Earl of *Bridgewater*, from the Lords Sub-Committees for the examining the Journal of this House, That upon Examination thereof, their Lordships find, that the Narrative made upon Oath by *Titus Oates*, at the Bar on the 31st of October last, of the horrid Design against his Majesty's Person and Government, is only mention'd in the Journal, but not enter'd at large in such manner as he then related it; and that therefore their Lordships desire the Direction of the House

House concerning this Matter: It is thereupon ordered, that the said Narrative made by *Titus Oates* on the said 31st of *October*, shall be enter'd at large, and inserted in the Journal, as Part of the Business of that Day.

L. C. J. Now you make it Evidence; for it appears that he was sworn, and gave his Narrative upon Oath.

Mr. At. Gen. Then now, my Lord, I hope we may read it.

L. C. J. Ay, read it.

Mr. At. Gen. Read the 54th Article.

Cl. of Cr. Reads. This is the Narrative of *Titus Oates*, the 54th Article. That one *Matthew Medborne*, a Player in the Duke's Theatre; one *Mr. Penny*, *Mr. Mannoek*, *Mr. Sharpe*, and *Mr. Seddon*; and one *William Smith*, a School-master at *Islington*; and one *Edward Everard*, and others, meet in a Club on *Thursday* Nights and *Sunday* Nights, with one *Jones* a Priest, and one *Keymasb* within-mention'd: And all these Persons are employ'd by the Jesuits, to vilify the House of Commons, and to go about the City to incense the People against them, and against the Bishops of the Nation; and they deliver this Treasonable Position, That the Commons assembled in Parliament are the Devil's Representatives, and not the Nation's; which treasonable and detestable Words the Deponent did hear at the said Club, which is kept at *Fuller's-Rents*, near *Gray's-Inn*. And in the Month of *August* the Deponent was order'd by the Jesuits in *London*, to give the said Persons great Respects; and in their Names to thank the Club for their Faithfulness to them in that Particular.

Mr. At. Gen. Thus you see what he had sworn against him; now we shall shew how he dealt with him. Is that *Mr. Oates's* Hand?

Witness. It is; yes, I believe it is.

Mr. At. Gen. I believe he will hardly deny it himself.

Oates. Let me see it, I pray you, *Mr. Attorney.*

Mr. At. Gen. Shew it him. [*Which was done.*] Is that your Hand?

Oates. I cannot say it is my Hand; nor do I believe it to be so.

L. C. J. He does not own it to be his Hand.

Oates. I do not say it is not my Hand; but I do not remember any thing of it.

Mr. At. Gen. Read it, Sir, pray you.

L. C. J. What is it you would read?

Mr. At. Gen. A Certificate under *Oates's* Hand of *Mr. Smith's* Honesty, not three Days before the Trial of the five Jesuits.

L. C. J. Read it, let us hear what it is.

These are to certify that William Smith is no Papist; and that he is upon good Service at this time for his King and Country; of which, I hope, these that are Inquirers after Recusants, will take notice.

Witness my Hand this 3d Day of June 1679.

Titus Oates.

L. C. J. What harm is there in all this? I must needs say, I cannot comprehend what you would make of it.

Mr. At. Gen. This Protection was given *Mr. Smith* by *Mr. Oates*, three Days before the Trial; but after he had sworn him into the Plot in his Narrative.

L. C. J. I see not any Plot, for my part, that he swore him into, unless you mean Treason against

the House of Commons: For that is the Accusation he made, that he spoke such Words of the House of Commons. Pray read it again. [*Which was done.*]

L. C. J. Well, and what is all this?

Mr. At. Gen. Is not this a swearing him into the Plot?

L. C. J. No, not that I see; it only gives an ill Character of him.

Mr. At. Gen. But he is accused as a Confederate with the Priests and Jesuits.

Oates. Did I charge him, *Mr. Attorney*, with having any hand in the Plot against the King's Life?

Mr. At. Gen. I only offer this as an Evidence that there was tampering.

L. C. J. You call it a being in the Plot; I see no such thing.

Mr. At. Gen. And then he comes and gives him an Acquittal under his hand, and then produces him as a Witness.

L. C. J. There can be no great matter in this, *Mr. Attorney.*

Mr. At. Gen. Then, my Lord, we'll call *Mr. Smith* himself, and he will tell you how *Oates* drew him in: Swear *Mr. Smith*. [*Which was done.*] Pray acquaint my Lord and the Jury, how you came to swear at the former Trial, by whom you were persuaded, and how you varied from the Truth.

L. C. J. That is very nauseous and fullsome, *Mr. Attorney*, methinks, in a Court of Justice.

Mr. At. Gen. What did you swear in the former Trial? and was that true you did swear then?

L. C. J. I tell you truly, *Mr. Attorney*, it looks rank and fullsome; if he did forswear himself, why should he ever be a Witness again?

Mr. At. Gen. 'Tis not the first time by twenty that such Evidences have been given.

L. C. J. I hate such Precedents in all times; let it be done never so often. Shall I believe a Villain one Word he says, when he owns that he forswore himself?

Mr. At. Gen. Pray, my Lord, give me leave; I must pursue my Master's Interest.

Mr. Sol. Gen. My Lord, it was ever Testimony allow'd to be given, to detect a Subornation.

L. C. J. I am sure 'tis not fit to be allow'd at any time: If he did forswear himself in a Court of Record, in my Opinion he is not to be receiv'd as a Witness any more.

Mr. Sol. Gen. We do only make this use of him, to prove that *Oates* did suborn him.

L. C. J. Pray call some other Witnesses, if you have them, to contradict him; but do not offer to bring a Man to swear, that he did forswear himself before.

Mr. Sol. Gen. My Lord, we give Evidence here of a Man's being produced by *Oates*, to swear he was here in *May* 78, and he did make such an Oath: Now I hope, with Submission, my Lord, it is Evidence to contradict that Oath, if we can prove that he has confess'd he was forsworn, and mistaken in his Oath; such Evidence perhaps will be of little value, yet Evidence it is.

L. C. J. Make it what you will, *Mr. Solicitor*; I think it is of no value at all, nor to be admitted, for the Man to come and swear it himself: Prove what you can by others.

Mr. Sol. Gen. Surely, my Lord, this Confession of his to others, is of less value than when we bring the Man himself to confess his Fault; that Man himself coming and owning the thing, that he was mistaken, with great Sorrow for it, sure is a good Evidence. *L.*

L. C. J. Argue the matter as long as you will, Mr. Solicitor, you will never convince me, but that he that has once forsworn himself, ought not to be a Witness after that in any Cause whatsoever. If any Man tell me otherwise till Doomsday, I cannot be convinced of it.

Mr. Sol. Gen. I go but to ask him this Question, whether or no what he swore were true?

L. C. J. Mr. Solicitor, we are all of another Opinion, that it is not Evidence fit to be given.

Mr. Sol. Gen. My Lord, I must submit it to you.

L. C. J. I tell you, Mr. Solicitor, if you should call him to know what it was he swore, and it does appear by any Evidence, or by his own Confession, that it was false, you ought not to believe what he says, even in that matter. And I think truly, for Example's sake, it ought not by any means to be admitted.

Mr. Sol. Gen. My Lord, I must submit it to you; but then I humbly conceive, it will be in very many Cases impossible to detect a Perjury or Subornation, if the Party suborn'd cannot be admitted to be a Witness.

L. C. J. What good will the admitting him to be a Witness do? For either what he swore then, or what he swears now, is false; and if he once swears false, can you say he is to be believ'd?

Mr. North. My Lord, if a Man come and swear—

L. C. J. Look ye, Sir, you have our Opinion; it has been always the Practice heretofore, that when the Court have deliver'd their Opinion, the Counsel should sit down, and not dispute it any further.

Mr. At. Gen. Then we will go about the Business of *Clay*, and for that we will call *Lawrence Davenport*.

L. C. J. 'Tis certainly against the Law to admit a Man that has once forsworn himself to be a Witness again in any Cause.

Mr. At. Gen. Swear *Lawrence Davenport*. [*Which was done.*] Pray give my Lord and the Jury an account how *Clay* came to be a Witness, and by whom he was wrought upon to be so.

Davenport. May it please you, my Lords, and Gentlemen of the Jury, Mr. *Oates* came to the Prison, I being then a Prisoner at that time in the *Gate-house* at *Westminster* myself; and having no other Employment, I had the Government and Care of some of the Prisoners for a Livelihood, being in Custody; and at that time Mr. *Oates*, as I said, when old *Clay* was in Prison, did come there to visit this *Clay* at several times. And coming there to visit this *Clay*, up stairs he went to his Chamber, and desired to speak with him; and I did desire your Worship, Mr. *Oates*, that you would go in to him, and you did go into his Chamber, and there these Words you did speak to him before the Trial of the five Jesuits; That if he did not swear what you put to him, he should be profecuted as a Priest, which you did believe he would die for.

L. C. J. What is this Man's Name?

Mr. At. Gen. *Lawrence Davenport*.

L. C. J. Did you hear him say so?

Davenport. Yes, my Lord, upon my Oath I did hear him say so, and Sir *William Waller* was with him; and then he replied, and said, with a Proviso that you would give him his Gold and Silver that was taken from him, being then a Prisoner under my keeping in the *Gate-house*, and wanting his Money; if you would do that, he said,

he had been a Rogue before, and he could not say what he might do.

L. C. J. Now make it appear that this *Clay* was sworn at the Trial.

Davenport. My Lord, afterwards I was Keeper to him under the other Keeper, and he had a Keeper to wait on him to *Newgate* Sessions at the *Old Bailey*; wherefore this Gentleman that is standing there, Mr. *Oates*, comes to us, says he, do not you trouble yourself about this Prisoner; let him alone with me, I'll see him at home again; and then the Jesuits there did take their Trials; how it was I cannot tell, for we could not come into the Court. Afterwards they went to the *Fountain Tavern* by *Newgate* to Dinner, and Mr. *Oates* and he went to Dinner together; we were below in the House waiting there till it was Night, and still thinking that he should come down again: but away went he home, and left us in the lurch; but indeed he did come home to the Prison very honestly and civilly, because he was civilly guarded.

Mr. At. Gen. Now, my Lord, we'll give you an account, that the next Morning after this Discourse betwixt *Oates* and *Clay* at the *Gate-house*, this Witness told it to another that was a Prisoner there then too.

Oates. My Lord, I would ask this Man a Question, whether he had the sole keeping of *Clay*, without any other Keeper with him?

Davenport. There was no Keeper in the House but myself, where he lay, which was in *Margaret's-lane*, not in the Prison, but in the House.

Oates. Pray ask this Gentleman, why he did not come in and testify this Discourse he speaks of, when *Clay* was a Witness.

Davenport. I was not by when he was sworn.

Oates. Did he not know he was a Witness?

L. C. J. No, he says he did not go into the Court with you, he was not suffered to go in.

Davenport. My Lord, I am a poor Tradesman, and know nothing what belongs to the Law.

Mr. At. Gen. Come, pray swear this Man, Mr.—
[*Which was done.*]

Mr. Sol. Gen. Pray tell what *Davenport* told you, and when.

Mr. ———. He came and told me the next day in the Prison, where I was then, what Mr. *Oates* and Sir *William Waller* had been tampering with *Clay* about, to make him swear for Mr. *Oates*.

L. C. J. What were the Words he told you they said to him?

Mr. ———. It was, that he must swear that Mr. *Oates* dined at Mr. *Howard's* House such a Day of the Month, and Mr. *Clay* did say he knew nothing of the matter; but then Sir *William Waller* and Mr. *Oates* did reply to him again, here's your Choice; if you will not swear this, we will try you for a Priest, and hang you, and so *Clay* agreed, if he might have his Money restored that was taken from him; he had been a Rogue before, and did not know what he might do.

Oates. Is this Evidence, my Lord?

L. C. J. Yes, doubtless, very good Evidence.

Oates. 'Tis only upon Hear-say that he speaks.

L. C. J. But that establishes the other Man's Testimony, this being told the very next Morning; for he would not conceal it, it seems.

Mr. At. Gen. Now that *Clay* was sworn at the Trial, you admit, Mr. *Oates*.

Oates. Yes, I do, he was so.

Mr. At. Gen. Then I think here's a plain Proof of a Subornation.

L. C. J. You must observe how they apply this Evidence: They say you are an ill Man, not only as to swearing false yourself, but as to suborning others to swear more than they knew; and particularly as to this *Clay*, that you and Sir *William Waller* did threaten him, you would hang him up for a Priest, if he would not swear as you would have him; and by your Threatnings he was prevailed with to swear.

Oates. Is Mr. *Clay* in Court, my Lord?

L. C. J. Nay, I cannot tell where he is.

Mr. At. Gen. He was your Witness, *Mr. Oates*; we expected you would have brought him.

Oates. I cannot tell where to find him, my Lord, now, truly.

Mr. At. Gen. Call Mr. *Howard*.

Cryer. Here he is, Sir; he is sworn.

L. C. J. Mr. Attorney, you have not proved what he swore.

Mr. At. Gen. We are now about it, my Lord. *Mr. Howard*, pray were you at the Trial of the five Jesuits, or at *Langborn's*, when *Clay* was sworn as a Witness for Dr. *Oates*?

Mr. Howard. Yes, I was at *Langborn's* Trial, my Lord.

Mr. At. Gen. What was the effect of his Testimony there?

Mr. Howard. He did swear, that he was with me and Mr. *Oates* at Dinner at my House, in *May* in the Year 77.

Mr. At. Gen. 77 did he say, or 78?

Mr. Howard. Stay, I will look upon my Notes I took at that time.

L. C. J. Ay, do so, to refresh your Memory, *Mr. Howard*.

Mr. Howard. It was *May* 78, my Lord.

Mr. Sol. Gen. Pray, Sir, was he then at your House with *Oates*?

Mr. Howard. No, he was not there in *May*; *Mr. Clay* was with me and Mr. *Oates* both together in *July* 78, after the 4th Day of *July*.

Mr. At. Gen. That is, after the time he came to *London* from *St. Omers*.

L. C. J. You say very well; have you any more Witnesses?

Mr. Sol. Gen. My Lord, we must desire that the 28th Article of Mr. *Oates's* Narrative may be read.

Cl. of Cr. Reads. That in order to this Command on April 24. 78. Father Warren, Rector of Liege; Sir Thomas Preston, Baronet; Father Marth, Rector of Gaunt; and Father Williams, Rector of Watton, and Master of the Novices; Sir John Warner, Baronet; Richard Ashby, Rector of the English Seminary at St. Omers, being sick of the Gout could not go. But out of the said Seminary went Sir Robert Bret, Baronet; Father Pool, Edward Nevile. There were in all with the Deponent nine or ten, who met in London in consult with Thomas Whitebread, Father Harcourt Senior, and Father Harcourt Junior, John Fenwick, Basil Langworth, William Morgan, John Keimes, Father Lovel, Father Ireland, Father Blundel, Richard Strange, Father Mico, Father Grey, and others, to the Number of fifty Jesuits, met at the White Horse Tavern in the Strand, where they plotted their Designs for the Society, and ordered Father John Carey, who was also there, to go Procurator for Rome; at which Consult thus held in the Month of May, the Deponent was present to attend the Consultors, and deliver their Concerns from Company to Company; and then a little after they left the White-horse Tavern, and divided

themselves into several Clubs and Companies; some met at Mr. Saunders's House in Wild-street; others at Mr. Fenwick's, at Aires's House in Drury-lane; others at Mr. Ireland's in Russel-street, near Covent-Garden; and in other Places. All which, tho' in several Companies, five or six in a Company, did contrive the Death of the King; and in order to which, there were Papers sent from Company to Company, which the Deponent did carry, containing their Opinions of the timing their Business, and the manner how it was to be done; and within three or four Days after the Deponent went to St. Omers, with the Fathers that came from the other side of the Water.

Mr. At. Gen. My Lord, we produce this to overthrow their Witnesses, that speak of his being here a Week in *May*. Now Mr. *Oates* in his Narrative says, that the Consult ended the 24th of *April*; and that three or four Days after, he returned back to *St. Omers*.

L. C. J. Pray read that over again, where the Names are; for the Witnesses for the King swear, that Mr. *Williams* came over from *St. Omers*, but he there says he did not, I think.

It was read again.

L. C. J. I thought it had been otherwise, 'tis darkly penn'd.

Mr. At. Gen. My Lord, I myself heard him declare in many Trials here, and at the *Old Bailey*; that all was finish'd in that Day, and he went in a few Days.

Oates. Mr. Attorney, you are mistaken: For if you please, my Lord, the Consult was not dissolv'd in six or eight Days, tho' they were not fitting or acting every Day.

Mr. At. Gen. 'Tis not a difference of six or eight Days that is contended for, but it is, either Mr. *Oates*, or his Witnesses, do not swear true. If it were as Mr. *Oates* says, that six or eight Days were allow'd after the 24th of *April*, then it must be the 5th or 6th of *May* that he went to *St. Omers*; and then his Witnesses, that say he was here the latter end of *May*, cannot swear true. And our Witnesses say he was all *April* and *May*, till the 23d of *June*, at *St. Omers*.

Oates. My Lord, Mr. Attorney does not apprehend the Evidence aright.

L. C. J. Well, you may make your Remarks by and by, and set him right if you can.

Mr. At. Gen. We have done our Evidence, my Lord.

L. C. J. Have you any more Witnesses, Mr. *Oates*?

Oates. No, my Lord, I have not.

L. C. J. Then you must conclude, and say what you have to say to the Jury.

Oates. My Lord, I have one thing more, and that is, a Copy of the Record out of the House of Lords. It is in the Journal the twenty-fifth of *March*, 79.

Mr. Walker. My Lord, I have not the Book here, it was not spoke for.

Oates. But do you know this Hand?

[Shewing him a Copy.]

Mr. Walker. Yes, and I believe it is a true Copy.

L. C. J. Read it.

Cl. of Cr. Reads. *Tuesday* the 25th of *March*, 1679.

Oates. It is the last Clause in the Journal of that Day.

Cl. of Cr. Reads. Resolved, Nemine Contradicente, by the Lords Spiritual and Temporal, and Commons in Parliament assembled, that they do declare that they are fully satisfied by the Proofs they have heard, that there now is, and for divers Years last past hath been a horrid and treasonable Plot and Conspiracy contrived and carried on by those of the Popish Religion, for the murdering of his Majesty's Sacred Person, and for subverting the Protestant Religion, and the ancient and established Government of this Kingdom.

Oates. There is an Order to have that Vote printed, and inserted before the Form of Prayer for the Fast. Pray, Sir, read the next Page.

Cl. of Cr. Reads. Die Lunæ 25 Oct. 1680.

Upon Report from the Lords Committees for examining Matters relating to the Discovery of the late horrid Plot and Conspiracy, that Captain Thomas Bickley hath lately vilified Dr. Titus Oates at a public Meeting at Chichester, to the prejudice of his Majesty's Evidence, for the further Discovery of the said Plot: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, that the said Thomas Bickley be, and is hereby required to appear before their Lordships, in the Lord Privy-Seal's Lodgings, near the House of Peers, on Wednesday the third Day of November next, at eight of the Clock in the Forenoon. And it is further ordered, that Alderman Exon, and Alderman William Bury of Chichester aforesaid, who were then present at the said meeting, do likewise attend their Lordships at the time aforesaid, to give Evidence of what they know concerning this matter.

L. C. J. What of all this? We know hereupon *Bickley* was turn'd out of Commission, and now *Bickley* is in again. But it seems, as you had credit with some then, so you had not with others. Well, have you now done all?

Mr. At. Gen. Yes, my Lord.

Mr. Sol. Gen. If *Mr. Oates* will sum up his Evidence, then I will do the same for the King, when he has done.

L. C. J. Well, what say you, *Mr. Oates*?

Oates. Now, my Lord, here is an Indictment prefer'd against me for Perjury, and the Evidence they have given for the King, is this. 1. They have call'd *Mr. Foster*, and he tells you, that I was produced at the Sessions-House in the *Old Bailey*, where he was summoned as a Juryman, upon the Trial of *Ireland*; and he says, that when I was produced at the Sessions in the *Old Bailey* as a Witness, and sworn (if I do remember *Mr. Foster* aright in what he says) he did hear me swear, that there was a treasonable Consult of Jesuits upon the twenty-fourth of *April* 78, at the *White-Horse Tavern* in the *Strand*; and he does further say, that I said those Jesuits afterwards came to a Resolution to kill the King; and that they separated themselves into lesser Clubs, the Resolution being drawn up by one *Mico*; and that I carried it from Chamber to Chamber to be signed, and did see it signed. My Lord, I did ask *Mr. Foster*, whether I in my Evidence call'd it a Consult, or a traitorous Consult. Now, my Lord, 'tis true I did call it a traitorous Consult; it is as true that I did swear there was such a Consult; and it is as true, that I did swear this Consult did divide itself into lesser Companies; it is as true that I did say I carried that Resolution about from Chamber to Chamber, and saw them sign that Resolution for murdering the King, I do not mean of this King, but of the late King. My

Lord, the Evidence I think I, nor no honest Man shall need to be ashamed of: I am not ashamed to own, that I repeated this Evidence several times, nor that I gave that Evidence upon Oath; for it is Truth, my Lord, and nothing but Truth, and I resolve by the Grace of God to stand by it, and confirm it with my Blood, if there be occasion. My Lord, to convict me of Perjury, they have brought a parcel of *St. Omers* Witnesses, and these do swear that which they would have sworn six Years ago; but then the Court thought them not fit to be sworn, not only because the Law will not allow them, but because of their Religion, that can dispense with false Oaths, if it were for a good Cause, and that was the Remark my Lord Chief Justice *Scroggs* then made on it. I shall not insist much upon what they have sworn, for that I suppose your Lordship and the Jury do very well remember: But I have five things to object to their Evidence, and I hope the Jury will take notice of my Objections, and make their Remarks upon them; for since you have heard the Evidence that is brought against me, it will be necessary for your Lordship to weigh the nature of these Witnesses, and the value that the several Juries of *London* and *Middlesex* had for them. 'Tis true, there are several brought here now, that never were Witnesses before; there are indeed other Men, but of the same Religion and the same Interest, and therefore their Testimony must be of the same value; I think your Lordship will allow me that. Therefore I begin with their Religion, and that I take notice to be a great Objection to their Evidence, as I am advis'd by those that are learned in the Law. And I must appeal to the Court, whether a Papist, in case of Religion, may be believed and received as a good Witness.

L. C. J. We must not hear any of these idle Expressions.

Mr. Just. Withins. Do you think you are come here to preach, *Mr. Oates*?

L. C. J. I'll tell you, a Papist, except you'll prove any legal Objection against him, is as good a Witness in a Court of Record, as any other Person whatsoever.

Oates. But if 'tis your Lordship's, I'll tell you my Lord *Coke's* Practice was not to admit them as good Witnesses.

L. C. J. Do not tell me of my Lord *Coke's* Practice; the Law is otherwise: keep to the Business that you have here in hand, the Question before us, whether you were forsworn in *Ireland's* Trial or not. Answer that if you can; but you must not run out into Clamorous and idle Extravagancies.

Oates. My Lord, I demand it as my Right to be heard what I have to except against the Witnesses.

L. C. J. I tell you, you shall be heard when you speak properly; but are you to determine what is right, or what is wrong?

Oates. I am to determine my own Right now in this Point, and I insist upon it, and demand it.

L. C. J. It may be, presently you'll tell us we have no right to judge of it.

Oates. Yes, my Lord, you have; but I hope I have right to urge it.

L. C. J. Urge what you will that is to the purpose, but then you must keep to the matter in hand, and not make such idle Excursions as these are.

Oates. I will keep to the matter, my Lord, if you will hear me.

L. C. J. So you shall; we'll make you keep to the Matter, or we will not hear you at all: Do not think your Impudence shall storm us out of our Senses.

Oates. My Lord, I do insist upon it, that these Mens Religion is an exception to their Testimony, and a Papist is not a good Witness in a Cause of Religion; and I desire I may have leave to argue that as a Point of Law in my own Defence.

L. C. J. No, Sir, it is no Point of Law at all.

Oates. Then I appeal to all the Hearers, whether I have Justice done me.

L. C. J. What's that? Why you impudent Fellow, do you know where you are? You are in a Court of Justice, and must appeal to none but the Court and the Jury.

Oates. I do appeal to the Hearers.

L. C. J. Take him away there; if you will not behave your self as you ought, I can assure you, the Court will do what they ought to do, and stop your Mouth.

Oates. What you please, my Lord, I must make my own Defence as well as I can.

L. C. J. You are here in Judgment before us, and are to appeal to us; we'll suffer none of your Common-wealth Appeals to your *Mobile*; keep within the Bounds of Decency, and say what you can for your self.

Oates. My Lord, this I move to the Court as one of my Objections to this Evidence given against me, That their Religion makes them no good Witnesses; especially in this Cause.

L. C. J. I tell you that is nothing to the purpose, what their Religion is.

Mr. Just. Holloway. Mr. *Oates*, we come not here to dispute Points of Religion, we come to try a bare Matter of Fact, whether you are perjured, or no.

L. C. J. I tell you a Papist is a good Witness without a legal Exception.

Mr. Just. Witbins. Pray, Mr. *Oates*, is not a Papist as good a Witness as a Dissenter?

Oates. My Lord *Coke* would not admit a Papist to be a good Witness in any Cause.

Mr. Just. Witbins. How, not in a Cause of *Meum* and *Tuum*?

Oates. No, my Lord, not in any Cause between Party and Party.

L. C. J. Where is that Opinion?

Oates. I'll cite you the Case, if you please, my Lord.

L. C. J. Pray let us hear it.

Oates. It is in *Bulstrode's* Reports, the Second Part, 155. A Popish Recusant is not to be admitted a Witness between Party and Party.

Mr. Just. Witbins. May a Presbyterian be a good Witness, Mr. *Oates*?

Mr. Just. Holloway. Or would Mr. *Colledge* have been a good Witness, Mr. *Oates*?

Oates. I tell you this was my Lord *Coke's* Practice.

L. C. J. You have our Opinion, and be satisfied with it; that Book says it was my Lord *Coke's* Practice, and we think if that was his Practice, his Practice was against Law.

Oates. Then another thing I object to their Testimony, is their Education.

L. C. J. That's no Objection at all neither.

Oates. My Lord, they are bred up in a Seminary against Law, and for which their Friends are to be punished.

L. C. J. So is every Man living that's bred a Dissenter, bred up against Law.

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Oates. My Lord, I have not offered any Dissenter as Evidence for me.

L. C. J. No, they are all no doubt of it very good People. Good-wife *Maye*, and her Companions, excellent Protestants without all question!

Oates. My Lord, I humbly offer a Statute to your Lordship: And that is Law sure.

L. C. J. Yes, a Statute is Law. What Statute is it?

Oates. It is 27^o of *Eliz. Cap. 2.* The Law says there—

L. C. J. Come we will see what the Law says. Read the Statute he speaks of.

Cl. of Cr. *It is intituled, an Act against Jesuits, Priests, and other such like disobedient Persons.*

Oates. My Lord, I desire that the Preamble of the Act may be read.

Cl. of Cr. *Whereas divers Persons called and professed Jesuits, Seminary Priests, and other Priests, which have been, and from time to time are made in the Parts beyond the Seas, by or according to the Order and Rites of the Romish Church, have of late come, and have been sent, and daily do come, and are sent into this Realm of England, and others the Queen's Majesty's Dominions—*

L. C. J. This is nothing to this Business before us at all.

Mr. Just. Witbins. Does this Statute say they are no good Witnesses?

Oates. They own themselves to be educated at *St. Omers*, and that is against this Law expressly.

L. C. J. What then! Do they own themselves to be in Orders, Jesuits and Priests, then you might say somewhat to them upon this Law; but do not spend our Time in such Trifles.

Oates. I do not spend your Time in Trifles, my Lord; it is my Defence.

L. C. J. Mr. *Attorney*, do you go on; for we will not sit here to spend our Time for nothing.

Oates. Pray, my Lord, let me but shew this, I only propose one Statute more to your Lordship's Consideration.

L. C. J. You may propose to read the whole Statute-Book.

Oates. Pray, my Lord, hear me out.

L. C. J. Speak then to the Business in hand.

Oates. It is the Statute made in the 3^d of King *Charles I. Chap. 2.*

L. C. J. It is nothing to the purpose.

Oates. I am advised 'tis very material for me.

L. C. J. I tell you it is not, and we'll not let your Importunity prevail upon us to spend our time for nothing: There has been a great deal of Time spent to no purpose already.

Oates. Then if you will over-rule it, my Lord—

L. C. J. We do over-rule it: For it signifies nothing to this purpose.

Oates. Pray, my Lord, be pleased to give me leave to offer their Judgments in Cases of Conscience, whereby they own they have Dispensations to swear Lyes for the promoting of the Cause.

L. C. J. That is no Evidence neither.

Oates. This is very hard in such a Case as this.

L. C. J. No, it is not hard, that what is no Evidence in Law, should not be suffered to be given in Evidence.

Oates. It is Evidence against the poor Dissenters, my Lord.

L. C. J. Indeed, Sir, it is not Evidence against any one body in the World; if you will take my

Word for it; if you will not, I cannot tell how to help it.

Oates. Then I offer you one thing more, my Lord, and that is what was said and done in the Case of the Earl of *Shaftesbury*, when he was charged with High Treason, and committed to the Tower of *London*; at several Sessions in the *Old-Bailey* and at *Hick's-Hall*, they did move that they might have liberty to bring in an Indictment of Perjury against the Witnesses which did accuse him of Treason, but now the Court there over-rul'd those Motions, and would not suffer my Lord of *Shaftesbury's* Friends to bring Indictments of Perjury against them, because they would not have the King's Evidence indicted of Perjury, nor the Popish Plot called in question: this is a Matter of Fact in the *Old-Bailey*.

L. C. J. And this is all idle too.

Oates. Pray, my Lord, will you hear me?

L. C. J. But pray, Sir, will you hear me too? I tell you this is nothing to the purpose neither.

Oates. My Lord, I desire to speak but these few Words then, as to my own Witnesses I have produced. And the first is *Cicely Mayo*; and, my Lord, though it be your Lordship's pleasure, not to have that good Opinion of her, as I think the poor Woman does deserve, yet I hope her Evidence will have its due Weight and Consideration with your Lordship and the Jury; she says, she saw me in Town in the Month of *May*: Now indeed she could not be positive, what *May* it was, but she said it was the *May* before the Popish Plot broke out, that is, before the Rumour of that Plot was spread abroad, and she believes the Plot broke out in 78. But this she says positively, she saw me in the Month of *May* here; my Lord, she comes to give this Evidence freely and voluntarily: a Man that is a Knave, is a Knave for something, either out of Malice, or for Gain or Interest; but she has no Reward given her, nor can hope for any; but in Love to Justice, without any By-end or particular Interest, she came here to testify the Truth, about her seeing me in *London*, in *May* 78. The next Witness is *Mr. Butler*, he was then *Sir Richard Barker's* Coachman. He lived some Years with him, as his Servant; but he is now set up for himself, and he says, that when he was about his Master's Business in the Coach-yard, and sitting the Coach for to fetch his Master home from *Putney*, I came in, and this was in the beginning of *May*, in a Disguise; and he says, he saw me a second time in another Disguise. Then comes a third Witness that I called, and that is *Page*, and he came into the Hall, where the Patients use to wait for his Master, and there he met me, and spoke with me. Then I called *Walker*, the Minister, but it happens his Memory is not so good now, as it was heretofore; and indeed I cannot tell how to blame him, for 'tis so long since, that it is impossible for any body to remember the Circumstances of Times and Places, that in some short time after the Fact might have been remembered with far greater Ease. I expected *Sir Richard Barker* might have been here, being subpoena'd to justify the Evidence of these People; and I did expect that *Mr. Smith* would have been examined: but I perceived the Court tender of that Point, as knowing it would then easily have been seen upon which Side it was, that he was suborned, that is, to make such a Confession as *Mr. Attorney* would have hinted at.

L. C. J. Have you a mind to examine him, *Mr. Oates*? with all my heart. If you consent to it, he shall be examined.

Mr. Just. Witbins. If you will, he shall be examined, it was for your sake he was not.

Mr. Just. Holloway. It was to do you Right, that he was refused to be sworn before.

Oates. Good *Mr. Justice Holloway*, you are very sharp upon me.

Mr. Just. Holloway. No, I am not sharp upon you; I think the Court did you a great deal of Justice, you have no reason to complain.

Oates. But, my Lord, this I say, the Evidence upon which I am now indicted of Perjury is the same which was delivered six Years ago at the *Old-Bailey*, at *Whitebread's* Trial first, and then at *Langborn's* Trial, where were sixteen Witnesses then produced and heard against me: But then, my Lord, what Credit did they receive at *Whitebread* and *Langborn's* Trials? Now if this Evidence that I gave was then to be believed, though opposed by so many Witnesses, what new Objection does rise against it, which was not then hinted, and received an Answer? For as to all the Records that are brought out of the House of Lords, they have not amounted to a Charge sufficient to diminish any Man's Evidence in the World: for as to the Narrative that is entered there in the Journal, I think I and any Man else, that were concerned as I was, may very well defend the Truth of it; and I do avow the Truth of the Popish Plot, and will stand by it as long as I have a Day to live, and I do not question but the Jury, upon Consideration of those Protestant Witnesses that I have here brought against these Popish Seminaries, will acquit me of this Perjury. I leave it to your Lordship and the Jury to judge; and I hope those Passages of Heat, that have fallen from me in Court, shall not make me fare at all the worse in your Judgment. I have called some noble Lords to testify for me; but I find, either the distance of time has wrought upon their Memories, or the difference of the Season has chang'd their Opinion, so that now they disbelieve that which they did believe before, and perhaps for as little Reason as—

L. C. J. As they believed you at first.

Oates. Yes, truly, my Lord, for as little reason as they believed me at first; for I cannot expect that a Man, who believes without a Principle, should not recant that Belief without a Reason.

L. C. J. What do you mean by that?

Oates. I name no body.

L. C. J. But the Nobility that are here, and that have been Witnesses in this Cause, are all Persons of that Honour, that the Court is bound in Justice to take notice of, and vindicate them from your scandalous Reflections; but only I think that a Slander from your Mouth is very little Scandal.

Oates. Nor from some body's else neither.

L. C. J. But, Sir, you must be taught better Manners.

Oates. I find, my Lord, I am not to be heard in this Cause with Patience.

L. C. J. I think you do not deserve to be heard at all.

Oates. I cannot tell how to help it, if you will not hear me.

L. C. J. Can't you say what you have to say for your self without Reflections, and running out into such Extravagancies?

Oates. My Lord, you will suffer me to offer nothing that is material for my Defence.

Mr. Just. Walcot. Do you think it decent for this Court to suffer Persons of Honour, that by your own Desire were sworn to give Testimony in this Cause,

Cause, should lie under the Reproach of your Tongue?

Oates. Good Mr. Justice *Walcot*, was there ever any Man dealt with as I am, or had such Evidence offer'd to be given against him? Here they offer to blacken me with the Imputation of that foul, infamous Crime of Perjury; and who are the Witnesses to prove it, but Youths out of a Seminary? Sir *George Wakeman*, and my Lord *Castlemain*, known Papists, and perhaps Popish Recufants Convict too. As for my Lord *Castlemain*, the Record of his Acquittal is brought as a Charge against me, to prove that I was forsworn, and not believed at his Trial; when all the World knows, it was because there was but one Witness against him, that he came off, and that was the Reason that was urg'd by my Lord Chief Justice *Scroggs* at that very time, who would not admit *Dangerfield* to be a Witness, and reflected not at all upon my Testimony, but directed the Jury, for want of another Witness, to acquit him. Then, my Lord, here is *Wakeman* brought, and his Acquittal too; he swears all I said against him was false: whereas, had it not been for two dishonest Persons, one I have now in my fight, I shall not name any Names, we could at that time have proved five thousand Pounds of the Money paid to him, and that he gave a Receipt for it. But, my Lord, this I am sure of, if I had been brought in as a Witness in the Case of those that suffered lately for the Presbyterian Fanatick Plot (as they call it) I had never been call'd in question, if my Evidence had been false; but it is apparent the Papists have now a Turn to serve, and these Papists are brought in, the *St. Omers* Youths, to bear this Testimony on purpose to falsify my Evidence, and to bring off the Popish Lords that now stand impeach'd of High-Treason for the Popish Conspiracy: but, my Lord, I hope as the Court would never admit Indictments of Perjury against the Witnesses in that Case of my Lord *Shaftesbury*, so you will not admit it here; and if my Lord Chief Justice *Jones* were in the right, who did the same thing in his Circuit, I hope I shall have that Right done me here. My Lord, it is not me they indict, but the whole Protestant Interest is aim'd at in this Prosecution; and hereby they arraign the whole Proceedings of so many Parliaments, all the Courts of Justice, and the Verdicts of those Juries that convicted the Traitors that were executed; for my own part, I care not what becomes of me, the Truth will one time or another appear.

L. C. J. I hope in God it will.

Oates. I do not question it, my Lord.

L. C. J. And I hope we are finding it out to-day.

Oates. But, my Lord, since I have not the liberty to argue those things that were most material for my Defence against this Indictment, I appeal to the Great God of Heaven and Earth, the Judge of all; and once more in his Presence, and before all this Auditory, I avow my Evidence of the Popish Plot, all and every part of it, to be nothing but true, and will expect from the Almighty God, the Vindication of my Integrity and Innocence.

Mr. *Sol. Gen.* May it please your Lordship, and you Gentlemen of the Jury—

Oates. My Lord, I have one thing to move to your Lordship; I desire I may be brought up to-morrow by Rule of Court to hear my Trial that is then to be.

L. C. J. Ay, let him be brought up by Rule to his Trial.

Oates. My Lord, I lie under very great Affliction with the Stone and the Gout, and besides that, I have lain in Irons these twenty-one Weeks; I beseech your Lordship, that this Cruelty may not be inflicted upon me. My Lord, I am but hitherto a Debtor to the King upon a Civil Account; and if I should be convicted upon these Indictments, I could then be but in Execution for a Trespass: and I humbly conceive and hope the Court will shew me that Favour, as to acquaint my Keeper, that I ought not to be so handled.

L. C. J. Look you, for that, I tell you again what I have often said, I expect from the Marshal that he keep you as he ought to keep you; I have heard that there have been abundance of Attempts made for your Escape, and therefore the Marshal must have the greater Care of you.

Oates. Let any of those Complaints be made out, my Lord, and I'll be contented to be used how they will.

L. C. J. I repeat it again, Let the Marshal have a care to keep you in *salvâ & arctâ Custodiâ*, according to Law.

Mr. *Just. Holloway.* If the Marshal does otherwise than his Duty, inform against him, and take the Remedy the Law allows.

Marshal. But the last Night, my Lord, Ropes were brought into his Chamber, on purpose to give him means to escape, and here are the Bundle of Ropes.

Oates. I know nothing at all of them, I assure you, my Lord.

L. C. J. Well, you have our Rule. Go on, Mr. Solicitor.

Mr. *Sol. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the King in this Cause; which is upon an Indictment of Perjury against *Titus Oates*, the Defendant; and the Perjury charg'd upon the Defendant, is laid to be in his Oath at the Trial of *Ireland*, at the *Old-Bailey*; and it is thus, That he in his Evidence at that Trial did swear, that there was a treasonable Consult of the Jesuits, held at the *White-Horse Tavern* in the *Strand*, the 24th of *April* 78, and that he was there present—

Oates. Ay, I was there.

L. C. J. You must be quiet, and let the Counsel go on without Interruption.

Mr. *Sol. Gen.* And that they separated themselves into lesser Companies and Clubs, and that the Jesuits came to a Resolution to murder the late King, and that he, the Defendant *Oates*, carried this Resolution from Chamber to Chamber, and saw it signed by them: Now all this is laid in his Indictment to be false; for that, in truth, he was not present at any such Consult of the Jesuits at the *White Horse Tavern* in the *Strand* upon the 24th of *April* 78, nor did carry any such Resolution from Chamber to Chamber to be sign'd, as he had sworn in the *Old Bailey* at that Trial; and so has committed wilful and corrupt Perjury.

Gentlemen, The Evidence that has been given to prove, that he was not present at any such Consult, nor did carry any such Resolution, has been by proving where he was at that very time that he swears this Consult was held, that is, that he was really at *St. Omers*, in parts beyond the Seas, and not in *London*; and to make out this, we have produced no less than twenty Witnesses, that swear positively, and give you very many Circumstances to induce you to believe, that what they have taken

upon

upon them to remember, is really and effectually true.

First, You have Mr. *Hilsley*, and he swears that he himself came away from *St. Omers* the 24th of *April*, New Stile, which is the 14th of *April*, Old Stile, which was a *Sunday*; that Night he came to *Calais*, the next day he arriv'd at *Dover*, and coming up to town towards *London*, the next Day he met with Mr. *Burnaby*, who was then going to *St. Omers*. And he further swears, that at that very time, when he came from *St. Omers*, he left *Oates*, the Defendant, upon the Place: this, I say, was the 14th of *April*. And for a Confirmation of this to be true, he left him there at that time, I would mention what two other Witnesses do testify, and therein do verify what he swears; for they tell you, that at this very time when he came over, or within a Day or two, but long before such time as there was any occasion to bring this to be a Question, he told one of them, in a Discourse that was between them, that he had left upon the Place from whence he came, which was the College at *St. Omers*, an *English* Minister, whose Name was *Sampson Lucy*—

Oates. My Lord, I beg I may have leave to withdraw, for I am very weak and ill.

L. C. J. Then make room for him to go away, if he will.

Mr. Sol. G. n. And they give you an account, that the Defendant, *Oates*, went by that Name there, and it is not denied by him that he did so: And this is a Circumstance greatly verifying Mr. *Hilsley's* Evidence. Then comes Mr. *Burnaby*, who swears, That he met Mr. *Hilsley* when he came from *St. Omers*, about the 16th of *April*, Old Stile, and the 21st of *April*, Old Stile, he came to *St. Omers*; and that when he came there, he found *Oates* there upon the Place; this was the 1st of *May*, New Stile: and he gives you this Circumstance to strengthen his Testimony, That he very well remembers, that upon the 2d of *May*, New Stile, the Day after he came to *St. Omers*, *Oates* intruded into his Company, and got himself acquainted with him. He says further, that upon the 3d of *May*, New Stile, he particularly remembers *Oates* was in his Company there, and they went into the Garden and walk'd together; he also says, he saw him the 5th of *May* New Stile, which is the 25th of *April*, Old Stile, the Day after this Day assign'd for the Consult, with this Circumstance, That he remembers to have seen him in the Rhetorick School, and so successively afterwards he gives you a particular Account down to *Midsummer*: after that, *Oates* continued in the College at *St. Omers*, and then went away.

Then the next Witness we produce is Mr. *Pool*, and he gives you an account, that upon the 25th of *April* 1678, New Stile, which was the 15th of *April* our Stile, he came over here, and he left behind him at *St. Omers*, the Defendant *Oates*; for he particularly remembers, that he saw him there when he came away; so *Hilsley* left him the 14th of *April*. Mr. *Pool* came away the 15th of *April*, which is their 25th, and left him at *St. Omers*, and does not remember, that he used to be absent out of the College; and Mr. *Burnaby* finds him there the 21st of *April*; so that particularly at the times the other two came away, and *Burnaby* came thither, there he was, and there they saw him.

The next Witness is Mr. *Thornton*, and he gives you an account when *Oates* came thither first, and how long he staid there; he says he came about

Christmas 77, and there he staid till *Midsummer* Eve 78; and he tells you some particular Days he saw him on; he says he saw him there on the 1st of *May* New Stile, and he saw him the 2d of *May* New Stile, in company with Mr. *Burnaby*, the next Day after his Arrival there, wondering at their sudden Acquaintance. And he adds a particular Circumstance, why he remembers it was the 2d of *May*; because that Day the Scholars at *St. Omers* acted a Play, at which *Oates* had a Scuffle for a Seat: and he says he does likewise remember him to have been there, when Mr. *Pool* came away, which was the 25th of *April*, New Stile.

Then Mr. *Conway*, that was our next Witness, gives you an account likewise of *Oates's* coming to *St. Omers* about *December* 77, and how long he staid there, viz. till the latter end of *June* 78. And he does not remember, that he lay out of the College above one Night, and that was in *January*. And he remembers particularly, that he saw him with Mr. *Burnaby* such a Day in *May*.

Then we brought another Witness, and that was Mr. *Haggerstone*, and he tells you, he had good reason to remember Mr. *Oates*, for he was in the same *Classis* with him; and this Gentleman gives an account particularly, that he remembers him to be there the next Day after Mr. *Burnaby* came, and agrees in testimony with all the rest, that from *Christmas* till *Midsummer*, he was not absent out of the College but one Night.

We have another Witness, Mr. *Beefston*, and he remembers, that *Oates* was playing at Nine-pins the 1st of *May*; he remembers the 2d of *May* to have seen him with Mr. *Burnaby* after the Play was over; and that agrees with the other Witnesses about his being in *Burnaby's* Company the 2d of *May*: and he remembers likewise, that he himself was chosen Reader to the Sodality; but upon Mr. *Oates's* Importunity, he supplied the Place in Mr. *Beefston's* room, only with this Reserve and Condition, That Mr. *Beefston* was to be Reader at any time, if *Oates* failed. And he gives you this particular account, that *Oates* did read, as he believes, every *Sunday* and Holiday, from the latter end of *March*, when he was chosen Reader, to within a Week of his going away; for that he did never read himself, as he should have done if *Oates* had been absent or failed to read.

We have another Witness, and that is Mr. *Smith*, and he swears his being there from *Christmas* 77 to *Midsummer* 78, and he remembers particularly as to *April* and *May*, because the 21st of *April* he himself fell sick in the College, and went into the Infirmary, and remained there till the 7th of *May*; and he does remember that *Oates* visited him very oft in that time in the Infirmary, and told him Mr. *Hilsley* was gone away, and Mr. *Pool* was gone away, and two or three other Particulars, which happened in the College at that time; so that there is another Evidence, that is very strong with Circumstances to confirm the Testimony of the rest; and he gives you a very satisfactory Account of it, by shewing the Reasons how he comes to remember these things.

Mr. *Price*, who was our next Witness, has given you a Relation all to the same purpose of *Oates's* coming there at *Christmas*, and of his going away at *Midsummer*. And he remembers particularly, that *Oates* was at *St. Omers* when the Jesuits went to the Consult at *London*; for that there was a Consult, and at that time, is acknowledged to be true; but not such as he says, nor was he there: but he

says some of the Fathers did call there in the way to *England*. And at that very time, and after, he saw him there. And Mr. *Doddington* gives you the same Account.

Then comes Mr. *Gerrard*, and he tells you a Story to the same purpose; how long *Oates* was there, and when he came. And that the 2d of *May* he remembers *Oates* was at the Play; and he remembers the 26th of *May* *Oates* was there, which was the 16th of *May* Old Stile. And he is sure *Oates* was there, at that time, for this reason, that being the Day whereon he himself was confirmed, *St. Augustine's* Day; and *Oates* was confirm'd with him: and therefore he has reason to remember *Oates* was at *St. Omers*.

My Lord *Gerrard* of *Bromley* was our next Witness, and he gives you an account to the same purpose; and to the general Evidence, in which he confirms the others, he adds this Particular, That *Oates* used to read with a singular canting Tone; so that he must needs remember him, and was so remarkable for other things, that he could not be absent without being mis'd, which he never was.

Then comes Mr. *Morgan*, who was there at that time, a Scholar; but he's now a Minister of the Church of *England*; and therefore not liable to Mr. *Oates's* great Exception of Religion. He confirms what all the Witnesses said of the Time of *Oates's* coming, and of the Time of his going away: And particularly he swears, That when Mr. *Hilsley* went away, he was there; when Mr. *Pool* went away, he was there; and when Mr. *Burnaby* came thither, he was there. And this is not all, for there is something more remarkable in his Testimony; for he tells you particularly he does remember, That upon the 24th of *April*, Old Stile, the Day, Gentlemen, when *Oates* says he was at the Consult in *London*, *Oates* was then at *St. Omers*. And the Occasion of his remembering this, he gives you an account of; for, he tells you, upon reading the Trial of *Ireland*, where *Oates* swears, That he was here at the Consult the 24th of *April* 1678, Old Stile, all the College reflected upon it, and wondered at the Impudence of the Man, that he should dare to swear such a thing, when all the College remember'd him to be there all the while. And upon recollection of Circumstances, he himself did particularly recollect his own playing at Ball that very Day, and having toss'd his Ball over the Wall, he borrow'd *Oates's* Key to go into the Garden to fetch it: And this was thought of whilst things were fresh, and every Man remember'd this, or that, or the other thing to be done at such a particular time.

Mr. *Arundel*, who was another Witness, proves the general Testimony of the rest, and agrees in some particular things; and all he says, is to the same purpose.

Mr. *Christopher Turberville*, he comes and swears *Oates's* being at *St. Omers* the 4th or 5th of *May*, which is the 24th and 25th of *April*, Old Stile. For that upon Mr. *Pool's* going away, he changed his Chamber in the College, and saw *Oates* divers Days afterwards in his Chamber, and at the Door; and he knew that he constantly read in the Sodality, and that he left particularly the *Sunday* before he went away, which was about *Midsummer* 1678.

There was another Gentleman, and that was Mr. *Anthony Turberville*, who gives evidence all to the same purpose; and this Circumstance goes thorough all the Testimony of these Persons, that there's scarce any body can come to, or go out of

the College, but it is known to all that are there, every Man takes notice of it, 'tis the common Discourse amongst them; and therefore they give this as the Reason of their Belief, That he was there all this while, because they did not remember any thing that should give them occasion to believe Mr. *Oates* was away from the College from *Christmas* till *Midsummer*, but only one time; and the Remembrance of that does shew, that they do really observe these things; for they could all tell that in *January* he went to *Watton*, and staid out one Night.

There is one Witness more that is positive and particular, and that is Mr. *Clavering*, and he remembers *Oates*, by a very remarkable Circumstance, was at *St. Omers* at the very time the Congregation is said to be held in *London*; for he tells you there came a Person to beg Money of him, and there was a Collection made in the House; and this Person did desire to speak with *Oates*, who was then in the College, and whom it seems this Person had known in *Spain*; but *Oates* did refuse to speak with him, and did not come down to him. Thus he remembers such an one came there, and when he was there, he was sent to *Oates* to desire him to come down to this Man, and he would not. Ay, but now how is this remember'd to be at the time when the Congregation was held here in *England*? As to that, he gives this plain and full account, That it must be at that very time; for the Scholars did discourse among themselves, and were reckoning up what he had gotten among them, and what he had gotten at *Watton*; and finding that it was very inconsiderable that he had gotten at *Watton*, they talk'd among themselves what should be the Reason, and concluded it was, because the Fathers were gone over to *England* to the Congregation.

These particular Circumstances our Witnesses give you as the Reasons of their particular Remembrances of the particular Times: But, Gentlemen, you must take along with you those general Considerations too that are offered, which do affect the whole Time, from *Christmas* till *Midsummer*. First, That none can come or go, without being discoursed of in the College: Next, That much more Mr. *Oates* must needs be missed, than any other, being so remarkable a Person, as they tell you, that scarce any Week pass'd without his making it remarkable by some ridiculous Action or another. They say he sat singly by himself, at a particular Table, that no Man could come into the Hall, but they must see him; and therefore, if absent, must needs miss him. And yet they swear they do not ever remember him absent, but that one Night; and if he had been absent, they must needs have observed it, because of all those Circumstances that have been reckoned up.

These are the Witnesses, Gentlemen, that we have produced to prove this Charge upon the Defendant, two of whom are brought only to verify Mr. *Hilsley's* Testimony; having heard it from him at that time that he had left *Oates* at *St. Omers*, when there was no Thoughts of this Question.

Now among these twenty Witnesses, there are not above two or three at most that were at either of the Trials before. They were never produced as Evidence, tho' indeed they proved the same thing that was testified by others then, but with many other Circumstances and Particularities that were not before spoken of; some are now produced that were produced before, and the Reason is, because they are themselves concerned in those Parti-

Particularities which gave occasion to the others to remember them.

Gentlemen, after the producing of so many Witnesses, and so strong a Proof, what is it that Mr. *Oates* has produced against it? His main Objection to their Testimony, is, There were several that came from *St. Omers* to testify at those former Trials what these now swear, who were not believed, but I was believed, and the Men were convicted, condemned, and executed upon my Testimony: But is that all he has to say? No, says he, I have likewise Witnesses to offer as a Counter-proof to them, a positive Proof that I was here in *England* at the time they swear me to be at *St. Omers*; and he says well; if that be proved, there is an end of the Case. Well, what is the Proof? The Witnesses that he has, have been these four, *Cicely Mayo*, Servant to Sir *Richard Barker*; *Butler* his Coachman; *Page*, another of Sir *Richard's* Servants; and the Parson *Walker*.

The Evidence of *Page* and *Walker*, tho' produced last by Mr. *Oates*, yet I crave leave to mention first, and set them out of the way. *Page*, he remembers to have seen Mr. *Oates* in a Disguise at Sir *Richard Barker's*; that is, in grey Clothes; but he is not certain as to the Time; and he cannot take upon him to say what time of the Year, or what Year it was, only he believes it was in *May*: and therefore that can be no sufficient Evidence to contradict Witnesses, that with great Particularity speak to certain times. As for *Walker*, the Parson, he said he saw him between *St. Martin's-Lane* and *Leicester-Fields*; but he cannot remember the time when neither: nay, the Remembrance he has of it goes rather to another time, than the time in question; for being asked what Circumstance he knew the Time by, he said, it was about a Year and a Quarter before the Plot was discovered, which must be in *April* or *May* 1677, and that will do the Doctor no service at all upon this Question.

Now let us consider Mrs. *Mayo's* Testimony; and the Oath that she made was this, That when *Oates* came over into *England*, she saw him at Sir *Richard Barker's* House the latter end of *April*, or the beginning of *May*, and the Week before *Whitsuntide*. The latter end of *April*, or the beginning of *May*, was the first time that he came, that she saw him; but that he came before, as she heard, but the Coachman only saw him, and told her that *Oates* had been there: but the second time she did see him, and he went in and dined there in the House. Sir *Richard Barker* was not there, but my Lady's Sister, her Sons and Daughters were there. She says, that she saw him again a Week before *Whitsuntide*; that when he came the first time he was in grey Clothes, a white Hat, and a short Perriwig. Afterwards he was in black Clothes, a pretty long Perriwig, not very long, but the Perriwig was brown: and these are the Circumstances she remembers to have seen him by.

Now let us see what *Butler*, the Coachman, says: He remembers about the beginning of *May* he saw *Oates* at his Master's House in a Disguise; the other said it was the latter end of *April*, or the beginning of *May*; but I stand not upon that: but this he does swear, That the first time he saw him, *Cicely Mayo* saw him too, that he was then in grey Clothes, a white Hat, but his Hair was cut short, and he had no Perriwig on; afterwards he came in a cinnamon-colour'd Coat, and green Ribbons, and a long black Perriwig. This is *Butler's* Evidence.

Now these two People's Evidence are utterly impossible to be reconciled, they contradict one another so much: First, they contradict one another in this; she says, the first time he came she did not see him, but the Coachman told her he had been there; but he swears, That she did at that time look out of the Window into the Yard, and did see him as well as he. Another Contradiction is this, she remembers the first time he came in grey Clothes, a white Hat, and a short Perriwig; the Coachman swears he had no Perriwig on, but his Hair was cut short to his Ears. Then again he swears the second time, he was in black Clothes, and an indifferent long Perriwig, and the Perriwig was brown; and the other swears he was in cinnamon-colour'd Clothes, and a long Perriwig, and it was a black one. Now thus you see the Witnesses contradict themselves, and cannot be reconciled to one another.

But take one thing more, which is very considerable, wherein she contradicts Mr. *Gerrard*; for she swears he was here a Week before *Whitsuntide*; that she is sure of: Now that falls upon the nineteenth Day of *May*; then upon the sixteenth Day of *May*, was the Week before *Whitsuntide*; now, that is a most eminent Day, by the Testimony of Mr. *Gerrard*; for that happens to be the twenty sixth of *May*, New Style, and that was the Day he was confirmed with Mr. *Gerrard* at *St. Omers*: And no Man sure can doubt which of the two Witnesses is to be believed; and it cannot but be true, that he was there at that time, because so remarkable a Circumstance cannot be forgotten: and yet this Woman swears that he was here a Week before *Whitsuntide*, and that by computation must be the Time of his Confirmation. But, Gentlemen, another thing that I offer upon the Testimony of these Witnesses, is this: If you will believe it, he himself contradicts his own Witnesses, or they him, and one of them is forsworn: For he has sworn the Consult was the twenty fourth of *April*, and that three or four Days after that was over, he went back with the Fathers to *St. Omers*: Now this contradicts all that his Witnesses have said. But he has given himself, as he thought, some little Latitude; says he, the Consult began the twenty fourth, but it held six or seven Days longer. We will for this time admit it to be so, and give him the six Days he requires; and yet after all, it will not come up to the time that his Witnesses speak to: for to the 24th of *April*, add six Days, and that brings us just to the last Day of *April*; and then take four Days in *May*, to make up the three or four Days after the Consult was over, and we are yet at a great distance from the *Whitsun* Week; for that was the 19th of *May*, and the Week before must be the 12th or 13th, and so it is impossible to be reconcil'd to Truth, what he and his Witnesses swear; either the Evidence that the Doctor now brings, must be a Contradiction to his own former Oath, or his Oath proves they are mistaken: besides the Contradiction that is between the Witnesses themselves; for they vary in a great many material Circumstances, which I have before reckon'd up to you.

But, Gentlemen, false Witnesses are very often detected by little Circumstances, though I must needs say, these are not small ones; for these are very remarkable things in themselves, and great Contradictions to one another, and therefore 'tis impossible they both can swear true.

There were some other Witnesses that were produced by Mr. *Oates* formerly upon this Point; one of which was *Clay*, the Priest, and he you hear is contradicted by Mr. *Howard's* Testimony, who not only tells you he was not at his House, when he says he was, but shews that *Clay* was mistaken in point of Time: It was not in *May*, but in *July*. But that's not all, we have another Evidence, Gentlemen, to show how this Mistake comes to pass, and which will give a great light into this sort of Practice that has been used in this matter; for we have two Witnesses that give you an account how *Oates* and Sir *William Waller* were at the *Gate-house* with *Clay*, and there did threaten him, that unless he swore he dined with *Oates*, at Mr. *Howard's*, in *May*, they knew he was a Priest, and he should be hang'd. The Man was somewhat cautious at first, for truly he knew nothing of the matter; but at last, upon condition he might have his Money again that was taken from him, he had been a Rogue formerly, and he did not know what he might do. Now, we find presently after, that he was in fact brought as a Witness; what he swore, Mr. *Howard* tells you, and you have heard him contradicted in that point of Time. For Mr. *Howard* says, it was in *July*; and then it was agreed that *Oates* was in *England*; for our Witnesses tell you that at *Midsummer* he came away from *St. Omers*.

So that, Gentlemen, the Evidence that was formerly produced for him, is not only taken away by positive Counter-proof, but there is fixed upon him, with great Infamy, the additional Crime of Subornation, by forcing People to swear for him under the Threats of being hanged; and we all know how such People lay under great Fears and Terrors at that time.

There was another Witness that was produced formerly for him; but I shall not take upon me to repeat all the particular Evidence that has been now given about that Matter. In short, our Objection to that Testimony lies thus: That *Oates* did swear in his Narrative, that *Smith* was a dangerous Man, and employed by the Jesuits to stir up the People against the Government; that appears by *Oates's* own Oath. But it likewise appears, that afterwards they were reconciled, and that he gave *Smith* a Certificate under his Hand, that he was a good Protestant, and a good Subject, and about eminent Service for the King. Now we see no reason hitherto, why Mr. *Oates* should change his Mind, after having sworn him such an ill Man, all of a sudden to be so kind to give him his Protection, and so advantageous a Character, as that was in that Season. But, Gentlemen, the Mystery is easily unfolded, if we go three or four Days further in time, which brings us to the Trials of *Whitebread* and *Langborn*; it seems Mr. *Oates* was then aware of that, which is now an Objection to his Testimony; for it was made an Objection at the first Trial of *Ireland*, That he was not at this Consult, for he was then actually at *St. Omers*; but no Witnesses were there to prove it; but now he was aware that some were a coming over, and it concerned him to make some good Proof if he could, that really and in truth he was here in *London* at that time.

And I cannot omit to take notice of what my Lord Chief Justice was pleased to observe and object to him now: It is a wonder a Man should be here in Town so long; a Man that had much Acquaintance, as it seems he had; a Man that went about

freely and publickly, as his own Witnesses say he did, should be seen by no body, but these few, should not be able to give an Account, by any body, where he lodged, at any one Time in this Interval. Nay, by no Circumstances that must occur to his own knowledge, to be able to shew where he lodged, is very strange; though it should be that he did lodge in the Houses of those that would not come to give Evidence, as he alleges, yet it is almost impossible, but there must be some other Circumstances to prove his being here, besides the Evidence of the Landlord of the House where he lodged: but he gives no Account where he was lodged, and whom he conversed withal, but these People only; and that they should see him, who were not his Intimates, and none else in the World, is to me one of the most strange Things that can be conceived.

Now, Gentlemen, when he has given no manner of Satisfaction, that he was here, and is by twenty Witnesses sworn not to be here; what is it that he says to all this? Why he doth insist upon it, that his Credit must not be now impeached, because that once he had the fortune to be believed, and some Men have died and suffered for it; as if no Perjury were to be punished, but that which is unsuccessful; whereas the reason why Perjury is taken notice of in the Temporal Courts, is only because of the Mischief that it may do. Shall it then be no Crime when a Man has done the Mischief, when the fear of that Mischief was the ground of making it a Crime? That is a most monstrous way of arguing. And yet this would Mr. *Oates* have look like an Argument, that because he has been believed in his false Oaths, and Men have suffered by his Perjury, and he has been successful in his Crime, that Success has protected his Wickedness from Punishment. This I confess is a new way of arguing; and such as none but Mr. *Oates* could certainly have invented.

But, Gentlemen, to contradict this, we have shown you, that as he has had the fortune to be believed; so he has likewise had the fortune to be disbelieved. For there have been produced as many Records of Acquittals, where he was an Evidence, as there have been produced Convictions upon his Testimony; so that he has been as often disbelieved as believed.

Whither then does he betake himself next? He has called a great many Witnesses to give you, as Evidence for him, an Account what Opinions at that time the Houses of Parliament, the Courts of Justice, and the Juries had of his Evidence; and then insists upon it, that now to call his Credit in question, is to arraign the Justice of the Nation, the Wisdom of both Houses of Parliament that believed him, the Honesty of the Juries that convicted those whom he accused, and the Integrity and Understanding of the Judges who were learned, wise and just Men; and with great Earnestness he asks the Question, why now at this time of day should this be called in question, which received so much Credit and Approbation so long ago, by the good Opinion that all sorts of Men had of it at that time? And now to question this, he would have thought to be a casting a Blot upon the Wisdom of the Nation, and an arrainging the Justice of it; when, if the Thing be duly considered, the not punishing this heinous Offence with the utmost Severity that the Law will allow of, now, that these Circumstances appear to make it plain and evident, would be a greater piece of Injustice and

Reproach, rather to our Nation, than any ways a Reflection on the Justice of it.

Gentlemen, when we consider the Circumstances of this Case now, I do verily think it will appear to be a very strange and wonderful thing to us, that ever any Man should have believed him. And it is a strange Consideration to reflect upon, to think what Credit he had at that time. But withal, consider, Gentlemen, could any one imagine, that it were possible for any Man on Earth to become so impudent, as to dare to expose himself before the High Court of Parliament, the great Courts of Justice, and there tell a most infamous Lye for the taking away the Lives of Men? The greatness of the Attempt, was a great Inducement to the Belief of it, because no Man could be presumed to dare the doing of such a thing, if he had not a Foundation of Truth to build upon. And when he had thus made his Discovery, and that of such a nature too, a most horrid, bloody, and traitorous Conspiracy to murder the King, to overturn the Government, to massacre all the Protestants in the Kingdom, and to deface the very Name of the Protestant Religion; what was more natural than that the Parliament should take all imaginable Care to prevent the accomplishment of so great a Mischief? And consider too how much easier it was for him to relate his Evidence in a continued Story, than afterwards it was to maintain it, when it came to be examin'd and oppos'd by them that were accus'd, who best knew wherein, and by what means to prove him false.

Gentlemen, the Care the Parliament took to disappoint any Designs of this nature, and the means they us'd for the Security of the King and Kingdom, and the Preservation of our Religion and Lives, (which I cannot but observe, was previous to the Trial of any one Offender, that was tried and convicted upon this Evidence) must needs put the whole Nation under great Apprehensions of Danger, and make the way much easier for him to be believed, as by sad Experience we found it did. Under these Circumstances came those Men to be tried, with this further, (as we cannot now but think) that there were ill Men at work, that laboured to improve those Fears and Jealousies, that had already possess'd Men's Minds; the Wonder then will be the less, if Men under such Disadvantages, tried by Men under those Fears and Apprehensions, had the ill fortune to be convicted. But when Men had a little overcome their Fears, and began to consider his Evidence more calmly, the Scene was changed, *Oates* lost his Credit, and the Men were all acquitted. Nor is this Prosecution any Reflection on the Protestant Religion, whose Cause he falsely assumes to himself. No, Gentlemen, the Protestant Religion had no share in that Invention. It needs not the support of a Lye, no, not the most plausible Lye, much less of one so infamous as this does now appear to be. It is rather a Vindication of our Religion, to punish such Offenders as they deserve, and the proper way to maintain the Justice of the Nation, and wipe off that Reproach this Man's Perjury has brought upon it.

L. C. 7. Then, Gentlemen of the Jury, the Evidence has been very long, and it cannot be expected for so much time has been spent in this Cause, and such a difference of Testimony, and especially considering that the Testimony has met with frequent interruptions, and I may say, some Part of it, delivered in great Confusion, it cannot be thought

or imagin'd, I say, that I should be able to remind you of the several Particulars that concern this Case, and may be necessary to be observed about it. But, Gentlemen, I am sure, by the Knowledge I have of most of you, you are Persons of great Understanding; so that what may be omitted by me, I question not, but your own Abilities will supply. I confess I am much shorned in my Labour, by the pains that Mr. *Solicitor* has taken to sum up the Evidence to you, and without all doubt, has done it with all Faithfulness to his Master, and with great Right to himself. I could not hear much of what he did say; but you who were nearer and did hear all, which I could not do, your Judgments will direct you to lay that Weight upon it, which it deserves, and which the Law will allow; for, Gentlemen, I am bound to tell you, that you are to lay no weight upon any Allegations on the one side, or on the other, or what is observed to you by the Court, further than is supported by the Testimony that has been offered.

Now, Gentlemen, I think it not amiss for me (before such time as I enter upon the Consideration of the Particulars, and reminding you what I take to be Evidence in this Case, and what not) to clear one Point, that this Person, *Oates*, the Defendant, against whom this Indictment of Perjury is brought, has endeavoured to insinuate, on purpose to gain himself a Reputation; which if he could acquire this way, would add a greater Reproach to the Justice of the Nation, than it has contracted already, by giving too much Credit to such profligate Wretches, as have too lately appeared among us. The Objection he makes and insists so much upon; says he, I was believed very much before, I can produce you the Opinions of the Judges, that declared themselves very well satisfied with my Evidence, and the Verdicts of Juries, two or three, that convicted Men upon my Testimony; and not only that, but here were likewise three or four Parliaments that did not only believe that Testimony (or rather Narrative, for I cannot call that Testimony, which was given before the House of Commons) that I gave, but did declare their Satisfaction of the Truth of what I said; which Satisfaction and Belief of theirs did produce Thanks from both Houses to me for giving this Testimony.

But all this while, what Mr. *Solicitor* said upon this Point, is a plain and a full Answer to it: if in case upon a sudden Information, the King, the Parliament, the Courts of Law, and Juries, were surpriz'd into this Belief, as not imagining there could be a pack of such Villains, that could be wound up to that height, as these Fellows have been; that there could be such an horrid Impostor, as this Fellow, that should make such Attempts, unless there had been some Truth in it.

Therefore the surprize of the thing, at that time might obtain a Belief; but God forbid, that that Belief, which was so obtained, should protect the Party believed, from being call'd in question for the Falshood of that Testimony, which was the ground of that Belief. It was hardly credible that any Person could be so wicked as to declare such impudent Falsties as these; but, God forbid, that we should continue longer under the same blindness and delusion, the whole Matter is now laid open and detected. Therefore, Gentlemen, if you are satisfied in your Consciences, and do believe upon the Testimony and Evidence that has been given here this day, that those very things that were so much believed before, were credited upon the Surprize

prize of a sudden Discovery, or the Boldness of the Undertaking, yet now do plainly appear to be false; then be it, I say, upon your Consciences, if you let this Fallhood go unpunished. It is a Charge upon us who are upon our Oaths as Judges, and who must answer to the great Judge of all the World for our Judgments; and 'tis likewise a Charge upon you that are sworn to try this Cause, and must answer, as well as we, for what you do in it, not to have regard to any thing that was done before upon that hurry and surprize, but seriously to weigh and consider what is sworn now, and from thence make a Conclusion, whether you are not satisfied that innocent Blood has been spilt by the means of this Fellow. Nay, in this Case, 'tis a contracting of much more Guilt than ordinary, as it is Murder done under the Forms of Law, and common Methods of Justice. That Men should take away the Lives of their Fellow-Creatures, by Perjury and false Accusations, is of such dreadful consequence, that if the Justice of the Nation shall be afraid to have such matters detected, there would be an end of all the Security we have of our Lives, Liberties, and whatsoever is dear to us.

Gentlemen, the Justice of the Nation lies under a very great Reproach abroad, for this particular thing; and we must be, all of us, that have any Concern for the Honour and Good of our Country, uneasy, till this matter be thoroughly searched into, and impartially determined; and I take it to be a Case of the greatest Importance to the Settlement of the Kingdom, for the Credit of our Laws, for the Honour and Justice of our Kingdom, that ever came in Judgment in any of our Courts of Justice. And therefore as you respect your own Consciences, and the Obligation of that Oath you are now under, and as you would be thought to bear any regard to the Peace, Honour and Good of your Country, take care to examine strictly and impartially into the Merits of this Cause, and weigh the Evidence which has been given on all sides: be not at all dismayed with the Apprehension of Clamour or Calumny, from any sort of People whatsoever, for doing your Duty; neither be led away by the Insinuations of what was believed formerly; for you hear the Reason which might make *Oates* be believ'd then; but it is incumbent upon you to enquire, whether you have not sufficient reason to be satisfied what the Truth now is.

And, Gentlemen, I take my self to be the more obliged to take some pains in the pressing a serious and impartial Consideration of these things upon you, because I cannot but say, my Blood does curdle, and my Spirits are raised, that after the Discoveries made, I think, to the satisfaction of all that have attended this Day, to see a Fellow continue so impudent, as to brazen it out, as he has done this Day; and that there should appear no more shame and confusion than what was seen in the Face of that monstrous Villain that stood but now at the Bar. The pretended Infirmitie of his Body made him remove out of Court, but the Infirmitie of his depraved Mind, the Blackness of his Soul, the Baseness of his Actions ought to be look'd upon with such Horror and Detestation, as to think him unworthy any longer to tread upon the Face of God's Earth. You'll pardon my warmth, I hope; for it is impossible that such things should come before any honest Man, and not have some extraordinary Influence upon him.

Gentlemen, As to the Merits of the Cause, you have the positive Proof of many Witnesses, whose

Testimony I shall by and by, as well as I can, repeat to you; but, pray you, first give me leave to observe somewhat, as to some Points that have been started at the Bar, as, Whether a Papist can be a Witness? Now, suppose all these Persons that come here to testify this Matter against the Defendant, were Papists, as they are not, except you can take it upon your Oaths and Consciences, that all these Men are guilty of voluntary and wilful Perjury, you must find the Defendant guilty.

As to their Difference in Religion, which *Oates* so much hung upon, I must tell you, every Papist or Roman Catholick, call them how you will, except the contrary be made appear by a legal Exception, I mean such as would take off the Testimony of one that were not a Papist, is as good a Witness in a Court of Justice, as any Protestant whatsoever: we are not come here to controvert Points of Religion, but to try a bare Matter of Fact; so that all that stuff that you have heard here this day from the Defendant, and those Insinuations that he made about their Religion, on purpose to cast dirt and filth upon all the Testimony that they have brought against him, must signify nothing with you at all. If in case such Doctrine happen to prevail as he has this day preached, then it is in the power of any Villain to swear any mischief whatsoever against a Roman Catholick, and that Roman Catholick has no way to vindicate himself, nor to make the Truth appear. We have no such Exceptions to Witnesses in our Law; every Man, till it is made to appear, that his Credit is forfeited, may and ought to be received as a Witness to give Testimony in any Cause: so that all that matter is of no import at all.

And, Gentlemen, I am the rather minded to hint this unto you, because he has insinuated something out of the Trials of *Grooe* and *Pickering*, and *Ireland*, which was in *December*, in the Year 1677. at which Trial *Whitebread* and *Fenwick*, who had pleaded to the same Indictment, were brought on to Trial; but because there was but one Witness against them, the Court discharged them for that time, and they came not again to Trial till the Month of *June* or *July* thereafter, when they were convicted and executed. Now between that time of *Ireland's* Trial, and the time when *Whitebread* and the rest came on to Trial again, says *Oates*, they had sufficient time to have brought all their Witnesses from *St. Omers*, to testify this business of my being there, having notice by the former Trial, what Evidence was against them: but all the Witnesses they did bring, which were about fifteen or sixteen, were not sufficient to countervail the Testimony that *Oates* gave of his being here in Town; and thereupon they were convicted, condemned, and afterwards (I am sorry to say it) executed.

This is the Objection he makes, but at the same time I must repeat what I said before, when such a dismal Story as this was told, when he had the confidence to relate it before, in the Houses of Parliament, and there obtained Credit; no wonder if, in that hurry, all of that Persuasion were look'd upon with an evil Eye; and the Conviction of those that were at that time accused were too easy.

We must remember the Apprehensions some were under of our Religion being to be subverted, our Government to be destroyed, our King to be murdered, our Throats to be cut by the Papists, to that height, that this very Fellow, *Oates*, was so much credited, that all other People almost were below him, and greater Respect shewn to him,

than to the Branches of the Royal Family. Nay, it was come to that degree of Folly, to give it no worse Name, than in publick Societies, to the Reproach and Infamy of them be it spoken, this profligate Villain was carested, was drunk to, and fabled, by the Name of the *Saviour of the Nation*. O prodigious Madnes! that such a Title as that was, should ever be given to such a prostitute Monster of Impiety, as this is!

Good God, whither were we running, when many easy People were so strangely wrought upon by this Impostor, and when the villanous and black Designs of some evil Instruments amongst us, could prevail so far, as to deceive almost a whole Nation into the Belief of so horrid a Falshood; even at the same time that a hidden Treason too deeply contriv'd was carried on amongst us? But, God be thanked, was not too lately discovered. The Conspirators had a fair Game of it, whilst this Fellow was believed, and they needed no other means to accomplish their Design: But when he was found false, and the pretended Plot had lost its Credit in the World, what is their next Step? Why, then they enter into that black and bloody Conspiracy, from which it hath pleased God lately to deliver us.

I speak this the rather, because I know there are in my Eye several Persons, whose Fears of Popery made them give credit to such Villains as these before: But when it pleased God to open their Eyes, and the false Mist vanish'd, they found a real Conspiracy against the Persons of that Blessed King, lately dead, and of our Gracious Sovereign, now living, carried on under the pretence of that false, but so much credited Discovery; and now God be thanked, all our Eyes are open. And I hope, as we are secured from what we so vainly dreaded, so we shall not be afraid to have Villany detected, and the greatest Mark of Infamy that can be put upon it.

Yes, Gentlemen, there was a Consult, and there was a Conspiracy against the Life of our King, our Government, and our Religion: Not a Consult at the *White-Horse* in the *Strand*, but a Cabal and Association of perfidious Rebels and Traitors, who had a mind to embroil us in Blood and Confusion; but, God be thanked, it had not its desired Effect. The same sort of Villains were Parties in this Conspiracy, that had too great a hand in the late great Rebellion, which we to this day feel the smart of, and they had a mind to make use of the like Instruments, as they did before, to bring us into the like Misery, as we were before involv'd in.

And is it not a prodigious thing, to have such Actions as these to-day defended in a Court of Justice, with that Impudence and Unconcernedness, as tho' he would challenge even God Almighty to punish his Wickedness, and blasphemously blesses God, that he has liv'd to do such wonderful Service to the Protestant Religion; and is so obstinate, in his Villany, as to declare he would venture his Blood for the Confirmation of so impious a Falshood: and indeed, to speak the truth, he makes no great Venture in it; for when he had pawn'd his immortal Soul, by so perjurd a Testimony, he may very easily proffer the venturing of his vile Carcass to maintain it?

Gentlemen, Having thus said, (and I could not forbear saying of it) give me leave to put you in mind of what lies before you now to be tried. First, this Indictment takes notice, that there was an Indictment taken before the Commissioners of *Oyer and Terminer*, and Goal-delivery at *Hick's-Hall*,

of High-Treason against *Whitebread*, *Fenwick*, *Ireland*, *Pickering*, and *Grove*, and that Indictment and the whole Record is proved to you by *Swift*. For I must tell you as I go along, what Proofs there are of all the Particulars, and you, upon consideration of all that is alledged, are to be Judges what is sufficient Proof to convict the Defendant of the Crime that is laid to him; which is wilful and corrupt Perjury. The Indictment, Gentlemen, sets forth the Oath that *Oates* did make at *Ireland's* Trial, and then avers it to be false: For the Oath that he did take, that stands thus, That he did swear he was present at a Consult, held at the *White-Horse* Tavern in the *Strand*, the 24th of *April 1678*. That he did swear, that it was there resolved to murder the late King: How that that Resolution was carried by him from Chamber to Chamber, that is, to *Whitebread's* and *Fenwick's*, and *Ireland's* Chambers, and saw them sign this Resolution there: And the Assignment of the Perjury, is, that he was not present at any Consult, 'tis not that there was not any such Consult, tho' it appears by the Evidence that there was none such, but that he was not present at any Consult at all held there at that time.

Now, that he did make such an Oath, is proved by a worthy Gentleman, *Mr. Foster*; a Gentleman known to you all that live in the City of *London*; and he did truly make that Remark in the beginning of his Testimony, that any honest Man in his place would have done, that he was one of those unfortunate Men, that tried *Mr. Ireland*; for tho' a Man do go according to his Conscience, as to be sure there is no question to be made of it, but all these Jury-men did in finding that Verdict; yet when I come to find, that the Evidence, upon which I convicted those Men, is detected to be false, and that upon my Verdict the Persons were executed; tho' no Guilt of their Blood is really contracted by me, yet I cannot but think my self unfortunate, that I was, tho' innocently, an Instrument of their Death; and there is never an one of you, but would have thought your selves unfortunate, if you had convicted Men upon such a Testimony, which tho' you believed then, yet afterwards you should have reason to conclude was false. And yet *Oates* would have you think, that because they believed him when he was a Villain, and not known to be so, you must believe him, notwithstanding his Villany is now discovered; for that is all the Argument this learned Doctor has a mind to impose upon you by.

Gentlemen, *Mr. Solicitor* has been very particular, in giving an Account of the whole Evidence, and then it comes to this, which is the natural Question in the Case; Whether upon the Testimonies that have been given to you, there does remain so much as a Doubt, what Verdict you ought to give; for I confess, were it a thing in the least doubtful, Matters of Perjury are so nice and tender, that we and you ought to be cautious how you convict People for Perjury in doubtful Matters; but if it be a thing without doubt, and plainly evident, that there was a Verdict thereupon, it adds to the Guilt, because the Justice of the Nation is imposed upon; the God of Heaven deliver every honest Man's Soul and Conscience from such Guilt. For my part, I would not for the Universe have the least Guilt of innocent Blood lie upon me.

Then, Gentlemen, to prove what *Oates* swore is not true, you have no less than twenty two Witnesses, that swear directly he was not here in *London* the

the 24th of *April* 1678. But it may be that it is not such a positive Testimony as the Law requires to prove a Perjury: but then to swear directly that he was in another place at that time, is a positive Contradiction to his Evidence; and this has been testified by the Oaths of twenty two Persons, against the Credit of whose Testimony there is no Objection at all really made, but only Impudence; and that Shadow of an Objection, they are all Papists, and I am a Protestant: and truly a wonderful Credit it is, I must needs say, for the Protestant Religion to have such a learned and pious Supporter, as Mr. *Oates*, to be of that Persuasion; but it is certain there was a *Judas* amongst the twelve Apostles, and there are Rascals of all Persuasions. And truly I take it makes never the more for his Advantage, nor the Honour of our Church, that he is pleased to call himself by that Name, which he, and such as he, have brought into some Scandal and Reproach, by setting themselves up, as the great Pillars of it; but we know Dr. *Oates* has been very liberal to himself, he has given himself Baptism, and given himself the Doctor's Degree, and now he gives himself the Title of the Reforming Protestant, Mr. *Oates*. We have Protestant Shoe-makers, and Protestant Joiners, and Protestant Atheists, and all sorts of true Protestant Rascals; but it becomes us and you to assert the Honour of our Religion, by disowning any Fellowship with such Villains, or their Actions.

Gentlemen, the Method that was taken, gives you an exact account in point of time, as to this whole Business. First, says Mr. *Hilsley*, I left him, in time the 23d of *April* New Stile, at *St. Omers*, and I am sure I saw him there then, which is the 13th Old Stile; the 24th of *April* New Stile, which is the 14th Old Stile, I came from *St. Omers*, I did not see him there that Morning, but I myself came to *Calais*, it being Sunday, and I staid there till Sunday in the Afternoon, and all Night. I came on Monday in the Afternoon to take water at *Calais*, and from thence went to *Dover*. And from thence the next Day I went towards *London*; but I staid four or five Days by the way before I came to *London*; but then there is this Circumstance that you must take along with you, Gentlemen, that at this time, one Mr. *Burnaby* was coming from *London*, and going to *St. Omers*, and met with Mr. *Hilsley* in his way towards *London*: says *Hilsley*, I came afterwards to Town, and that was upon the Monday following, which happens to be the 21st or 22d of *April*, our Stile; but this I do remember very particularly, which makes his Testimony to be true, and not dressed up for this occasion; says he, I told one *Osborn* at that time, that we had a pretty Fellow at *St. Omers*, that went sometimes by the Name of *Lucy*, and sometimes by the Name of *Oates*, a Minister of the Church of *England*; and there he comes and gives an account of his ridiculous childish Actions, and what a remarkable Fellow he was; and this, says he, I told to *Osborn*.

Now, to make this good, you have one Mr. *Dorrel*, who tells you there happened a Discourse, where he was present, between his Mother and Mr. *Osborn*, about Religion; and amongst other things, *Osborn* did say, Mr. *Hilsley* had told him he left *Oates* at *St. Omers* when he came away from thence; and Mr. *Osborn*, he comes and says, I remember I did tell Mr. *Dorrel* and his Mother, at that time that Mr. *Hilsley* did tell me this Story: so that here are these two Witnesses which support Mr. *Hilsley*

in that Circumstance of the time of his coming away, and his Relation of *Oates* being left behind him, and that this was related about the 21st or 22d of *April*.

Burnaby is the next Person that was produced, and he swears he met *Hilsley* by *Sittinbourn*; and he happens to set out for *St. Omers* the 18th of *April*, our Stile, and to come thither to *St. Omers* the 21st; and he swears positively, that he was there the 21st, 22d, 23d, and was there the 25th Day of *April*, our Stile; and he does positively affirm, that all those Days he saw *Oates* there at *St. Omers*; that *Oates* intruded into his Company at his first coming; and that he and all the other Scholars wondered at the Confidence of the Man; and he particularly remembers that he was with him at a publick Entertainment that was there the 25th: and if so, then it is impossible that what *Oates* has sworn of his being at the Consult the 24th of *April*, our Stile, can be true. And except you can imagine Mr. *Oates* to fly from *St. Omers* the 24th Day in the Morning, and be at the Consult and back again at Night, which is more than he would have believed, because he swears the contrary, you must conclude that what he swore was false.

The next Witness is Mr. *Pool*, and he comes and says, he was there at *St. Omers*, and he came over from thence the 25th of *April*, and that was the Day after *Oates* swears the Consult of the Plot to be here; and all the rest of the Witnesses do directly swear, That at the time that *Pool* went from thence, *Oates* was there: so that the Testimony of *Pool* is fully and positively confirmed; and *Pool* gives you a reason why he came over, which was the Death of a Brother of his, and upon a Prospect of an Estate he came into *England*, which likewise is a reasonable Circumstance why he should remember the time, because he had such Inducement to come over hither.

The next, Gentlemen, is one *Thornton*, and he comes to the Month of *May*, to the 1st and 2d of *May*, their Stile, which was the 21st and 22d of *April*, our Stile; and particularly he is sure *Oates* was there upon the 22d of *April*, our Stile, that is, the 2d of *May*, their Stile. For, says he, there was an Action or Play of the Scholars; and I can tell you how I remember *Oates* was there, *Oates* had a mind to have a place to see the Play, which he had no Pretence or Title to; and he had a Scuffle with somebody about it; and therefore I remember by that Token, that he was there at that time.

Now, Gentlemen, it is not easy to be imagined, that six or seven Men should agree in their Testimony in all those Circumstances, which in themselves are but minute; yet when offered as Reasons to induce Men's Remembrance, must be allowed as good Reasons; and yet this is to be thought but a made Story. If Sir *Richard Barker's* Coach-man, and Mrs. *Mayo* had had any such Circumstances to support their Testimony, they would have had much more Credit.

Then there is one *Conway*; and it is very observable what he speaks of; for he was there all the while that they say *Oates* was there, and he gives you an account that he saw him with *Burnaby* the first time he came over, and agrees with *Burnaby* in this, that he wonder'd much at his Confidence, and did think that he was very well known to him before: He swears *Oates* came in thither about the beginning of *December* 77, and he was not absent, says he and several more, any one Night, except in *January* once at *Watton*, till he went away in

June 78. Nay, they are so precise in their Memory for very good Reasons, because they are so regular in their Societies, and keep a strict Order, each has his fixed Place in the Refectory, where all the *Socii* or the Members of the College do meet; and because this Fellow was an old Fellow, older than the rest, and likewise was a Dunce, therefore he was set at the Dunce-Table in every body's View, because he was a Blockhead, and too old to keep company with the Boys: so that though perhaps one of those young Fellows in a mixt Society may escape the View, and be absent without being missed, yet remarkable Mr. *Oates* is not so easily forgotten, that us'd to fit by himself. And as that noble Lord, my Lord *Gerrard* of *Bromley* says, he has a particular Face, and a particular Tone; and there was more reason to remark him than any other, both upon the account of his Person and of his Actions: so that I must needs say indeed, it is not a downright and positive Swearing, but their Testimony is given with deliberation and recollection of such particular Circumstances, as may reasonably induce any unprejudic'd Person to give credit to it.

The next Witness, Gentlemen, is *Haggerstone*, whose Evidence is wonderful particular, and very material as to the Circumstances that accompany it. For you are to observe, that in these Colleges some are of the Sodality, and some are not; and some are of such and such Classes or Forms, and others of other. Now this Gentleman and Mr. *Oates* were of the same Form, and he does particularly remember that he was setting up for a Preacher, as he has an excellent knack that way; and he tells you, how ridiculous he made the late King in a Sermon; that he halted between two Opinions, and there ran a Stream of *Popery* between his Legs; and such like precious Stuff he vented. And to fix it to be about the same time that is now in question, he says, he particularly remembers it was when he was Reader, when Mr. *Oates* was, it seems, the Buffoon to the Society, or as I may call him, the Jack-pudding to the College, that us'd to make them Sport, and was guilty of so many ridiculous Things, that they could not but put particular Remarks upon him.

Next, I take notice, that this Person says, there were two Persons, *Williams* and *Marb*, that were qualified to give Suffrages in the Congregation, that is, they were past eighteen Years standing, and did go over: For that there was a Consult, is not denied, nor that it was in *London*, nor that it was upon the 24th of *April*; but they say, it was a Triennial Meeting, which they us'd to have once in three Years for the choice of some Officers to manage the Affairs of the Society; as for the choice of a Provincial, and other Persons that they were to send upon their Errands, in order to the support of their Society: so that under the Colour and Countenance of what was in itself ordinary and usual, and that happened to be at that time, *Oates*, who had heard somewhat of it, and that it was the 24th of *April*, and that such and such were to be there, he upon that Hear-say, as should seem at *St. Omers*, does feign and contrive this pretended Conspiracy.

The next is one *Beeston*; and it is very material too that he swears: For besides what he testifies, That from the time of his coming, which was in *December* 77, he was not absent till the 23d of *June*, when he went away; and for the Time in question, he very well remembers his being

there, by this Circumstance: Says he, I was chosen to be Reader of the Sodality in the Month of *March*, but then *Oates* comes and gets the Office out of my hands; but still with me there was that Benefit reserved, that if he should at any time fail of reading there upon a *Sunday* or a Holy-day, I was then to have read, and to have supplied his Place. Says he, I was there from *March*, till the time *Oates* went away in *June*; and *Oates* read there that very *Sunday* before the time in *June* that he went away. And I am sure I heard him read every time; and in case he had not read every time, I must have read in his absence: But I did not read at all during that time.

Now, Gentlemen, when a Man is to succeed or to supply the Absence of another in an Office that is peculiar as to the Charge incumbent upon the Officer, and considerable as to the Profit of it, that must needs make an impression upon the Mind, and give a Man a more exact remembrance of the Thing; and therefore I recommend it particularly to your Observation.

The next is one Mr. *Smith*, and he says, he saw *Oates* there all the time: And as to one part of it, when he himself was in the Infirmary, *Oates* went to visit him every two or three Days; nay, and about such a time in *May*, says he, which was about the beginning of *May*, *Oates* being then in the Infirmary, not well, the Doctor and he had a pretty Dialogue together, and *Oates* spoke false *Latin* to the Doctor, for he said, *Si placeat Dominatio vestra*, in the beginning of his Complement: This he did particularly say was the Expression that this excellent Scholar us'd to the Physician at his first application to him, and all the whole College took notice of that Piece of his Learning.

The next is one *Price*, and he tells you, he was there all the time that the others speak of; he remembers him very well, and particularly says, I am sure *Oates* was there the 11th of *May* N. S. which will be the first of *May* O. S. because, says he, I know he was soundly beaten that day upon a Quarrel that he had there. This particularly he speaks to, besides his remembrance of the other Circumstances in concurrence with the former Witnesses.

Mr. *Doddington* swears the same, and Mr. *Gerrard* also swears the same, with that other particular Circumstance that Mr. *Solicitor* repeated to you, which was of *Oates's* being there upon the Day of Confirmation, the 26th of *May* N. S. the 16th of *May* O. S. and he is sure of it, because he was confirmed along with him, and therefore it is impossible he should forget it: And my Lord *Gerrard*, who was next, gives this reason upon his remembrance of all the fore-mentioned Particulars, that he always took special notice of the Man for his canting Tone, his Physiognomy, and remarkable Behaviour.

Then there is Mr. *Morgan*, who is no *Papist*, but a Minister of the Church of *England*; now Mr. *Oates* was angry with all the rest, because they were *Catholicks*; but what has he to say to Mr. *Morgan*, who is a *Protestant*? Why the truth is, there are none of them to be believed, because they swear against him, and really he ought to be permitted to give that reason, or it is like to go very hard with him; for if in case you believe but a third part of the Testimony that has been given, it is enough to do his Work.

But

But what says Mr. *Morgan*? Truly he comes up to the 24th of *April* particularly, and he tells you how he remembers it; and the first Occasion he had to look into it was, they being all surprized at *St. Omers* at what *Oates* had sworn, and Mr. *Morgan* recollecting with himself, did remember that very Day he was playing at Ball within the College, and happened to tols his Ball over the Wall into the Garden, and not being able to recover it any other way, he spied *Oates* walking and looking into his Book, and therefore he desired him to lend him his Key, and by the help of that, he went in and fetched his Ball; and this was the very Day that *Oates* swore he was here.

Mr. *Arundel* says the same: The two *Turberviles* say the same; and one of them is positive to have seen him there, either the 24th or 25th, or 23d and 24th of *April* O. S. which is the 3d and 4th, or 4th and 5th of *May* N. S. and if it were either of these Days, it cannot be possible he should be here at the Consult.

The next is Mr. *Clavering*, and I cannot but particularly take notice of what he has sworn: He says Mr. *Oates* was there all the time that the rest speak of; but it seems particularly about the time of the Congregation in *London*: There comes in a Stranger that was poor, and this Gentleman, Mr. *Clavering*, made a Collection for him; and it was talked of in the College as the reason why he had not Success in his Collection, because the Fathers were gone to the Congregation. Nay, and yet farther says he, I do remember particularly that Mr. *Williams* and Mr. *Marsh* did go over to the Congregation, but *Oates* did not; for I do remember when *Williams* and *Marsh* came back again, I had some Discourse with Mr. *Oates* about the Congregation: He came to me, and desired to know of me what account I was able to give of the Matter of that Meeting after the Consult was over. Now had Mr. *Oates* been there, and been a Person of that great Trust that he had sworn himself into, he needed not sure have asked Mr. *Clavering* at *St. Omers*, what the Business of the Consult was at *London*, where he himself had been, but the other had not.

There is, besides Mr. *Copley*, another Witness, Mr. *Cooke*, that speaks particularly of the 30th of *April*, that he was sure *Oates* was there then, because of the Procession, and because he walked by himself in it; and *Wright* the last Witness gives a general Account, but speaks to no particular time.

And now, Gentlemen, after all this Evidence, *viva voce*, you must give me leave to hint *Testimonium Rei*, an improbable Oath was that which *Oates* owns he made, if it be considered in all its Parts. Can any Man believe that fifty Persons should meet together in a Tavern in *London*, and these fifty Persons should come to a Resolution to kill the King and subvert the Government, and alter the Religion; and that this Consultation being drawn up in the Tavern (for so he swears it was) they should sever themselves into lesser Clubs and Companies, and take care that none should sign when they were all together and among themselves, but must have it carried up and down from one Man's Chamber to another, and find no body to trust with this Affair, that if discovered, must subject them to present Destruction, and ruin their whole Party, but only Mr. *Oates*, who was none of their own Order, nor does appear to be of such Credit

amongst them? Can you believe any Men should be so void of Sense and Reason, that of fifty together, and those reputed as subtle as any sort of Men whatsoever, there should not be one Man of common Understanding, that should take care for a more rational Management of so great and hazardous an Undertaking? When they were met together, and might have dispatched it in a quarter of an Hour, they should separate themselves into several Parts of the Town, and trust a Resolution of that nature in Mr. *Oates's* Pocket, in whom if they had had more Confidence than they seem to have, yet it was folly and madness to give him that Opportunity of destroying all of them, and making himself. Were there no other Evidence but the very Testimony of the thing, it would go a very great way with me, I confess; but I must say withal, you are Judges of this Fact, upon a superadded Testimony of Twenty-two Witnesses, *viva voce*; I think it leaves the thing without any doubt.

Gentlemen, the Answer given by the Defendant to this Charge is very fallacious; and tho' he puts such a Countenance upon it, as though his Witnesses were such Persons of Credit, that nothing could be objected against them, yet he is certainly very much mistaken in that: He has produced but two positive Witnesses, and those two, as positive as they are in their Proof, are likewise positive in their Contradictions of one another, and what they have said is left to your Consideration.

The one is a Coachman, the other was Sir *Richard Barker's* House-keeper; they indeed do say, Sir *Richard Barker's* Wife's Sister, and his Nephew, and his Daughter, and his Nieces, and a worshipful Knight, and I know not who, that the old Woman tells me are gone into my Country, were all there at the same time, and no body comes to testify it, but only this Coachman and this old Woman: These, Gentlemen, are things fit to be thought of.

But now let us consider how they agree in their Evidence. Says the Woman, I saw him not till the beginning of *May*; but I am sure he was there before once or twice. And how does she know that? Because the Coachman told her so; and he came there several times, but he did dine there but once; and when he came there the first time she saw him, he came in such a Disguise, and he had a short Perruwig, and a kind of a short white Coat, and a white Hat; but when the Coachman comes to swear, he tells you the first time he saw him, the Woman saw him too, that he had his own Hair, and cut close to his Ears, that made him look, as the young Fellow told her, like a Quaker. And when I asked the Coachman, Are you sure that *Benjamin* the young Fellow did see him the first time you saw him there? He told me, No; but he was sure the old Woman did look out of the Window and see him, which she denies. I then asked him how often he dined there? He tells you several times, and there were such and such, and the old Woman did see him dine there several times; which she denies that she ever saw him dine there above once. And I take notice of one of the Evidence, the Coachman, he gives but an odd sort of Reason for his remembrance: In *February*, says he, my Lady died, and my Master was sick at *Putney*, and *Oates* came into the Yard while I was cleaning my Coach; and I am sure it was where the Coat

of Arms hung over the Door, because he ask'd me about my Lady's Death, and therefore it must be in *May*; when, for ought does appear to the contrary, it might be in any other Month after the Escutcheon was up; and in the other Circumstances there is no Certainty at all: So that it is plain, these Witnesses swear according as their Humour leads them, and not according to any Remembrance they have of the thing.

And I rather believe it, because the third Witness, that is *Page* the Apothecary, that used to make up Sir *Richard Barker's* Medicines, gives an Evidence contrary to both those; he cannot remember the Year positively or particularly: but I'll tell you how he thwarts and contradicts the other Peoples Testimony; for he remembers he came in such a Disguise, but he believes no body spoke to him but himself, because he found him walking in the Place that was for the common Reception of the Patients, and he asked for Dr. *Tongue*, and he not being within, he went away very discontented: And so now these three Witnesses seem to contradict one another; and the last Witness *Walker*, who is the Parson, he says nothing to the Matter; for it does plainly appear, the Time which he speaks of, which was about a Year and a half before he was called to testify at the five Jesuits Trial, must be in the Year 77, and not in the Year 78, which is the Question here, which must be before he went first to *St. Omers*.

Gentlemen, the other Part of Mr. *Oates's* Defence has been upon this Topick: Says he, I have been believed heretofore, the Parliaments have given me Credit; and to prove it, he has called several noble Lords and Persons of Quality. The first was my Lord of *Devonshire*, who says he cannot remember any Particulars of his Evidence, 'tis so long since; but he remembers the Parliament, upon the Evidence given of the Plot, did make such Votes as we do all know of. And there were a great many People that gave credit to his Testimony, who, God be thanked, are of another Opinion now. And my Lord of *Clare* says, he was not in the House of Lords at the beginning of the Discovery, and cannot remember any thing in particular. But my Lord of *Huntingdon* was a little more particular; and Mr. *Oates* began to be angry with him, because he spoke so much: Says he, I remember Mr. *Oates* was examin'd in the House of Lords, and was believed there, because they did believe he spoke Truth at that time; but now, upon Consideration of the Contradictions and Falsities of his Evidence, I cannot but say, I do believe him, says he, to be a great Villain, and that he has been guilty of spilling innocent Blood. And this noble Lord speaks with great Honour and Consideration: And truly, I believe, if every Man that is here were to speak his Mind, my Lord has delivered the Opinions of us all, and many Thousands more in the Nation.

Mr. *Oates* call'd next my Lord Chief Baron, my Brother *Gregory*, my Lord of *London*, Sir *George Treby*, Mr. *Williams*, and my Brother *Dolben*. But they all tell you, they are able to give no particular Answers to his Questions; and this was the Sum of his Evidence.

To this Mr. *Attorney-General* has given a Reply of Evidence, that truly is of very great moment. First, here is produced Sir *George Wakeman*, whom *Oates* accus'd of High-Treason, and he suffered his Trial and was acquitted; so that as well as the Jury had given Credit to him in the former

Verdicts, so says Mr. *Attorney*, I must speak likewise for the Credit of that Verdict that did disbelieve him, because though he did swear as roundly and briskly up to the matter as he had done before, yet when he had not the Hurry and Surprize of his Discovery to support him, his Villany was detected, and the Innocent acquitted. And besides the Record of the Acquittal, here is the Person himself who is now under no dread or danger, having stood his Trial and being acquitted; and he takes it upon his Oath, in the Presence of the great God, and the Searcher of Hearts, that whatsoever *Oates* swore against him at his Trial, was every Tittle of it false: And this Acquittal of his, being after great and mature Consideration, is an Evidence of another-guise Quality, than the Verdicts of the other Convictions.

Next to him, is my Lord *Castlemain*, a Person of very great Honour; and he gives an account he was arraigned of High-Treason at this Bar, and upon his Trial *Oates* was produced as a Witness against him, and there he swore he met with my Lord *Castlemain* in *Lincolns-Inn-Fields*, and great familiarity there was between them, so that my Lord could not trust him in a less Affair than the Plot; and away he goes with him to *Fenwick's* Chamber, there to talk about a Design of killing the late King; Mr. *Oates*, of all Mankind must be the great Repository of this Secret. But the Jury then being Persons of great Understanding and Integrity, did not believe *Oates*, but acquitted my Lord *Castlemain*. And he does here take it upon his Oath, back'd with all the Imprecations of Evil to himself that a Man can use, that there was not one Word of Truth in *Oates's* Testimony; nor did he ever see *Oates* in his life, till such time as he was taken up upon his Accusation. Now are here two Persons of Honour and Quality, that upon their Oaths do particularly give you an Account, as in the Presence of Almighty God, that *Oates* has twice forsworn himself against them.

Gentlemen, there is notice to be taken of the Journal of the House of Lords; and though it is true for the sake of the Precedent, and to secure the Justice of the Nation, we did keep them strictly to their Proof, that it was upon Oath. And as to the Business of *Smith*, though we do believe the Thing in our private Judgments, yet we thought it not fit to be permitted, that Persons should upon their own Oaths confess themselves to be guilty of Perjury, and afterwards give Evidence against others; for such are not to have the Countenance of ever being Witnesses again: Yet by the Records of Parliament, and other Evidence, there is enough to make the matter aimed at clear.

For it is clear by his Narrative, that *Oates* did first swear, as far as he could well swear, to bring him into the Displeasure of the People: For that was his way to intimidate all he had to do with, and thereby force them to comply with his Designs. And there was no more plausible Accusation at that time, than to accuse a Man for saying somewhat against the Parliament, or being in a Combination to subvert the Protestant Religion. But you see when he comes to have his own Turn served, then this Man upon whom he had fixed such an odious Character, is really no Papist at all, but engaged in Service for his King and Country, and has Mr. *Oates's* Passport, a Thing of great advantage to him at that Season. This the King's Counsel made use of with great reason, as an Evidence of tampering: For the Man has altered his Opinion of one

he had before accused, and now brings him as an honest Man to give Evidence for him. And this, say they, must be intended to be done by Practice and by Threats.

And the rather, Gentlemen, for that you have an Account by Witnesses sworn, that there was one *Clay* a Popish Priest, that lay in Prison at the *Gate-house*, and while he was there, *Oates* and Sir *William Waller* came into the Prison to him, and tampering with him, says *Oates*, I hear there are some *St. Omers* Boys that intend to testify that I was at *St. Omers*, when I say I was at *London*; but you must swear, that you dined with me at Mr. *Howard's* in *May* 1678; or if you will not, you know I know you to be a Priest, and I'll hang you. Says *Clay*, where is my Silver and Gold that was taken away from me? And we all know Sir *William Waller* was wonderful good at the fingering of Gold; he us'd to take away broad Pieces as Popish Reliques, because of the Crosses upon them. Says *Clay*, Give me my Gold again, I will swear for you; I have been a Rogue before, and I may be a Rogue again. And accordingly a Contract is made for him to swear directly that *Oates* and he were together at Mr. *Howard's* House in *May* 78. This very Fellow that tells you now the Story, told it the next Morning to another Man, who has likewise sworn the same. Then is *Clay* conveyed by *Oates* to the *Old Bailey*, and there swears, being thus threaten'd and suborn'd, that in *May* 1678, he and Mr. *Oates* dined together at Mr. *Howard's* House, and you have Mr. *Howard* produc'd, who does swear that *Clay* did swear so; but indeed he was not there with Mr. *Oates* at Dinner till *July* after.

This, Gentlemen, is direct Corruption and Subornation; and if a Man will be a corrupt Knave, and endeavour to suborn Witnesses to swear that which is false, he is the more likely to swear false himself. Besides, that you are to take notice, here is his own Narrative produced, where you have it sworn by himself, that he went back to *St. Omers* about the beginning of *May*, and was there all the Month of *May*, and in *June* till the latter end of it. Then all this while, either Mr. *Oates*, or his Witnesses, are perjured in the Case: He says, he staid but three or four Days in *England* after the Consult was over, and then went straight back again to *St. Omers*. Which must be the first Week in *May*; but if you believe his two Witnesses, he din'd with them several times after that: And so it is apparent, some of them are guilty of gross and foul Perjury.

Now, Gentlemen, I cannot but resort back to the Objection that I made at first. 'Tis strange to me, that a Man that came upon such a Design, should go publickly about the Streets at Noon-day, though in a Disguise, yet he was known. But if

you take the Persons Time to be in the Year 1677, then it is easily reconciled what they did say of their seeing him in such a Disguise; and so all their Testimony may stand together, and perhaps they may mistake in a Point of Time, though not in the Substance of their Evidence: and I would out of Charity conclude it to be so.

But I will say, if they are to be taken strictly to the Year 1678, it is monstrous to imagine that we should have no body brought to let us know where he lodged, where he eat, with whom he convers'd for all that time.

Gentlemen, I have detained you the longer in this Matter, because I take it to be of so great Weight, wherein the Justice and Honour of the Nation are so much engag'd, and it was therefore fit this Cause should be tried in the most solemn and publick manner, in order to vindicate the Nation from the Reproach and Calumny of Injustice and Oppression. And sure I am, if you think these Witnesses swear true, as I cannot see any colour of Objection, there does not remain the least doubt, but that *Oates* is the blackest, most perjur'd Villain that ever appear'd upon the face of the Earth.

Cl. of Cr. Tipstaff, you must take care of the Jury.

L. C. J. Gentlemen, if any of you have a mind to drink at the Bar, before you go, you shall have some got for you.

Jury. No, my Lord, we do not care for drinking.

L. C. J. Then we will stay for you.

Then the Jury withdrew to consider of their Verdict, and after about a quarter of an Hour's stay, they returned and delivered in their Verdict: That the Defendant was guilty of the Perjury whereof he was indicted. Which being Recorded, the Lord Chief Justice spoke to the Jury, to this effect.

L. C. J. Gentlemen, that we are not, God be thanked, in those Times of Disorder and Confusion that we have been heretofore in, to have Humming or Hissings to declare the Auditors Approbation or Dislike of Juries Verdicts. But because there has been this Day mention made of the Opinions of Judges about Verdicts, I shall take the liberty to declare my Mind to you now, That for my part, I am satisfied in my Conscience, you have given a good and a just Verdict; and so I believe is every other Judge upon the Bench.

To which the rest of the Judges assented; and then the Court arose.



A Second Trial of TITUS OATES D. D. at the King's-Bench for Perjury, May 9. 1685. Paschæ 1 Jac. II.

THIS Day being appointed for the Trial of the other of the Causes between our Sovereign Lord the King, and *Titus Oates*, for Perjury; the same began about Nine in the Morning, and proceeded after this manner.

First, Proclamation was made for Silence: Then the Defendant was called; who, appearing in Person, was advised to look to his Challenges: but he challenged none; only he desired, that they might be all ask'd, Whether they were of the Grand Jury that found the Bill? which was done. And all denying it, the Twelve sworn were these:

Sir <i>Thomas Vernon</i> Kt. <i>Nickolas Cbarleton</i> Esq; <i>Thomas Langham</i> Esq; <i>Thomas Hartop</i> , <i>Francis Griffiths</i> , <i>John Kenl</i> ,	}	Jur ^s	{ <i>George Toriano</i> , { <i>Henry Loades</i> , { <i>John Midgley</i> , { <i>John Pelling</i> , { <i>Thomas Short</i> , and { <i>George Peck</i> .
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Cl. of Cr. Gentlemen, you that are sworn, hear-ken to the Record.

Memorandum, That by a certain Inquisition for our Sovereign Lord the King, at the *Guild-Hall* of the City of *London*, and within the same City, on *Tuesday* the 28th of *October*, in the 36th Year of the Reign of our late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. before Sir *Henry Tulse*, Knight, Mayor of the City of *London*; Sir *William Turner*, Knight; and Sir *James Edwards*, Knight, Alderman of the said City; Sir *Thomas Jenner*, Knight, one of his Majesty's Serjeants at Law, and Recorder of the same City; Sir *Robert Jeffries*, Knight; and Sir *John Peake*, Knight, other Aldermen of the said City; and others their Companions, Justices of our said Lord the King; by his Majesty's Letters-Patents under the Great Seal of *England*, to enquire of several Offences in the said Letters-Patents contain'd, and to hear and determine the same, according to the Laws and Customs of this Kingdom, by the Oaths of twelve Jurors, honest and lawful Men of the City of *London* aforesaid, who then and there being sworn, and charged to enquire for our said Sovereign Lord the King, and the Body of the said City, upon their Oaths, present:

That at a certain Session of our said Lord the King, holden for the County of *Middlesex* at *Hicks's-Hall* in *St. John-street*, in the County aforesaid, on *Monday* (to wit) the 16th Day of *December*, in the Year of the Reign of our said late Sovereign Lord, *Charles II.* by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. the 30th, before Sir *Reginald Foster*, Baronet; Sir *Philip Matthews*, Baronet; Sir *William Bowles*, Knight; Sir *Charles Pitfield*, Knight; *Thomas Robinson*, *Humphrey Wyrley*, *Thomas Harriot*, and *William Hempson*, Esquires, Justices of our said

Lord the King; to enquire by the Oaths of honest and lawful Men, of the County of *Middlesex* aforesaid; and by other ways, manners, and means, whereby they might, or could better know, as well within Liberties as without; by whom the Truth of the matter might be better known and enquired of, concerning all Treasons and Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, False-making, and other Falsifying of the Moneys of this Kingdom of *England*; and of any other Kingdoms and Dominions whatsoever; and of all Murthers, Felonies, Manslaughters, Killings, Burglaries, and other Articles and Offences in the Letters-Patents of our said Lord the King, to them, or any four or more of them, thereupon directed, specified; as also the Accessaries of the same, within the County aforesaid, as well within Liberties as without, by whomsoever, howsoever had, made, done, or committed, and to hear and determine the same Treasons, and other the Premises, according to the Law and Custom of this Kingdom of *England*, assigned by the Oaths of *Ralph Wain*, *John Vaughan*, *Richard Foster*, *Thomas Paget*, *Robert Newington*, *Henry Tompkins*, *Robert Hayes*, *John Greenwood*, *Peter Stynesson*, *Josiah Richard Richman*, *Augustine Bear*, *John King*, *Nathaniel Brit*, *Francis Fisher*, *Edward Forster*, and *Samuel Lynn*; honest and lawful Men of the County aforesaid, sworn, and charged to enquire for our said Lord the King, and the Body of the County aforesaid, upon their Oaths; it was presented, That *Thomas White* otherwise *Whitelread*, late of the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, Clerk; *William Ireland*, late of the Parish aforesaid, in the County aforesaid, Clerk; *John Fenwick*, late of the same Parish and County, Clerk; *Thomas Pickering*, late of the Parish aforesaid, in the County aforesaid, Clerk; and *John Grove*, late of the Parish aforesaid, in the County aforesaid, Gentleman; as false Traitors against the most Illustrious, and most Serene, and Excellent Prince, our said late Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. their supreme and natural Lord; not having the Fear of the Lord in their Hearts, nor weighing the Duty of their Allegiance; but being moved and seduced by the Intigation of the Devil, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our said Lord the King, towards him our said Lord the King, should, and of right ought to bear, utterly withdrawing and contriving, and, with all their might, intending the Peace and common Tranquillity of this Kingdom of *England*, to disturb; and the true Worship of God, within this Kingdom of *England* used, and by Law established, to subvert; and Sedition and Rebellion within this Kingdom of *England* to move, stir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful

ful Subjects of our said Lord the King, towards him the said Lord the King, should, and of right ought to bear, utterly to withdraw, put out, and extinguish; and our said Sovereign Lord the King, to Death and final Destruction to bring and put, the 24th of *April*, in the 30th Year of the Reign of our said late Sovereign Lord *Charles II.* at the Parish of *St. Giles in the Fields* aforesaid, in the County of *Middlesex* aforesaid; falsely, maliciously, subtilly, advisedly, and traitorously, did purpose, compass, imagine, and intend Sedition and Rebellion within this Kingdom of *England* to move, stir up, and procure, and a miserable Slaughter amongst the Subjects of our said Sovereign Lord the King, to procure and cause; and our said Lord the King, from the Regal State, Title, Power, and Government of his Kingdom of *England*, wholly to deprive, depose, cast down, and disinherit; and him our said Lord the King, to Death and final Destruction to bring and put; and the Government of the said Kingdom, and the sincere Religion of God, in the same Kingdom, rightly and by the Laws of the same Kingdom established, at their Will and Pleasure to change and alter; and the State of this whole Kingdom of *England*, through all its parts well instituted and ordained, wholly to subvert and destroy, and War against our said Lord the King, within this Kingdom of *England* to levy.

And to compleat and perfect the same their most wicked Treasons, and traitorous Imaginations and Purposes aforesaid; they, the aforesaid *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other false Traitors, to the Jurors unknown, the aforesaid 24th Day of *April*, in the 30th Year aforesaid, with Force and Arms, &c. at the Parish of *St. Giles in the Fields* aforesaid, in the County of *Middlesex* aforesaid, falsely, maliciously, subtilly, advisedly, devilishly and traitorously did assemble themselves, unite, and congregate; and then and there falsely, maliciously, subtilly, advisedly, devilishly and traitorously did consult and agree, our said Sovereign Lord the King to Death and final Destruction to bring and put, and the Religion within this Kingdom of *England*, rightly and by the Laws of the same Kingdom establish'd, to the Superstition of the *Romish* Church, to change and alter. And the sooner to compleat and perfect the same their most wicked Treasons and traitorous Imaginations and Purposes aforesaid, the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other false Traitors of our said late Lord the King, to the Jurors unknown; afterwards, (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, at the aforesaid Parish of *St. Giles in the Fields*, in the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and traitorously between themselves did conclude and agree, that they the said *Thomas Pickering* and *John Grove*, him our said late Lord the King should kill and murder; and that they, the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and others, false Traitors, to the Jurors unknown, a certain number of Masses, between them then and there agreed, for the Health of the Soul of him the said *Thomas Pickering*, therefore should say, celebrate, and perform; and therefore should pay unto the said *John Grove* a certain Sum of Money between them then and there agreed.

And the Jurors aforesaid, upon their Oaths aforesaid, did further present, That the said *Thomas Pickering* and *John Grove*, upon the Agreement aforesaid, then and there falsely, subtilly, advisedly, maliciously, devilishly and traitorously did take upon themselves, and to the same *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors against our said Lord the King, to the Jurors aforesaid unknown, then and there falsely, subtilly, advisedly, maliciously, devilishly and traitorously did promise, that they the said *Thomas Pickering* and *John Grove*, him our said late Lord the King would kill and murder: And that they, the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other false Traitors against our said Lord the King, unknown, afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, at the aforesaid Parish of *St. Giles in the Fields*, in the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and traitorously did give their Faith each to other, and upon the Sacrament then and there traitorously did swear and promise to conceal, and not to divulge their said most wicked Treasons and traitorous Compassings, Consultations, and Purposes so between them had, him our said late Lord the King traitorously to kill and murder, and the *Romish* Religion within this Kingdom of *England* to be used, to introduce, and the true reformed Religion within this Kingdom of *England*, rightly and by the Laws of the said Kingdom established, to alter and change. And that the said *Thomas Pickering* and *John Grove*, in Execution of the traitorous Agreement aforesaid, afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, and divers Days and Times after, at the aforesaid Parish of *St. Giles in the Fields*, in the County aforesaid, Muskets, Pistols, Swords, Daggers, and other offensive and cruel Weapons, him the said late Lord the King to kill and murder, falsely, subtilly, advisedly, maliciously, devilishly and traitorously did prepare and obtain, had and kept for themselves; and that they the said *Thomas Pickering* and *John Grove*, afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, and divers Days and Times after, with Force and Arms, &c. at the Parish aforesaid, in the County of *Middlesex* aforesaid, and in other Places within the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously, devilishly and traitorously did lie in wait, and endeavour our said late Lord the King traitorously to kill and murder; and that the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors to the Jurors aforesaid unknown, afterwards (to wit) the same 24th Day of *April*, in the 30th Year aforesaid, at the Parish aforesaid, in the County of *Middlesex* aforesaid, falsely, subtilly, advisedly, maliciously and traitorously did prepare, persuade, excite, abet, comfort and counsel four other Persons to the Jurors unknown, and Subjects of our said Lord the King, him our said late Lord the King traitorously to kill and murder, against the Duty of their Allegiance, against the Peace of our said Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided; and thereupon it was so far proceeded, that afterwards, at the Court of Goal-Delivery of our said Lord the King, at *Newgate*, at *Justice-Hall* in the *Old Bailev*, in the Suburbs of the City of *London*, in the Parish

of *St. Sepulchre*, in the Ward of *Faringdon without*, *London*, the 17th Day of *December*, in the 30th Year aforesaid, before the Justices of the said Lord the King, of the same Goal-delivery, then and there held by Adjournment, of the County of *Middlesex* aforesaid, came the said *William Ireland*, *Thomas Pickering* and *John Grove*, under the Custody of *Sir Richard How* Knight, and *Sir John Chapman* Knight, Sheriff of the County of *Middlesex* aforesaid; into whose Custody, for the Cause aforesaid, they were before committed: Being brought to the Bar there, in their proper Persons, and presently being severally asked concerning the Premises above-charged upon them, how they would acquit themselves; the aforesaid *William Ireland*, *Thomas Pickering* and *John Grove* did severally say; *That they were not thereof guilty*; and for the same, for good and bad, they did severally put themselves upon the Country; and by a certain Jury of the Country, in that behalf duly impanel'd, sworn and charged then and there in the same Court, before the Justices of Goal-delivery aforesaid, were tried: And that upon that Trial, before our said late Lord the King, and the said *William Ireland*, *Thomas Pickering* and *John Grove* at *London* aforesaid; to wit, at the *Justice-Hall* in the *Old Bailey* aforesaid, in the Parish of *St. Sepulchre*, in the Ward of *Faringdon without*, *London*, aforesaid; the Defendant (*Titus Oates*) late of the Parish of *St. Sepulchre* aforesaid, in the Ward aforesaid, Clerk, was produced as a Witness, on the part of the said late Lord the King, upon the Trial aforesaid; and before the said Justices of Goal-delivery, in the Court aforesaid, then and there held, upon the *Holy Gospels of God*, was duly sworn to speak and testify the Truth, the whole Truth, and nothing but the Truth, of and in the Premises between our said Lord the King, and the said *William Ireland*, *Thomas Pickering* and *John Grove*. And that the said *Titus Oates* then and there, in the Court of Goal-delivery aforesaid, upon his Oath aforesaid, upon the Indictment aforesaid, at the Parish and Ward aforesaid, by his own proper Act and Consent of his most wicked Mind, falsely, voluntarily and corruptly, did say, depose, swear, and give in Evidence to the Jurors of the Jury aforesaid, then and there sworn and impanel'd to try the Issue aforesaid between our said late Lord the King, and the said *William Ireland*, *Thomas Pickering* and *John Grove*; That the said *William Ireland*, in the Indictment aforesaid mentioned, was in Town (within the Cities of *London* and *Westminster*, or the places adjacent to the said Cities, meaning) upon the 1st or 2d Day of *September*, in the Year 1678. Whereas in truth and in deed the said *William Ireland*, in the Indictment aforesaid mentioned, was not in Town, nor within the Cities of *London* or *Westminster*, or the places adjacent to the same Cities, or either of them, upon the 1st or 2d Day of *September*, in the Year 1678. And so the aforesaid *Titus Oates*, the aforesaid 17th Day of *December*, in the 30th Year aforesaid, at the *Justice-Hall* aforesaid, in the Court aforesaid, upon the Trial aforesaid, upon the Indictment aforesaid, between our late Lord the King, and the aforesaid *William Ireland*, *Thomas Pickering* and *John Grove*, so as aforesaid had, by his own Act and Consent, and of his most wicked Mind, falsely, voluntarily and corruptly, in Manner and Form aforesaid, did commit voluntary and corrupt Perjury.

And the Jurors aforesaid, last sworn to enquire for our said Lord the King, and the Body of the

City of *London* aforesaid, upon their Oaths aforesaid, do further present, That at another Session of our said late Lord the King, held for the County of *Middlesex*, at *Hicks's-Hall* in *St. John's-Street*, in the County aforesaid, on *Thursday* (to wit) the 12th Day of *June*, in the 31st Year of our said late Lord King *Charles II.* before *Sir Philip Matthews* Baronet, *Sir Thomas Orby* Knight and Baronet, *Sir William Pultney* Knight, *Sir William Bowles* Knight, *Thomas Robinson*, *Thomas Harriet* Esquires, and others their Companions, by Letters Patents of our said late Lord the King, to the same Justices afore-named, and others, and to any four or more of them, under the Great Seal of our said late Lord the King made, to enquire, by the Oaths of good and lawful Men of the County of *Middlesex* aforesaid, and by all other ways, manners and means, by which they might or could better know, as well within Liberties as without; by whom the Truth of the Matter might be best known and enquired, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, False-making, and other Falsifyings of the Money of this Kingdom of *England*, and of other Kingdoms and Dominions whatsoever; and of all Murders, Felonies, Man-slaughters, Killings, Burglaries, Rapes, Meetings and unlawful Conventicles; Speakings of Words, Combinations, Misprisions, Confederacies, false Allegations, Trefpasses, Riots, Routs, Retainers, Escapes, Contempts, Oppressions; and of other Articles and Offences in the same Letters Patents of our said Lord the King, specified: As also, the Accessaries of the same, within the County aforesaid, as well within Liberties as without, by whomsoever and howsoever had, done, perpetrated or committed; and of other Articles and Circumstances concerning the Premises howsoever; and the same Treasons, and other the Premises, to hear and determine according to the Law and Custom of this Kingdom of *England*; being assigned by the Oaths of *Henry Ashurst* Esq; *Edward Gavell*, *John Radford*, *John Warral*, *William Hammar*, *Robert Pritchard*, *John Tredder*, *Gilbert Ureweyn*, *David Colvex*, *Abraham Harrison*, *Charles Morgan*, *Philip Trebearn*, *John Collier*, *Robert Whitehead*, *William Webb*, *Thomas Edwards* and *Abraham Tillent*, honest and lawful Men of the County aforesaid, sworn and charged to enquire for our said Lord the King, and the Body of the County aforesaid; upon their Oaths it was presented, That *Thomas White*, late of the Parish of *St. Giles* in the *Fields*, in the County of *Middlesex*, Clerk, otherwise called *Thomas Whitebread*, late of the Parish aforesaid, in the County aforesaid, Clerk; *John Fenwick*, late of the Parish aforesaid, in the County aforesaid, Clerk; *William Harcourt*, late of the Parish aforesaid, in the County aforesaid, Clerk, otherwise called *William Harrison*, late of the Parish aforesaid, in the County aforesaid, Clerk; *John Gaven*, late of the Parish aforesaid, in the County aforesaid, Clerk; and *James Corker*, late of the Parish aforesaid, in the County aforesaid, Clerk; as false Traitors against the most Illustrious, most Serene and Excellent Prince, our late Sovereign Lord King *Charles II.* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, &c. their Supreme and Natural Lord; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance; but being moved, and seduced by the Instigation of the Devil, the Cordial Love, the true, due, and natural Obedience, which true and faithful

ful Subjects of our said Lord the King, towards him our said Lord the King, should, and of right ought to bear; wholly withdrawing, and contriving, and with all their Might intending the Peace and common Tranquillity of this Kingdom of *England* to disturb; and the true *Worship of God* within this Kingdom of *England* used, and by Law established, to overthrow; and the Government of this Kingdom of *England* to subvert, and Sedition and Rebellion within this Kingdom of *England* to move, stir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful Subjects of our Lord the King, towards him the said Lord the King, should, and of right ought to bear, utterly to withdraw, put out, and extinguish; and our said late Lord the King to Death and final Destruction to bring, and put; the 24th Day of *April*, in the 30th Year of the Reign of our said late Lord King *Charles II.* &c. at the Parish of *St. Giles* in the *Fields*, and the County of *Middlesex* aforesaid, with divers other false Traitors against our said late Lord the King, to the Jurors aforesaid unknown, falsely, subtilly, advicedly, maliciously and traitorously did purpose, compass, imagine, and intend Sedition and Rebellion within this Kingdom of *England* to move, stir up and procure, and a miserable Slaughter among the Subjects of our said Lord the King to procure, and cause; and our said late Lord the King, from the Regal State, Title, Power and Government of his Kingdom of *England*, utterly to deprive, depose, cast down, and disinherit; and him our said late Lord the King to Death, and final Destruction to bring, and put; and the Government of the same Kingdom, and the sincere Religion of God in the same Kingdom, rightly and by the Laws of the said Kingdom established, at their Will and Pleasure to change and alter; and the State of this whole Kingdom of *England*, through all its Parts well instituted and ordered, wholly to subvert, and destroy; and War against our late Lord the King, within this Kingdom of *England*, to levy: And to perfect and compleat the same, their most wicked Treasons and Traitorous Imaginations, and Purposes, they the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, *Anthony Turner*, and *James Corker*, and other false Traitors to the Jurors aforesaid unknown, the aforesaid 24th Day of *April*, in the 30th Year aforesaid, with Force and Arms aforesaid, at the Parish of *St. Giles* in the *Fields* aforesaid, in the County of *Middlesex* aforesaid, falsely, maliciously, subtilly, advicedly, devilishly and traitorously did assemble, unite and gather themselves together; and then and there falsely, maliciously, subtilly, advicedly, devilishly and traitorously did consult, consent and agree our said late Lord the King, to Death and final Destruction to bring and put, and the Religion within this Kingdom of *England*, rightly and by the Laws of the same Kingdom established to change and alter, to the Superstition of the Church of *Rome*, and the Government of this Kingdom of *England* to subvert; and that one *Thomas Pickering*, and one *John Grove*, him our said late Lord the King should kill and murder: And that they the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, *Anthony Turner*, *James Corker*, and other false Traitors against our said late Lord the King, to the Jurors unknown, a certain number of Malices, between them, then and there agreed upon, for the Health of the Soul of him the said *Thomas*

Pickering, therefore should say, celebrate and perform; and therefore should pay unto the said *John Grove*, a certain Sum of Money, between them then and there agreed upon. And that the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *John Gaven*, *Anthony Turner*, *William Harcourt* otherwise *Harrison*, and other false Traitors against our said late Lord the King, to the Jurors unknown, in the further Prosecution of the Treasons and Traitorous Consultations and Agreements aforesaid, afterwards (to wit) the said 24th Day of *April*, in the 30th Year aforesaid, at the aforesaid Parish of *St. Giles* in the *Fields*, in the County of *Middlesex* aforesaid, falsely, subtilly, advicedly, maliciously, devilishly, and traitorously, did severally give their Faith each to other; and upon the Sacrament, then and there traitorously did swear and promise to conceal, and not to divulge their said most wicked Treasons and traitorous Compassings, Consultations and Purposes aforesaid, for between them had, him the said late Lord the King traitorously to kill and murder, and to introduce the *Romish* Religion, to be used within this Kingdom of *England*; and the Religion within this Kingdom of *England*, rightly and by the Laws of this Kingdom established, to alter and change; and that the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, *Anthony Turner*, *James Corker*, and other false Traitors to the Jurors aforesaid unknown, in further Prosecution of the Treasons and traitorous Intentions and Agreements aforesaid, afterwards (to wit) the said 24th Day of *April*, in the 30th Year aforesaid, at the Parish aforesaid, in the County aforesaid, falsely, subtilly, advicedly, maliciously, devilishly and traitorously, did prepare, persuade, excite, abet, comfort and counsel four other Persons to the Jurors unknown, and Subjects of our said late Lord the King, him our said late Lord the King traitorously to kill and murder, against the Duty of their Allegiance, and against the Peace of our said late Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. Whereupon, it was commanded the Sheriff of the County aforesaid, that he should not omit, &c. but should take them to answer, &c.

Which Indictment the said Justices of our Lord the King, afterwards (to wit) at the Goal-delivery of our said Lord the King, of *Newgate*, holden by Adjournment for the County of *Middlesex*, at *Justice-Hall* in the *Old Bailey*, in the Suburbs of the City of *London*, on *Friday* (to wit) the 13th Day of *June*, in the 31st Year aforesaid, before Sir *James Edwards* Knight, Mayor of the City of *London*; Sir *William Scroggs* Knight, Lord Chief Justice of his Majesty's Court of *King's-Bench*; Sir *Francis North* Knight, Lord Chief Justice of his Majesty's Court of *Common-Pleas*; Sir *Thomas Allen* Knight and Baronet, one of the Aldermen of the said City of *London*; Sir *George Jefferies* Knight, Recorder of the said City of *London*; and other their Companions, Justices of our said Lord the King, assigned to deliver his Goal of *Newgate* of the Prisoners in the same being, by their own proper Hands did deliver there, in the Court of Record, in form of Law to be determined: And thereupon, at the said Goal-delivery of our Lord the King, of *Newgate*, holden by the Adjournment aforesaid, for the County aforesaid, at *Justice-Hall* aforesaid, the said *Friday* the 13th of *June*, in the 31st Year aforesaid, before the aforesaid Justices of our said late Lord the King last named, came the said *Thomas White*

White otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*, under the Custody of *Sir Richard How*, Knight, and *Sir John Chapman* Knight, Sheriff of the County aforesaid; into whose Custody, for the Cause aforesaid, they were before that time committed; being brought to the Bar there, in their proper Persons; who were committed to the aforesaid Sheriff, &c. And immediately being severally demanded concerning the Premises aforesaid, in the Indictment aforesaid specified, charg'd upon them as above, how they would thereof acquit themselves; the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*, did severally say, that they were *Not* thereof *Guilty*: And thereupon, for good and bad, did severally put themselves upon the Country. And thereupon, upon the Indictment aforesaid last recited, at the Session of our Lord the King, at the *Justice-Hall* in the *Old-Bailey*, it was so far proceeded, that the Issue aforesaid between our said late Lord the King, and the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*, afterwards (to wit) the aforesaid *Friday*, the 13th Day of *June*, in the 31st Year aforesaid, at *Justice-Hall* aforesaid, by a certain Jury of the Country in that behalf duly impanell'd, sworn and charg'd, was tried; and that upon the Trial of the Issue aforesaid last mentioned, between our said late Lord the King, and the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*, at *London* aforesaid, (to wit) at the *Justice-Hall* in the *Old-Bailey* aforesaid, in the Parish of *St. Sepulchre* in the Ward of *Faringdon* without, *London*, aforesaid, the said Defendant, *Titus Oates*, was also a Witness produced on behalf of our said late Lord the King, upon the Trial aforesaid, upon the Indictment last aforesaid: And he, the aforesaid *Titus Oates*, then and there at the Session last aforesaid, at the *Justice-Hall* aforesaid, in the Court of the same Session (to wit) at the Parish and Ward aforesaid, was duly sworn upon the *Holy Gospels of God*, to speak and testify the Truth, the whole Truth, and nothing but the Truth of, and in the Premises, in the Issue aforesaid last mentioned, so as aforesaid joined between our said late Lord the King, and the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*. And that the said *Titus Oates* then and there, at the Session aforesaid last mentioned, in the *Justice-Hall* aforesaid, in the Court of the same Session, upon his Oath aforesaid, upon the Indictment last aforesaid, by his own proper Act and Consent, of his most wicked Mind, falsely, voluntarily, and corruptly did say, depose, swear, and give in Evidence to the *Jurors* of the *Jury* aforesaid last mentioned, so as aforesaid sworn and impanell'd to try the Issue aforesaid between our said late Lord the King, and the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*; That *William Ireland* (one *William Ireland*, then before convicted and executed for High-Treason against our late Lord the King, meaning) took his leave of him the said *Titus Oates* and others, at the Chamber of the said *William Ireland*, then being in *Russel-street* (a certain Street, called *Russel-street*, lying within the City of *Westminster*, in the County of *Middlesex*, meaning) between the 8th and 12th

Day of *August*, in the Year of our Lord 1678. Whereas, in truth and in deed, the said *William Ireland* did not take his Leave of the said *Titus Oates*, or any other Persons whatsoever, at the Chamber of the said *William Ireland*, then being in *Russel-street* aforesaid, between the said 8th and 12th Days of *August*, in the Year of our Lord 1678. And so the said *Titus Oates*, upon the said *Friday* the 13th Day of *June*, in the 31st Year aforesaid, at the Session last aforesaid, at the *Justice-Hall* aforesaid, in the Court of the same Session, upon the Indictment last aforesaid, so put in Issue, and tried as aforesaid, between our said late Lord the King, and the said *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*, by his own proper Act and Consent, and of his most wicked Mind, falsely, voluntarily, and corruptly, in manner and form aforesaid, did commit voluntary and corrupt Perjury, to the great Displeasure of *Almighty God*, in manifest contempt of the Laws of this Kingdom of *England*, to the evil and pernicious Example of all others in the like Case offending, and against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been arraigned; and thereunto hath pleaded, *Not Guilty*: And for his Trial, hath put himself upon the Country, and his Majesty's *Attorney-General* likewise; which Country you are. Your Charge is, to enquire, whether the Defendant, *Titus Oates*, be *Guilty* of the Perjury he stands indicted, or *Not Guilty*. If you find him *Guilty*, you are to say so: If you find him *Not Guilty*, you are to say so, and no more: And hear your Evidence.

L. C. J. Look ye, Mr. *Attorney*, my Lord Chief Justice *Jones* has sent to know, whether you have any thing to do with him to-day, here?

Sir *George Jefferies*.

Mr. *At. Gen.* Not at all, that I know of.

Sir *Roberts Sawyer*.

L. C. J. Mr. *Oates*, do you intend to make use of my Lord Chief Justice *Jones*, or any of the Judges of the *Common Pleas*, as Witnesses?

Oates. Yesterday, my Lord, I did call for them, to have made use of them, as Witnesses.

L. C. J. But have you any thing to say to them to-day?

Oates. I cannot tell, as yet.

L. C. J. Then my Lord Chief Justice *Jones* must be told, that he does not know, whether he shall, or not. Go on, Sir *Samuel Astry*.

Then Proclamation was made for Information, and Evidence was made in usual manner.

Mr. *Phipps*. May it please your Lordship, and you, Gentlemen of the *Jury*, this is an Indictment against *Titus Oates*, Clerk, for Perjury: And this Indictment sets forth, that *William Ireland*, *Thomas Pickering*, and *John Grove*, in the 30th Year of the late King, were indicted of High-Treason, and tried at the *Old-Bailey*; and at that Trial, the Defendant, *Titus Oates*, was produced a Witness for the King; and being sworn to tell the Truth, the whole Truth, and nothing but the Truth, did falsely, voluntarily, and corruptly, depose, and swear, and give in Evidence to the *Jury* that did try that Cause, that the said *William Ireland* was in *Town* (within the Cities of *London* and *Westminster*, or the Places adjacent, meaning) upon

upon the first or second Day of *September*, in the Year 1678. Whereas, in truth, the said *William Ireland* was not in *Town*, nor within the Cities of *London* and *Westminster*, or the Places adjacent, upon the first or second Day of *September*, in the Year 1678. And so the said *Titus Oates* hath committed wilful and corrupt Perjury. And the Indictment further sets forth, that upon the 13th Day of *June*, in the 31st Year of the late King, *Thomas White* otherwise *Whitebread*, *John Fenwick*, *William Harcourt* otherwise *Harrison*, *John Gaven*, and *Anthony Turner*, were indicted and tried at the *Old-Bailey* for Treason, and at that Trial, the said *Titus Oates* was a Witness produced on the part of the King: And being sworn to testify the Truth, the whole Truth, and nothing but the Truth, by his own Act and Consent, of his own most wicked Mind, falsely, voluntarily and corruptly did depose, and swear, and give in Evidence to the Jury, that *William Ireland* (one *William Ireland*, before that time convicted and executed for High-Treason, meaning) did take his Leave of him the said *Titus Oates*, at his the said *William Ireland's* Chamber, then being in *Russel-street*, between the 8th and 12th Day of *August*, in the Year of our Lord 1678. Whereas, in truth, the said *William Ireland* did not take his leave of him the said *Titus Oates*, or of any other Persons whatsoever, at his the said *William Ireland's* Chamber, then being in *Russel-street* aforesaid, between the said 8th and 12th Day of *August*, in the Year of our Lord 1678. And so the said *Titus Oates* did then and there commit wilful and corrupt Perjury. And this is laid to be to the great Displeasure of *Almighty God*, in contempt of the Laws of this Land, to the evil and pernicious Example of all others in the like Case offending, and against the King's Peace, Crown and Dignity. To this he has pleaded, *Not Guilty*. If we prove it, we do not question, but you will find him *Guilty*.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury; Mr. *Oates* stands indicted for having perjured himself: The Instances, Gentlemen, that we charge him with, are these: First, what he swore at the Trial of *Ireland*; and we say, that at that Trial he did swear *Ireland* was in *Town* the 1st or 2d of *September*, 1678. The second Instance is, what he swore at the Trial of the five *Jesuits*; and there we say, he did swear, that *Ireland* was in *Town* between the 8th and 12th of *August*, and that he took his leave of him here in *Town* at his Chamber in *Russel-street*; and we do charge him by this Indictment, that he has forsworn himself in both Instances: And that *Ireland*, Gentlemen, was neither in *Town* between the 8th and 12th of *August*, nor the 1st or 2d of *September*. And we shall make it out very evidently: For, Gentlemen, as to the Proof in this Case, our Case stands thus; we say, that the 3d of *August*, 1678, *Ireland* went into *Hertfordshire*, to a House of my Lord *Aston's*, and from thence went into *Staffordshire*. I will not stand to open the Particulars, where he was every Day; but we shall give you an Account, in a Method very easy to be remembered and observed, where he was till the 14th of *September*. But one remarkable Instance, Gentlemen, I desire to take particular notice of; and that is the Time of *Pancras-Fair*, which is upon the 2d of *September* always, a known Day, and a known Place in that Country. Now we have among the rest, many Witnesses to prove, that Mr. *Ireland* was there that Day, and not in *Town*. And when

we have proved this, as we shall by a whole Court of Witnesses, I believe, you Gentlemen of this Jury, will no more doubt; that Mr. *Oates* is forsworn in these Particulars, than the Jury yesterday did in that Particular; nor than, I believe, the whole Kingdom does by this time.

Mr. *Sol. Gen.* My Lord, we shall go to our Evidence; and first, we produce the Records of the two Trials of *Ireland*, and the five *Jesuits*. Swear Mr. *Swift*.

[*Which was done.*]
Pray, Sir, put in the Records. Are those true Copies?

Mr. *Swift*. My Lord, I examined these Records with the Originals, and they are true Copies.

Mr. *At. Gen.* Mr. *Oates*, will you have them read? Or to save the time of the Court, will you agree them?

Oates. My Lord, I consent to save the time of the Court; if they shall be made use of for Evidence for me.

L. C. J. No doubt, they are Evidence for you as well as against you, when they are produced here.

Mr. *Sol. Gen.* If Mr. *Oates* does admit the Records, then shall we go on, and prove what he did swear at those Trials; and for the first part of the time, which is between the 8th and 12th of *August*, we desire that Mr. *Thomas Harriot*, and Mr. *Rainford Waterhouse* may be sworn. [*Which was done.*]

Mr. *At. Gen.* Mr. *Harriot*, pray do you remember at the Trial of the five *Jesuits*, was Mr. *Oates* produced and sworn as a Witness?

Mr. *Harriot*. Yes, he was, my Lord.

Mr. *At. Gen.* Do you remember what Testimony he gave about *Ireland's* being in *Town*, and when it was, he said, he was in *Town*?

Mr. *Harriot*. My Lord, he did positively swear, that Mr. *Ireland*, the late *Jesuit*, did take his leave of him the said *Oates* and others, at the said *Ireland's* Chamber in *Russel-street*, betwixt the 8th and 12th of *August*, 1678.

Mr. *Sol. Gen.* Were you of the Jury that tried the five *Jesuits*, Mr. *Harriot*?

Mr. *Harriot*. Yes, I was Foreman of that Jury.

Mr. *Sol. Gen.* What say you, Mr. *Waterhouse*? Were you present at that Trial?

Mr. *Waterhouse*. Yes, I was of the Jury too.

Mr. *Sol. Gen.* What did *Oates* swear at that Trial?

Mr. *Waterhouse*. He said, that Mr. *Ireland* took his leave of him the 12th of *August*. My Lord Chief Justice *Scroggs* then asked him, are you sure it was the 12th? And then he said, he would not be positive it was the 12th, but between the 8th and 12th it was, I am positive upon my Oath.

Mr. *At. Gen.* It is so in the Print too; but we will now go on.

L. C. J. But will the Defendant ask these Witnesses any Questions?

Oates. My Lord, if your Lordship please, I will ask Mr. *Harriot* a Question.

L. C. J. Ay, do ask him what you will.

Oates. Mr. *Harriot*, did I swear, that he took his leave of me, or I took my leave of him?

Mr. *Harriot*. You swore, that *Ireland* took his leave of you and others, between the 8th and 12th of *August*, 1678; between those two Days, and in that Year.

Mr. *Just. Withins*. It is a nice Question, that of yours, Mr. *Oates*, upon my Word.

Oates. My Lord, I know what reason I have to ask that Question; I am sure in Perjury, the Court ought to keep up the Witnesses strictly to what is laid in the Indictment.

L. C. J. Well, you have his Answer according to the Indictment.

Oates, Pray, my Lord, be pleas'd to ask Mr. Harriot this Question, whether he took Notes of the Trial?

Mr. Harriot. Yes, I did so, Sir.

Oates, My Lord, I desire to know of Mr. Harriot, whether he has those Notes by him?

Mr. Harriot. No, Sir, I have them not here; but I have had them by me this four or five Years, or more. It was my manner in all the Trials, wherein I was concern'd as a Jury-man, to read the Trials strictly over, when they were printed, especially where I happened to have any Notes, that I took at the Trial; and to compare the printed Trial with my Notes: and where I found any thing doubtful, I us'd to put a Query upon it. And this and many other things, I found to be in the printed Trial strictly according to my Notes.

Oates, My Lord, I desire to know, what Trial he was Foreman at?

Mr. Harriot. That of the five Jesuits, in June; the 13th of June, 1679.

L. C. J. Have you any thing to ask Mr. Waterhouse?

Oates, Yes, my Lord, Pray, Sir, let me ask you a Question.

Mr. Waterhouse. Ay, if you please, Sir.

Oates, Did you take Notes of that Trial you speak of, Sir?

Mr. Waterhouse. No, I did not.

Oates, How come you then to remember this, that I was so positive as to the time betwixt the 8th and 12th of August?

Mr. Waterhouse. Because I was one of the Jury; and because my Lord Chief Justice made a stop, when you said, 'twas the 12th of August, and bid you consider: And you consider'd, and consider'd it; and did affirm positively, that it was between the 8th and 12th of August.

L. C. J. He gives you a plain Reason for his Remembrance.

Oates, My Lord, I have done with him.

Mr. Sol. Gen. Then we desire Mr. Foster may be sworn. *[Which was done.]*

Mr. Foster, Pray will you tell what you remember Mr. Oates swore at Mr. Ireland's Trial, about Ireland's being in Town?

Mr. Foster. I was one of the Jury at the Trial of Mr. Ireland, Mr. Pickering, and Mr. Grove; and I did see Mr. Oates sworn, as a Witness for the King, at that Trial; and so was Mr. Bedloe: And Bedloe there gave Evidence, that there was a Meeting at Harcourt's Chamber; and Ireland, Grove, and Pickering were there: And that this was the latter End of August. Mr. Ireland did make his Defence, as much as he could, to prove, that he was not in Town from the Beginning of August, to the Middle of September; and brought divers Witnesses. But upon his denying to be here the latter End of August, Mr. Oates did come and swear: *I am certain (says he) that the first or second of September, he was in Town; for then I had of him Twenty Shillings.*

Oates, Was I positive, that he was here in Town the 1st or 2d of September?

Mr. Foster, You were positive, Sir, to the 1st or 2d; I have it in my Notes in Writing.

L. C. J. He tells you, it is in his Notes: And therefore he's sure you said so.

Mr. At. Gen. In the printed Copy, if it be right, there is mention made of the Word *Positive*.

L. C. J. I think, that is in August, between the 8th or 12th he was positive.

Oates, Did I say these Words, *I was positive*?

Mr. Waterhouse. I say you affirm'd that he was in Town the 1st or 2d of September.

L. C. J. It is not necessary, that you should use the Word *Positive*: The Question is, whether it was positively affirm'd?

Mr. Just. Withins. Was not that true that you said? Did not you affirm a positive Truth?

Oates, My Lord, I'll tell you the Reason why I ask the Question, because I have forgot my self, whether I us'd the Word or no; and therefore I ask for my own Information now.

L. C. J. Well, ask for what Reason you will, you have receiv'd an Answer to your Question; and upon my Word he gives a notable Evidence: Says he, *Bedloe* had sworn a treasonable Practice by *Ireland*, in the latter end of August. Then *Ireland* comes, and makes his Defence: Says he, *That cannot be; for I was out of Town at that time: I was not in London all August, nor the beginning of September.* Then come you in, to support the Testimony of *Bedloe*; and swear, that he was in Town the 1st or 2d of September; for then he gave you twenty Shillings. And so you come to rivet the Matter that was sworn before by *Bedloe*.

Oates, My Lord, what I swore was Truth.

L. C. J. That is now to be tried.

Mr. At. Gen. We have another of the Jury here, Mr. John Byfield: Pray, swear him.

Mr. Sol. Gen. Well, Sir, what did you hear *Oates* swear at that Trial? *[Which was done.]*

Mr. Byfield. I heard the same that they have testified before.

L. C. J. But you must tell us what that was.

Mr. Sol. Gen. Were you a Jury-man at that Trial?

Mr. Byfield. Yes, I had a Summons to the *Old-Bailey*—

L. C. J. But what did *Oates* swear? That's the Question.

Mr. Byfield, Mr. *Oates* did positively assert, that *Ireland* was here in Town the 1st or 2d of September; and to confirm it, he said, he receiv'd of him twenty Shillings.

Mr. At. Gen. Now, my Lord, we shall go to our Evidence to prove, that all this is absolutely false: For *Ireland* went out of Town into *Staffordshire*, and did not return till after the 9th of September. And for this, we call *Anne Ireland*.

[Who was sworn.]

Mr. Sol. Gen. Mrs. *Ireland*, pray where did you take your leave of your Brother Mr. *Ireland*, who was executed in Summer 1678, and when?

Mrs. A. Ireland. I took my leave of him the beginning of August.

Mr. Sol. Gen. What Day in August, do you remember?

Mrs. A. Ireland. The 3d of August.

Mr. Sol. Gen. Where was it?

Mrs. A. Ireland. In my own Lodging.

L. C. J. Where was your Lodging?

Mrs. A. Ireland. In *Russel-street, Covent-Garden*.

L. C. J. Now tell us again the time when it was?

Mrs. A. Ireland. It was on Saturday Morning, as I remember, the 3d of August, the Saturday after St. Ignatius's Day.

L. C. J. How come you to remember so particularly, that it was then?

Mrs. *A. Ireland*. Because upon *St. Ignatius's Day*, we were invited to *Mr. Gifford's* at *HammerSmith*; my Brother, my Mother, and I, were invited to stay all Night: But my Brother refused to stay, because—

L. C. J. Which Brother? What was his Name?

Mrs. *A. Ireland*. *William Ireland*.

L. C. J. Did they stay there?

Mrs. *A. Ireland*. No, my Lord, my Brother came home on foot, but we staid all Night.

Mr. *At. Gen.* Here is an Almanack of that Year: And the 3d of *August* was on a *Saturday*.

Mrs. *A. Ireland*. He said he could not stay, because he was to go into the Country upon *Saturday*. I ask'd him, *Why he would set out on Saturday?* And says he, *I'll go to Standen; there I shall meet with my Lord Aston, and his Family; and have an Opportunity to go with him into Staffordshire.*

L. C. J. She says, he went out of Town on *Saturday* after *St. Ignatius's Day*; which was *Saturday* the 3d of *August*. But there being a Discourse between her and her Brother, why he should make choice of a *Saturday*; which she thought, it seems, was an inconvenient Day to take a Journey on: And upon that, her Brother made answer again, That that Night he would only go to *Standen*, to my Lord *Aston's* House, where he should meet with Company to go along with him into *Staffordshire*.

Mr. *At. Gen.* What Day of the Week was *St. Ignatius's Day*?

Mrs. *A. Ireland*. *St. Ignatius's Day* was on a *Wednesday*.

L. C. J. What Day of the Month is *St. Ignatius's Day*?

Mrs. *A. Ireland*. It is either the last Day of *July*, or the 1st of *August*.

L. C. J. Look on your Almanack, if you have any one of that Year, Mr. Attorney.

Mr. *At. Gen.* We have no such Saint in our Almanack.

Mrs. *A. Ireland*. It was, as near as I can remember, the 3d of *August*, that he went out of Town.

Mr. *Sol. Gen.* The 3d of *August*, at that time, was on a *Saturday*.

Lord *Petre*. *St. Ignatius's Day* is always the last Day of *July*, my Lord.

Mr. *At. Gen.* In this Almanack, another Saint has juffled him out; and that is *Bishop German*.

L. C. J. And in my Almanack, a third has juffled them both out: but my Lord *Petre* says, it is always the last of *July*; and that was on a *Wednesday* that Year.

Mrs. *A. Ireland*. I remember it was on a *Wednesday*.

L. C. J. And you are sure he went out of Town the *Saturday* after?

Mrs. *A. Ireland*. Yes, I am sure he went out of Town then; for I asked him, why he would go on a *Saturday*? And he told me, he would go but to *Standen* that Night.

Mr. *Sol. Gen.* And that does hold, according to the Computation, to be the 3d of *August*.

Oates. My Lord, she is not positive in this, that he went out of Town the 3d of *August*.

Mr. *At. Gen.* Yes, but she is; for she says, that she was the *Wednesday* before (which was *St. Ignatius's Day*) with him a little way out of Town.

L. C. J. And that it was *Saturday* after he went out of Town; and she gives the Reason, that she entered into a Discourse with him, why he would go

on *Saturday*? And he made that Answer which you hear.

Mr. *Just. Withins*. Mr. *Oates* knows what Day *St. Ignatius's Day* is upon, I presume.

Oates. It is the last Day of *July*, I think.

Mr. *Sol. Gen.* In our Protestant Almanacks, it seems, we give another Bishop place.

Mr. *At. Gen.* Mrs. *Ireland*, when did you see him again?

Mrs. *A. Ireland*. Just a Fortnight before *Michaelmas*, and not before.

L. C. J. You were his near Relation, I suppose?

Mrs. *A. Ireland*. Yes, my Lord, I was his Sister.

L. C. J. Pray, when he came to Town again, where did he lodge?

Mrs. *A. Ireland*. He used to lodge at the same place where we did always; and in the mean time, while he was absent, my Mother lent one Mrs. *Eagleston* his Lodging.

L. C. J. Is that Person, you lent his Chamber to in his Absence, here?

Mrs. *A. Ireland*. No, my Lord.

L. C. J. When did he enter upon his Lodging?

Mrs. *A. Ireland*. Truly, my Lord, I cannot tell; her Maid fell sick, and so she came down a pair of Stairs lower into his Lodging. It was in a short time after he went out of Town, my Lord, as I remember.

L. C. J. When did he come to Town again, do you say?

Mrs. *A. Ireland*. He came to Town again a Fortnight before *Michaelmas*; it was that Day Fortnight before *Michaelmas*; that *Michaelmas-day* fell on—

L. C. J. Have you any Questions to ask her, Mr. *Oates*?

Oates. My Lord, I desire to know, why she did not give this Evidence before? Or whether ever she did give this Evidence at any of the Trials?

Mrs. *A. Ireland*. Yes, I was at my Brother's Trial; and there I gave the same Evidence.

Oates. Were you there at the Trial of the five Jesuits? And did you give the same Evidence then?

Mrs. *A. Ireland*. No, I was not call'd.

L. C. J. But were you there?

Mrs. *A. Ireland*. I was in the Court at the same time, but was not examin'd.

Oates. What Year is it you speak of, that he went out of Town the 3d of *August*?

Mrs. *A. Ireland*. The Year 78.

Oates. I desire, my Lord, to ask this Gentlewoman, what Religion she is of?

Mrs. *A. Ireland*. I am a *Roman Catholick*, my Lord.

Oates. I desire to know, whether her Name be *Ireland* or *Ironmonger*?

Mrs. *A. Ireland*. My right Name is *Ironmonger*; but because of his Profession, he went by the Name of *Ireland*; and for his sake we go by that Name too.

Oates. By what Name did you give Evidence at *Ireland's* Trial?

Mrs. *A. Ireland*. By that Name of *Ireland*.

L. C. J. Why, Mr. *Oates*, that is a good Name enough to be call'd by; you may remember, you were called *Titus Ambrosius*, and *Sampson Lucy*, at *St. Omers*.

Mr. *At. Gen.* Swear Mrs. *Eleanor Ireland*.

[Which was done.]

Mr. *At. Gen.* When did your Son go out of Town?

Mrs. *El. Ireland*. The 3d of *August*.

Mr. *Sol. Gen.* Are you sure it was the 3d of *August*?

Mrs. *El. Ireland.* Yes, I am sure it was.

Mr. *Sol. Gen.* What Year was it?

Mrs. *El. Ireland.* My Memory is not good enough for that; I cannot tell what Year, my Daughter can.

Mr. *Sol. Gen.* Was it the same Year he was tried afterwards?

Mrs. *El. Ireland.* Yes, it was the same Summer; at *Michaelmas* after he was taken up.

Mr. *Sol. Gen.* What time did he return again out of the Country?

Mrs. *El. Ireland.* The 14th of *September* after.

Oates. My Lord, I would ask her, Whether or no she gave this Evidence at her Son's Trial?

Mrs. *El. Ireland.* Yes, I was a Witness there; but they would not permit me to speak half so much; they would hardly let me speak at all.

Oates. I desire to know, whether she was an Evidence at the five Jesuits Trials?

Mrs. *El. Ireland.* No, I was not there then.

Mr. *At. Gen.* Pray swear Mrs. *Duddle*, and Mrs. *Quino*. *[Which was done.]*

Mr. *Sol. Gen.* Come, Mrs. *Duddle*, do you remember when Mr. *Ireland* went out of Town, in the Year 78?

Mrs. *Duddle.* To the best of my Remembrance, it was the 3d of *August*.

Mr. *Sol. Gen.* Why do you think it was the 3d of *August*?

Mrs. *Duddle.* He went for a Recreation out of Town three Days before, which was upon an Holiday, *St. Ignatius's Day*; and he went out of Town one Night then, and he came and staid but two Nights after; and went out of Town upon the *Saturday*.

L. C. J. Did he stay out of Town one Night?

Mrs. *Duddle.* Yes, he staid out of Town all Night.

L. C. J. Are you sure he staid all Night?

Mrs. *Duddle.* I am sure he staid but one Night.

L. C. J. But what say you to that, Mr. Attorney? this Witness contradicts the other.

Mr. *Just. Wilbins.* Ay, plainly.

Mrs. *Duddle.* Mrs. *Ireland*, and Mrs. *Anne Ireland*, and he went out upon a Recreation out of Town, it being Holiday; and I remember well, that was of a *Wednesday*: And that *Saturday* he went away, and never came again till a Fortnight before *Michaelmas*.

L. C. J. But mind my Question, Woman.

Mrs. *Duddle.* Yes, my Lord.

L. C. J. Did he come home that Night he went on the Recreation?

Mrs. *Duddle.* I do not know.

L. C. J. But just now, you swore he staid out all Night.

Mrs. *Duddle.* No, my Lord.

L. C. J. Yes, but you did though; prithee mind what thou art about.

Mrs. *Duddle.* I do not say he, but I am sure his Sister and the Company staid out that Night. I remember very well, he went the third Day after, which was *Saturday*. And Mr. *Jennison* came to ask for him three Weeks after: and there was a Person of Quality with him in the Coach; I think it was Sir *Miles Wharion*. And he asking for him, they gave him an account, that they had not heard from him since he went; which was then three Weeks after he was gone. And I remember well, he did

not come to Town again till a Fortnight before *Michaelmas*.

L. C. J. How can you tell that?

Mrs. *Duddle.* My Lord, I can tell it very well: For I was almost every Night in the Room where he used to lie; and there lay a Gentlewoman there, that I knew.

L. C. J. What was her Name?

Mrs. *Duddle.* Mrs. *Eagleston*.

L. C. J. How come she to lie there?

Mrs. *Duddle.* Her Maid fell sick, and she chang'd her own Chamber, and lay there all the time he was out of Town.

Oates. My Lord, is this good Evidence?

L. C. J. Ay, why not?

Oates. My Lord, I think she contradicts the other Witness: For she says he lay out two Nights.

L. C. J. No, there you are mistaken too. But I tell you what I did observe before. Mrs. *Anne Ireland* swore, that they did stay all night; but Mr. *Ireland* refused to stay there, but would go home, because he was to go his Journey on *Saturday*. Then this Woman comes; and she said at first, that he went out of Town on the *Wednesday*, and staid out all Night, and lay at home but two Nights, and then went away. But now when I put her in mind to take care what she said, she swears, she is sure the Sister lay out, but she is not sure of *Ireland's* lying out. But she is positive he went away on *Saturday* the 3d of *August*, and return'd not till a Fortnight before *Michaelmas*.

Oates. My Lord, I humbly conceive, she having once sworn false—

L. C. J. Ay, but she immediately recollected her self.

Oates. By what Token does she remember it to be the 3d of *August*?

L. C. J. She said before, it was the *Saturday* after *St. Ignatius's Day*, which was on a *Wednesday*, the last Day of *July*; and he went then out of Town. She call'd it by the Name of *Recreation*.

Oates. Was it the *Saturday* after *St. Ignatius's Day*?

Mrs. *Duddle.* Yes, it was: And I had not remember'd it, but that it was upon that Holiday.

Oates. This is a *Roman* Catholick, I suppose, my Lord.

L. C. J. I cannot tell. What Religion are you of?

Mrs. *Duddle.* I am a *Roman* Catholick, my Lord. Mr. *Jennison* knows what I say to be true.

Oates. Were you a Witness in any of the Trials at the *Old-Bailey*?

Mrs. *Duddle.* I was in the Court, but was not call'd.

Mr. *Sol. Gen.* What say you, Mrs. *Quino*? When did Mr. *Ireland* go out of Town?

Mrs. *Quino.* I must say the same; it was the 3d Day of *August*, on a *Saturday*.

L. C. J. How do you know that it was on a *Saturday* the 3d of *August*?

Mrs. *Quino.* By the same Reason that she speaks. I mark'd that other Day he went out of Town; and he came again, and his Mother staid there that Night: And he went on *Saturday* Morning out of Town. I know it very well; for my Husband was his Taylor, and he had somewhat to alter in his Clothes; and I brought it immediately after it was done.

L. C. J. Are you sure he went out of Town that Day?

Mrs. *Quino.* He went out of the House, and as I take it, went out of Town?

L. C. J. Did he say, he was to go out of Town?
Mrs. Quino. He had his Boots on; and took
Horse at the Bull-Inn in *Drury-lane*.

L. C. J. How do you know it?

Mrs. Quino. Because his Servant that was there
has testified it.

Mr. At. Gen. Now swear my Lord *Aston*. [*Which
was done.*] We'll bring *Ireland* now upon the 3d
of *August* at Night, to my Lord *Aston's* House at
Standen.

Mr. Sol. Gen. Pray will your Lordship give my
Lord and the Jury an account, when Mr. *Ireland*
came to your House, and how far he travelled
with you afterwards?

Lord *Aston*. My Lord, being in Town, I was
spoke to, and desired, that Mr. *Ireland* might have
the Opportunity of going in my Company down
into *Staffordshire*; which I consented to. I went
out of Town, as I remember, the latter end of
July 1678, and this same Mr. *Ireland* came to me
at my House in *Hertfordshire* at *Standen*, upon the
3d of *August* at Night.

L. C. J. What Day of the Week was that, my
Lord?

Lord *Aston*. As I remember, it was *Saturday*,
and in the Evening.

L. C. J. How long did he stay with your Lord-
ship?

Lord *Aston*. My Lord, I staid till *Monday* at
Standen; and upon *Monday* he went in my Com-
pany to *St. Albans*, which was the 5th of *August*.

Mr. At. Gen. Whither then did you go, my
Lord?

Lord *Aston*. There I met with my Brother and
Sister *Southcoat*.

L. C. J. Sir *John Southcoat* you mean, my Lord.

Lord *Aston*. Yes, my Lord. And thence, in
four Days we went to my House at *Tixball*.

L. C. J. Did Mr. *Ireland* travel with you all the
way?

Lord *Aston*. I cannot charge my Memory, my
Lord, that he did, so as particularly to swear it:
But there he came into my Company sometimes at
Tixball; but I cannot tell the particular Days:
Nor could I speak positively to those things that I
have spoke to now, but that I find in my Note-
Book, that at that time he did come to my House
at *Standen*, and did go with me to *St. Albans*.

Mr. At. Gen. Pray, my Lord, did he go that
Journey to *Tixball* along with you?

Lord *Aston*. I cannot say positively that, Mr.
Attorney; but I have a general Notion that he did.
Nor could I testify this so positively, I say, but
by Notes that I have of things at that time: Where
I have only writ down these things concerning Mr.
Ireland, that he came the 3d of *August* to my
House at *Standen*: That on *Monday* we went to-
gether to *St. Albans*; and there met us Sir *John
Southcoat*, and my Sister his Wife; and thence I
went to *Tixball*; and there I arriv'd the 8th of
August, which was *Thursday*.

L. C. J. My Lord, I ask you this Question;
you say, you have a general Apprehension, that
he did go with you to *Tixball*: Pray, did he come
with you to *Standen* for that purpose, to go with
you to *Tixball*?

Lord *Aston*. I had no business with him at all;
but he desired the opportunity to go down in my
Company into *Staffordshire*.

L. C. J. Pray, my Lord, do you remember
you saw him within four or five Days after at *Tix-
ball*?

Lord *Aston*. To name particular Days, I cannot;
but that I saw him several Days at *Tixball*, I am
sure.

Oates. My Lord, you say that Sir *John Southcoat*
went with you to *Tixball*.

Lord *Aston*. Yes, he did so.

Oates. My Lord, I would ask this Nobleman,
whether he was at the Trial of the five Jesuits?
or the Trial of *Ireland*?

Lord *Aston*. No, my Lord, I was not.

Oates. Then I would ask my Lord, if he saw Mr.
Ireland executed?

Lord *Aston*. No, I did not.

Oates. Then I would ask him this Question;
whether the *Ireland* that was executed be the same
Ireland he speaks of?

Lord *Aston*. Amongst those that knew him well,
I have been told it was the same.

Oates. That is but Hear-say, my Lord; he does
not speak of his own Knowledge.

L. C. J. For that matter, I suppose, you'll pro-
duce some other *Ireland*, Mr. Oates, if it was not
the same.

Mr. At. Gen. Was it this Mrs. *Ireland's* Brother,
that was here a Witness now?

Lord *Aston*. He was so reputed, and so looked
upon.

L. C. J. That is all one. If any body should
ask me, if you were the same Mr. Oates that was at
St. Omers; I should say, I heard so; and it would
be very good Evidence, unless some one else were
produc'd.

Oates. My Lord, I submit; I will be directed by
the Court in any thing that is fair, and not injurious
to my Defence.

L. C. J. We will not direct you in any thing
that's foul, but pray keep to those Questions that
are pertinent.

Oates. Are you sure *Ireland* went the whole Jour-
ney with you, my Lord?

Lord *Aston*. I did answer that; I have but a
general Notion of it, he came to me for that purpose.

Oates. Then my Lord is not positive he went
with him into *Staffordshire*.

L. C. J. No, he is not; but I would ask you
this Question. My Lord *Aston*, do you believe he
went with you to *Tixball*?

Lord *Aston*. I make no doubt of it, I would
pawn all I have in the World upon it; only I can-
not swear it, because I have it not in my Notes, as
I have those two other Days.

Mr. Just. *Wilkins*. Do you like him the worse,
because he is cautious, Mr. Oates?

Oates. No, Sir, I do not. But pray, my Lord,
ask him, because it is a Question here about a
point of Time; whether he remembers, that within
eight or ten Days, he saw *Ireland* at *Tixball*?

Lord *Aston*. I cannot say any thing as to that.

Mr. At. Gen. Swear Sir *Edward Southcoat*.

[*Which was done.*]

L. C. J. I thought you had called him Sir *John
Southcoat*.

Mr. At. Gen. Sir *John* is sick, and cannot be
here.

Oates. I suppose my Lord *Aston* is a Roman Ca-
tholick?

L. C. J. Ay, that all the World knows very
well: but I tell you what, Mr. Oates, I observe,
he is not so easy in giving his Oath; nay, he is
wonderful cautious in swearing: I speak it for his
Commendation, not as his Fault, he is not very
forward at swearing.

Mr. *Just. Withins*. Well, what do you ask this Gentleman, Mr. *Attorney*?

Mr. *At. Gen.* We desire Sir *Edward Southcoat* would give an account, whether he met Mr. *Ireland* at my Lord *Aston's*? And when?

Sir *Edw. Southcoat*. I was with my Lord *Aston* in his Company.

L. C. J. When was that, Sir?

Sir *Edw. Southcoat*. The 4th of *August* I saw Mr. *Ireland* at my Lord *Aston's*.

L. C. J. Was it the same *Ireland*, that was afterwards tried and executed?

Sir *Edw. Southcoat*. It was the same *Ireland* that was commonly reported; I did not see him executed.

Mr. *At. Gen.* Was it the same that was reputed to be this old Gentlewoman's Son?

Sir *Edw. Southcoat*. Yes, it was.

L. C. J. Pray, Sir, go on with your Evidence.

Sir *Edw. Southcoat*. Upon *Monday* we began our Journey to *Tixball*, and went that Night to *St. Albans*, where we met my Father and Mother, and thence we continued on our Journey the next Day.

L. C. J. Was he with you there that Day you went to *St. Albans*?

Sir *Edw. Southcoat*. He was with us, I remember very particularly. It was hot Weather, and my Lord *Aston* invited him into the Coach; for before he was riding by the Coach-side, and there I remember a particular Discourse that he and my Lord *Aston* had; from thence we went on to *Northampton*, and came there *Tuesday* Night.

L. C. J. Was *Ireland* with you there?

Sir *Edw. Southcoat*. *Ireland* was with us there.

Oates. My Lord, I did not well observe what this Gentleman said.

L. C. J. Pray mind your Business your self, he speaks plain enough; go on, Sir.

Sir *Edw. Southcoat*. Mr. *Ireland* was with us, I say my Lord, all the Journey; and I do remember it particularly by a pretty Horse Mr. *Ireland* rode upon; and I had a Dispute with my Cousin, who should buy him: I took particular notice every day of him, as he rode by the Coach, and conversed with him every Night in the Inn. We went, I say, from *St. Albans* to *Northampton* on the *Tuesday*; from *Northampton* we went to *Coventry* on the *Wednesday*; and from thence to my Lord *Aston's*, at *Tixball*, on the *Thursday*.

L. C. J. Come, let us go by degrees. Was Mr. *Ireland* with you, when you went from my Lord *Aston's* at *Standen* to *St. Albans*?

Sir *Edw. Southcoat*. Yes, he was.

L. C. J. You say it was a hot Day, when you set out; and my Lord *Aston* did invite him into the Coach.

Sir *Edw. Southcoat*. Yes, my Lord, he came into the Coach on *Monday*, which was the first Day we set out; and came that Night to *St. Albans*.

L. C. J. You lay there that Night?

Sir *Edw. Southcoat*. Yes, my Lord.

L. C. J. Where did you lie there?

Sir *Edw. Southcoat*. At the great Inn, at the *Bull*.

L. C. J. Ay, that is the great Inn.

Sir *Edw. Southcoat*. The next Night, my Lord, we came to *Northampton*.

L. C. J. Where did you lie there?

Sir *Edw. Southcoat*. We lay at the Sign of the *George*; it was Sir *William Farmer's* House, but made use of for an Inn, because the Town was burnt down.

L. C. J. Was Mr. *Ireland* with you all that day?

Sir *Edw. Southcoat*. He rode with us all the day.

L. C. J. And you took notice of it, because of his Horse, you say?

Sir *Edw. Southcoat*. Yes, he had a very pretty Horse, my Lord; and my Brother bought the Horse of him, after we came back again.

L. C. J. Whither went ye the next day?

Sir *Edw. Southcoat*. The next Night we lay at the *Bull* in *Coventry*, and from thence on *Thursday*, we arrived at my Lord *Aston's* at *Tixball*.

Mr. *At. Gen.* My Lord, the Jury desires to know what he says? For they have not heard it.

L. C. J. He says, Mr. *Ireland* went with my Lord *Aston* in the Coach, it being a hot Day, on *Monday* the 5th of *August*, from *Standen*, my Lord *Aston's* House in *Hertfordshire*, to *St. Albans*, and lay there at the *Bull* Inn that Night; that he went the next day, which was *Tuesday*, the 6th of *August*, with them to *Northampton*. That he rode upon a pretty Horse, which makes him remember it particularly; and that there was a Dispute on the Road, who should buy him; and when they came back, his Brother bought him. He says, they lay on *Tuesday* Night at *Northampton*, at the *George*, which was a Gentleman's House, which was turned into an Inn, because of the Fire: That he went with them the next day to *Coventry*, which was *Wednesday* the 7th of *August*, and lay with them that Night at the *Bull* in *Coventry*; and the next day, which was *Thursday* the 8th, they came, and *Ireland* with them, to my Lord *Aston's* House at *Tixball* in *Staffordshire*.

Mr. *At. Gen.* Pray Sir *Edward Southcoat*, how long did he stay with you at *Tixball*, at my Lord *Aston's*?

Sir *Edw. Southcoat*. He staid with us there till the *Tuesday* after; and then we began our Journey from my Lord *Aston's* House in *Tixball* into *Wales*, to *St. Winifred's* Well.

L. C. J. That is *Holy-Well*, you mean.

Sir *Edw. Southcoat*. Yes, my Lord.

L. C. J. You say he staid all *Friday*, *Saturday*, *Sunday*, *Monday*, and till *Tuesday* after you came to my Lord *Aston's* at *Tixball*?

Sir *Edw. Southcoat*. Yes, my Lord, he did so.

Mr. *At. Gen.* So then, my Lord, we are gotten to *Tuesday* the 13th of *August*, which is past the time of the Perjury, that is laid second in the Indictment; but in point of Time, is the first that happened, for he swore that *Ireland* took his leave of them, and others here in Town, between the 8th and 12th of *August*?

Mr. *Sol. Gen.* Where did you go on *Tuesday*, Sir?

Sir *Edw. Southcoat*. Towards *Wales*.

Mr. *Jones*. Was he at *Tixball* the 12th of *August*?

L. C. J. He says, he was till *Tuesday* the 13th. Pray let us not have the same Questions repeated over and over again.

Mr. *Sol. Gen.* Where did you go on *Tuesday* Night?

Sir *Edw. Southcoat*. We went to *Nantwich*, and lay at the *Holy Lamb* there.

L. C. J. Where were you the next Night?

Sir *Edw. Southcoat*. The next day we reached to *St. Winifred's* Well.

L. C. J. Where did you lie there?

Sir *Edw. Southcoat*. At the *Star*, which is the great Inn there.

L. C. J. It is so.

Mr.

Mr. *At. Gen.* Was Mr. *Ireland* there with you?

Sir *Edw. Southcoat.* Yes, he was.

Mr. *At. Gen.* Whither did ye go then?

Sir *Edw. Southcoat.* We staid not but one Day at *Holy-Well*; for we arrived there pretty late at Night, and all the Morning we spent there, and went away in the Afternoon, and came that Evening to *Chester*, and lay there only one Night, and came the next Day to *Tixball* again.

Mr. *At. Gen.* Which was *Friday* the 16th of *August*?

Mr. *Sol. Gen.* Pray, my Lord, be pleased to ask him, whether this Gentleman, Mr. *Ireland*, was with them all the while, in this Journey to *Holy-Well*?

Sir *Edw. Southcoat.* Every Day particularly; I remember it very perfectly.

Mr. *At. Gen.* After he came to *Tixball* again, how long did he tarry there?

Sir *Edw. Southcoat.* That I cannot so well say. I do remember truly, but he was afterwards at my Lord *Aston's* at *Tixball*, I remember some scambling Days; but I cannot fix upon only two.

L. C. J. Which are they?

Sir *Edw. Southcoat.* I cannot tell what Day of the Month it was, or what Day of the Week; but one Day that I remember him there, was Mr. *Chester's* Race with Sir *Henry Gough*; and one other Day.

L. C. J. When was that Horse-Race?

Sir *Edw. Southcoat.* My Lord, I cannot tell what Day of the Month it was.

Mr. *At. Gen.* When was the other time you speak of?

Sir *Edw. Southcoat.* I remember him there one *Thursday* upon the *Bowling-green* at *Tixball*, where there was a particular Company.

Mr. *Sol. Gen.* My Lord, we desire to know, when his Brother did buy the Horse of Mr. *Ireland*.

Sir *Edw. Southcoat.* When we came back; for he came home with us from my Lord *Aston's*, and we began our Journey, the 9th or 10th of *September*, from *Tixball* to *Kingston*; and when we arriv'd at my Father's House, my Brother bought the Horse of him.

L. C. J. Did you come home back again with Mr. *Ireland*, do you say?

Sir *Edw. Southcoat.* Yes, my Lord, we did.

L. C. J. When did you set out from *Tixball*?

Sir *Edw. Southcoat.* The ninth of *September*, my Lord, I think it was; I am sure, it was upon a *Monday*, the 9th or 10th.

L. C. J. When did you come home?

Sir *Edw. Southcoat.* We were four Days on our Journey.

L. C. J. And did you come straight to *London*?

Sir *Edw. Southcoat.* No, we went to my Father's House in *Surrey*.

L. C. J. Which way did you come?

Sir *Edw. Southcoat.* The first Night we came to the *Bull* in *Coventry*; and from thence, the next Night, we went to the *Altar Stone* at *Banbury*; and from *Banbury*, we came the third Day to *Agmondishman* (I think, it is called) a little Town in *Buckinghamshire*: And from thence the fourth Day, to my Father's House, by *Kingston* in *Surrey*.

Mr. *At. Gen.* And then *Ireland* sold his Brother his Horse.

L. C. J. How long was he at your Father's House in *Surrey*, Sir *Edward*?

Sir *Edw. Southcoat.* My Lord, we came on the *Thursday*; and as I take it, he went on the *Satur-*

day to *London*. My Brother after he had bought his Horse, lent him the Horse to *Town*; and sent a Man with him, to bring it back again.

Mr. *At. Gen.* That *Saturday*, my Lord, makes it come just to the Fourteenth of *September*; and is the very Day Fortnight before *Michaelmas-day*.

Oates. My Lord, I desire to ask this Gentleman, whether he saw *Ireland* all *August*, and till the Fourteenth of *September* in *Staffordshire*, and elsewhere? And, how long in *Staffordshire*?

Sir *Edw. Southcoat.* I cannot say, as to any particular Days of the Months, after our coming from *Holy-Well*, till our coming from *Tixball* to *London*.

L. C. J. Marry, if he did, he would contradict what he had said before: For from the time of coming from *Holy-Well*, to the time of coming back to *London*, he could tell but of two Days, and those uncertain: For he remembers not by the Times, but by other particular Circumstances.

Oates. Pray, my Lord, be pleased to ask him this Question, When was the first Day he saw him in *September*?

Sir *Edw. Southcoat.* Truly, my Lord, I remember not any Day before we began our Journey home?

Mr. *At. Gen.* But, my Lord, this is his Testimony: He was in his Company till the sixteenth of *August*. It is true, there were other times that he saw him at *Tixball*; but he cannot particularly speak unto them: But by and by, we shall go on to every Day, and prove particularly where he was.

Oates. My Lord, I desire to know, Was Sir *Edw. Southcoat* at the Trial of *Ireland* a Witness, or no?

Sir *Edw. Southcoat.* No, I was not, my Lord.

Oates. Were you at *Whitebread's* Trial, Sir?

Sir *Edw. Southcoat.* Yes, I was, and gave the same Evidence I give now.

Mr. *Sol. Gen.* Then swear Mr. *John Southcoat*.
[Which was done.]

Mr. *At. Gen.* This is Sir *Edward Southcoat's* Brother, my Lord.

L. C. J. What, he that bought the Horse?

Mr. *John Southcoat.* Yes, my Lord, I bought the Horse of Mr. *Ireland*.

L. C. J. Well, what do you ask him?

Mr. *At. Gen.* Pray, Sir, When did you meet Mr. *Ireland* in *August* 1678? And where?

Mr. *John Southcoat.* My Lord, I met with Mr. *Ireland*, upon *Monday* the Fifth of *August*, at the *Bull-Inn* in *St. Albans*, with my Lord *Aston*: I came thither that day with my Father and Mother. And the next day we went to *Northampton*; and there we inn'd at the Sign of the *George*, Sir *William Farmer's* House; which is an House in the Road, us'd for an Inn since the Town was burnt: And I conversed with him every day, in our Journey. And from thence, the next day, we went to *Coventry*, to the *Bull-Inn* there; and from thence, to my Lord *Aston's* (on *Thursday* Night) at *Tixball*: There we staid all *Friday*, *Saturday*, *Sunday*, and *Monday*. Mr. *Ireland* was there; I was with him all the while. And then upon *Tuesday* we set out for *Holy-Well* in *Flintshire*; and went that Night to *Nantwich*, to the *Lamb* there. And the next day we went through *Chester* to *Holy-Well*: We staid that Night at *Holy-Well*; and the next day came back again towards *Noon*, to *Chester*; and there lay that Night: And then the next Night, which was *Friday*, we came back again to *Tixball*.

L. C. J. Was Mr. Ireland with you both those Journeys, all the while?

Mr. *John Southcoat*. Yes, my Lord, he was; I did see him, and rode with him every Day.

L. C. J. Pray, Sir, how long were you at *Tixball*, after you came from *Holy-Well*?

Mr. *John Southcoat*. We staid there till we came away for good and all.

L. C. J. Was Mr. Ireland with you all that time?

Mr. *John Southcoat*. No, he was not.

Mr. *At. Gen.* Do you remember, that Mr. Ireland came to *Tixball* the Ninth of September; and came along home with you, when you came?

Mr. *John Southcoat*. Yes, I do remember it very well.

L. C. J. What Day did you come home, Sir?

Mr. *John Southcoat*. We came home in four Days.

Mr. *Sol. Gen.* When did he leave you?

Mr. *John Southcoat*. We came home upon *Thursday*, and he went to *London* on *Saturday*.

L. C. J. Pray, Sir, can you recollect when you did first see him again at *Tixball*, after you came from *Holy-Well*?

Mr. *John Southcoat*. My Lord, I cannot tell particularly any Day, till the Day we came away.

L. C. J. Do you remember the Horse-Match between Mr. *Cbetwind* and Sir *Henry Gough*?

Mr. *John Southcoat*. I was there, my Lord; but I do not remember Mr. Ireland was there.

L. C. J. How long did he stay at your Father's House in *Surrey*, Sir?

Mr. *John Southcoat*. Two Days, my Lord.

Mr. *Sol. Gen.* You lent him your Horse you bought of him, I think, Sir?

Mr. *John Southcoat*. Yes, up to *London*, I did; and I sent my Man with him, to bring him back again.

Mr. *At. Gen.* Has Mr. Oates any Questions to ask this Gentleman?

Oates. My Lord, I desire to ask Mr. *Southcoat*, whether or no he is sure, that Ireland was in his Company from the Fifth of August to the Sixteenth?

Mr. *John Southcoat*. Yes, every day, I am sure of it; I remember it very well.

Oates. Pray, my Lord, ask him, Whether or no he testified this that he now swears, at Ireland's Trial?

Mr. *John Southcoat*. My Lord, I was not at Ireland's Trial.

Oates. Then I desire to ask him, Whether or no he did testify this at the five Jesuits Trial?

Mr. *John Southcoat*. No; I was not sent for to any of the Trials.

L. C. J. I am forry you were not, Sir: 'Twas pity you were not there. It might have saved some innocent Blood.

Mr. *At. Gen.* Now swear *Harrison*.

[Which was done.]

Mr. *Sol. Gen.* Pray, will you give an Account when you saw Ireland, and where?

Harrison. In the Year of our Lord 1678, my Master, Sir *John Southcoat*, went with my Lady, on Monday the Fifth of August, to *St. Albans*; and we came with a Coach and four Horses: For my Master had an old Servant, that had a Pair of Horses, which my Master made use of. And there we met my Lord *Aston*, in the Company of Mr. Ireland. And the next Morning, my Lord *Aston* went with my Master and Lady towards

Tixball: And I rode by, in Mr. Ireland's Company; and came acquainted with him that Day. That Night we came to *Northampton*; and there we inn'd at a Stone-Houfe, that was used for the Inn, the Town being burnt before. The next Night we went to *Coventry*; and on *Thursday* we came to *Tixball*: There we staid till *Tuesday*. After we went to *Holy-Well*; and the *Tuesday* Night we lay at *Nantwich*: And thence we went to *Holy-Well*, and staid there on *Wednesday* Night: And on *Thursday* we came to *West-Chester*; and I parted with him upon the *Friday* at *West-Chester*.

Mr. *At. Gen.* Pray, did you know this Ireland? Was it he that was tried and executed?

Harrison. I was at Mr. Ireland's Trial.

L. C. J. Was it the same Man that was tried?

Harrison. My Lord, I saw him at his Trial, the Hair of his Face was grown, and he was a little disordered; he did not look so well, because he was not so well dres'd; but it was the same Man, my Lord.

Mr. *Sol. Gen.* Before this Man goes, we have more Questions to ask him: When did you see him again, after you left him in *Chester* you say?

Harrison. I saw him several times at *Tixball*; I saw him at the *Bowling-green* upon a *Thursday*; and I saw him when the Horse-Race was between Mr. *Cbetwind* and Sir *Henry Gough*: I cannot tell what Day it was; for I had no reason to keep an account of the particular Days at that time.

Mr. *At. Gen.* Did you come up with your Master again the 9th of September?

Harrison. My Lord, I did so; I have a Note wherein I set down the Charges at that time. It is in this bit of Paper, which I have kept in my Almanack ever since. My Lord *Aston* sent his Coach with us to *Banbury*, where my Master's Coach was to meet him; but came only to *Coventry* the first Night. The next Night, which was *Tuesday*, we came to the *Altar-Stone* at *Banbury*, and there we lay: From thence on *Wednesday*, we came to *Agmondsbam*, where we were ill lodged. The next Day we baited at *Uxbridge*, and came to *Kingston*, and so to Sir *John Southcoat*'s House, upon the *Thursday* Night. Upon the *Friday* Mr. Ireland sold his Horse to Mr. *John Southcoat*, my Master's Son. Upon the *Saturday* Morning, I came with him from my Master's House towards *London*; he did ride upon the Horse he had sold to Mr. *Southcoat*, and so we came up to *Town*, and took water; and I took a little Bag that belonged to Mr. Ireland upon my Arm, and we landed at *Somerset-House*, and I came with him to his Lodging in *Russel-street*; and when he came there, he went up stairs, where two Women met him, and welcom'd him home: Said they, *We are glad you are come, we thought we had lost you, because we had never heard from you all this while.* There I took my leave of him, and did not see him again till his Trial at the *Old-Bailey*; and this was *Saturday* the 14th of September.

L. C. J. Pray let me see your Paper you speak of.

[Which was delivered in, and the Court look'd upon it.]

L. C. J. Did you write this in your Journey?

Harrison. Yes, my Lord, I did it at that time.

Mr. *At. Gen.* Are the particular Days inserted there, my Lord?

L. C. J. No, they are not, Mr. Attorney.

Har-

Harrison. I could not write well; it was only but *Memorandums* for myself.

L. C. J. What Day of the Month was the *Saturday* he came to Town?

Harrison. It was the 14th of *September*, my Lord.

L. C. J. That agrees with all that the Women said, that he came on *Saturday* a Fortnight before *Michaelmas*, being the same Day of the Week as *Michaelmas-day* was: Thus far it is as clear as the Sun at Noon-day.

Oates. My Lord, there was a time when this was not believed.

L. C. J. Ay, Mr. *Oates*, we know there was a time, when there were *Ignoramus* Juries, and things were believed, and not believed, as the Humour went. What can you, Mr. *Oates*, say to it? I must needs tell you, *prima facie* 'tis so strong an Evidence, that if you have any Sense in the World, you must be concern'd at it.

Oates. Not at all, my Lord; I know who they are, and what is the end of it all.

L. C. J. Upon my Faith, I have so much Charity for you, as my Fellow-Creature, as to be concerned for you.

Oates. 'Tis not two Straws matter, whether you be or no; I know my own Innocency.

L. C. J. Thou art the most obstinately hardened Wretch that ever I saw.

Oates. Pray, my Lord, ask him, whether he did not appear at Mr. *Ireland's* Trial? And let it be remember'd what Credit he had then for all this Story he tells now. These People come here to serve a Turn only, and care not what they swear against me.

L. C. J. You must hold your tongue.

Oates. My Lord, I must speak the Truth, and I will speak the Truth.

L. C. J. I think there is scarce a Word of Truth comes out of thy Mouth.

Oates. You may think what you will, my Lord; but these Popish Traitors, I am sure, will swear any thing, and suborn Witnesses upon Witnesses against me to overthrow the Plot.

Mr. *Just. Withins*. If you cannot behave yourself better than you do, we must send you elsewhere; we must not suffer this Behaviour: And therefore either be quiet, or get you gone.

L. C. J. Let him keep himself in order, and we'll hear him. If he thinks by boisterous Impudency to outface Justice, we will not suffer it. Go on, Mr. Attorney.

Mr. *At. Gen.* Swear Mr. *George Hobson*.

[Which was done.]

Mr. *Sol. Gen.* Were you in the Journey to *Tixball* with Mr. *Ireland*, and my Lord *Aston* in 78?

Mr. *Hobson*. Yes, I was so, my Lord.

Mr. *Sol. Gen.* Pray tell all your Knowledge of that matter.

Mr. *Hobson*. From the 3d of *August* till the 16th at Night, I was present with him every Day.

L. C. J. How do you know you were?

Mr. *Hobson*. That is to say, the 3d of *August* he came to my Lord's House at *Standen* in *Hertfordshire* in the Evening, and there he remained till *Monday* the 5th of *August*; and that Day in the Morning, he went together with other Company to *St. Albans*, where we met Sir *John Southcoat* and his Lady towards the Evening; and we all lodged there, because that was the appointed Place to meet at: We lodged the 6th of *August* at Night at *Northampton*; upon the 7th at

Coventry; upon the 8th at *Tixball*, my Lord's House, where Mr. *Ireland* remained till *Tuesday* the 13th in the Morning. And upon the 13th in the Morning we set forth with my Lady *Aston*, my Lord's Mother, Sir *John Southcoat*, and Mr. *Ireland*, and the other Company, towards a Place called *Holy-Well* in *Flintshire*. That Night, being *Tuesday* the 13th of *August*, we lodged at *Nantwich* in *Cheeshire*; the *Wednesday* Night we lodged at *Holy-Well*, where Mr. *Ireland* was with the rest of the Company; and on *Thursday* Night we returned back again to *Chester*, and lay there. Upon *Friday* we came back again to my Lord's House at *Tixball*. After that I did not see Mr. *Ireland* till *Monday* the 26th of *August*, when he came back again to our House: Where he went in the mean time, I cannot tell.

L. C. J. Whose House is it that this Man means by our House?

Mr. *Hobson*. I mean my Lord *Aston's* House at *Tixball*.

L. C. J. You knew him very well, did not you?

Mr. *Hobson*. Yes, my Lord, I knew him very well.

L. C. J. You say, he came back the 26th of *August* to *Tixball*?

Mr. *Hobson*. Yes, as I remember, he did so.

Mr. *At. Gen.* How long after the 26th of *August* was it, that you saw him at *Tixball*?

Mr. *Hobson*. When he went away for *London*.

Mr. *At. Gen.* When was that?

Mr. *Hobson*. The 9th of *September*.

L. C. J. Did you come along with him to *London*?

Mr. *Hobson*. No, my Lord; I saw him go; he was not in the Coach, but he was in the Company.

Oates. My Lord, I would fain ask him a Question, when he was first acquainted with Mr. *Ireland*, that he speaks of?

Mr. *Hobson*. I never saw him till he came to my Lord *Aston's* at *Standen*.

Oates. Were you at the Trial of Mr. *Ireland*, Sir?

Mr. *Hobson*. No, my Lord, I was not; I was then in *Staffordshire*.

Oates. Then it is material, my Lord, for me to ask him this Question, it relating to a particular Person; whether *Ireland* that was executed, was the *Ireland* he says he was with?

L. C. J. I will ask him, if you will. Was that the same Man that was afterwards tried and executed?

Mr. *Hobson*. I believe it was, my Lord.

Oates. I insist not so much upon the Question, but only in reference to the Witness, his Acquaintance being so short with him.

L. C. J. Truly, I think it is not so very short; for he swears he was with him from the 3d of *August* till the 16th every Day.

Mr. *Just. Withins*. I have no great Acquaintance with you; but I know you, Mr. *Oates*, because I have seen you so often.

L. C. J. Is it the same *Ireland* that was at the Trial? You, *Harrison*, you saw him then?

Harrison. The very same, and no other.

Mr. *Just. Withins*. Certainly no body doubts that.

L. C. J. 'Tis fit he should have his Question answer'd, if the Witness can. Pray, go on, Mr. Attorney.

Mr. At. Gen. Swear *George North*. [*Which was done.*] Pray, will you give an account where you met Mr. *Ireland*, and whether you was with him in his Journey?

North. My Lord, I saw him the 4th of *August*, which was *Sunday*, at *Standen*, my Lord *Aston's* House in *Hertfordshire*: Upon the 5th, he went with my Lord to *St. Albans*; where my Lord met with Sir *John Southcoat* and his Lady; and I was with them. And from thence we went on *Tuesday* to the *George* at *Noribampton*: And from thence, on *Wednesday* the 7th, to the *Bull* at *Coventry*: And upon the 8th, we came to *Tixball*, which was *Thursday*. And from *Thursday* the 8th, to *Tuesday* the 13th, I did see him every day at my Lord's House at *Tixball*.

L. C. J. Whither went he then?

North. He went with my old Lady, and some other Company to go to *Holy-Well*.

L. C. J. When did you see him again?

North. I did see him several times after that at *Tixball*: But I took no particular notice of him again till he went away for *London*.

L. C. J. When was that?

North. I did see him the 9th of *September*. He came to go with Sir *John Southcoat* to *London*: Mr. *John Southcoat*, and he. I took my leave of him.

Oates. What Religion are you of, Sir?

North. I am a Catholick, my Lord.

Oates. I desire to know, how he comes to remember this so well?

North. I waited at the Table; and he was every day at Dinner with my Lord.

Oates. Were you at the Trial of *Ireland* a Witness?

North. No indeed, my Lord, I was not.

Mr. At. Gen. Swear *Richard Ingletrap*.

[*Which was done.*]

Mr. Sol. Gen. Pray, will you give an account, whether you knew Mr. *Ireland*, and where you saw him?

Ingletrap. The 1st of *August*, my Lord, I was ordered to be at *Standen* in *Hertfordshire*, to wait upon my Lord *Aston*, to go with him to *Tixball*. And the 3d of *August* I saw Mr. *Ireland* there at *Standen* Lodge at my Lord's House. The 4th Day he rested there, being *Sabbath-day*.

Mr. At. Gen. What are you, an Hackney-Coachman?

Ingletrap. Yes, my Lord, I am so. And upon the 5th, which was *Monday*, he went with my Lord *Aston* to *St. Albans*; upon the 6th to *Noribampton*; on the 7th, to *Coventry*; and the 8th Day, to *Tixball* Lodge. He was in the Company, and went all the way with him; and I was there too.

L. C. J. How long did he stay there?

Ingletrap. Till *Tuesday* the 13th.

L. C. J. Did you see him there till *Tuesday*?

Ingletrap. I do not say, that I did see him every Day.

L. C. J. Did you go with them on *Tuesday* to *Holy-Well*?

Ingletrap. No, I did not.

Mr. At. Gen. But, my Lord, you observe, that is past one of the Times that he swore *Ireland* was here in *Town*; that is, between the 8th and 12th of *August*.

L. C. J. It is so.

Mr. At. Gen. Pray, what Religion are you of, Mr. *Ingletrap*?

Ingletrap. I am a Protestant, my Lord.

Oates. Were you at the Trial of the five Jesuits, or that of *Ireland*?

Ingletrap. No, I was not.

Oates. My Lord, I desire you would ask him, he being a Protestant, how he came to be acquainted with *Ireland*, that was a Priest?

L. C. J. Why, Mr. Oates, is there no Conversation to be between Papists and Protestants?

Oates. Truly, very little, my Lord: But that is not to the Point now. I desire to have an Answer to my Question.

Ingletrap. There was no great Acquaintance between us, my Lord; for I never saw him before that time.

Mr. At. Gen. Swear *Andrew Wetton*. [*Which was done.*] Did you go that Journey with my Lord *Aston* to *Tixball*.

Wetton. No; I went from *Tixball* to *Holy-Well*.

Mr. At. Gen. What day did you set out from *Tixball*?

Wetton. Upon *Tuesday* the 13th of *August*.

Mr. Sol. Gen. Where did you lie that Night?

Wetton. At *Nantwich* at the *Holy-Lamb*. And the next day we baid at *Chester*; and from thence we came the next Night to *Holy-Well*: There we staid all Night, and till next day at Noon. We din'd at *Holy-Well*, and came that Night back to *Chester*: And from thence, the next day, we came home to *Tixball*.

L. C. J. Was Mr. *Ireland* there all the while?

Wetton. Mr. *Ireland* was there, I look'd after his Horse.

L. C. J. When did he come first to *Tixball*?

Wetton. He came upon the 8th, and staid till the 13th; and then went to *Holy-Well*.

Mr. Sol. Gen. Pray, what Religion are you of?

Wetton. I am a Protestant, Sir.

Mr. At. Gen. And the 9th of *September* he came away from *Tixball* to *London*, you say?

Wetton. Yes; I saw them take Coach; and he did ride on horseback.

L. C. J. Did you see him often at *Tixball*, between the time he came from *Holy-Well* and the time he went to *London*?

Wetton. Yes, he was there several times; but I cannot tell the particular Days: But, my Lord, if you please, I can tell you the very Money he gave me, which was a Shilling and two Six-pences, when we came back from *Holy-Well*.

L. C. J. And the 16th, you say, he came back from *Holy-Well*?

Wetton. Yes, it was the 16th, upon *Friday*, that he came from *Holy-Well*.

L. C. J. And he says, the 9th of *September* he came back again from *Tixball* to *London*; and that he saw him several times, in the mean time, at my Lord *Aston's* House.

Mr. Sol. Gen. So, my Lord, we are past one of the times; and have fix'd him at *Tixball* upon the 16th.

Mr. At. Gen. We have a couple of Witneses more upon this Point, and then we shall go on to the 17th; and so all along to the 9th of *September*.

Mr. At. Gen. Swear *Thomas Sawyer*. [*Which was done.*] When came Mr. *Ireland* to *Tixball*? can you tell?

Mr. *Sawyer*. He came the 8th of *August* to *Tixball*, and continued there till the 13th: And then he

he went away; but whither he went, I cannot tell: But, as I was told, it was to *Holy-Well*.

Mr. *At. Gen.* When did he come to *Tixball* again?

Mr. *Sawyer.* When my old Lady *Aston* came home, which was *Friday* the 16th.

Mr. *Sol. Gen.* Do you know when he left *Tixball* for good and all?

Mr. *Sawyer.* The 9th of *September*, my Lord, he went with Sir *John Southcoat* to go to *London*.

L. C. J. Can you remember he was there at any time between the 16th of *August*, and the 9th of *September*?

Mr. *Sawyer.* He was once or twice there; but I cannot tell the particular Days.

Mr. *Sol. Gen.* What Persuasion are you of, as to Religion, Sir?

Mr. *Sawyer.* I am one of the Church of *England*, my Lord.

L. C. J. Truth is the same in all Persuasions.

Mr. *Sol. Gen.* But we would obviate Mr. *Oates's* Objection, that they are all Papists.

Mr. *At. Gen.* Swear *Frances Allen*. [*Which was done.*] Pray, will you give an account, when you saw Mr. *Ireland* in *Staffordshire*?

Mrs. *Allen.* He came the 8th Day of *August* to *Tixball*, and continued there the 9th, 10th, 11th, 12th, and to the 13th in the Morning, and then he did go to *Holy-Well*.

Mr. *At. Gen.* She will tell you one particular Circumstance, how she remembers him about that time.

Mrs. *Allen.* The 10th of *August* was *Saturday*; and that which causeth me to remember it, is this: There was a Woman, one *Sarah Paine*, I think her Name was, which testified at the Trial, that he was in *Town* at that time; but he was not: For he was at *Tixball* upon the 10th, which was *Saturday*; and the 11th, which was *Sabbath-day*: And I saw him in the Chamber those Days.

Mr. *At. Gen.* How came you to know him so well?

Mrs. *Allen.* I was a Servant to my Lord *Aston*, and look'd to Mr. *Ireland's* Chamber, and wash'd his Linnen; and those Days I saw him in his Chamber.

Mr. *At. Gen.* When he went from *Tixball* to *Holy-Well* the 13th, when did he come back again?

Mrs. *Allen.* The 16th Day, which was *Friday*.

Mr. *At. Gen.* Did he come afterwards to *Tixball* at any time?

Mrs. *Allen.* He went away the 17th, and I can tell you by a good Token, that he did so: For the 17th I carried his Clothes into his Chamber, that he was to take with him.

Mr. *At. Gen.* When did he come again to *Tixball*?

Mrs. *Allen.* He came several times, but truly I cannot tell what Days particularly.

Mr. *Sol. Gen.* Pray, when did he go away for good and all?

Mrs. *Allen.* I remember his going away with Sir *John Southcoat*, but I cannot tell the time.

Mr. *At. Gen.* Pray what Religion are you of?

Mrs. *Allen.* I am a Protestant of the Church of *England*; so I was christened, so I have lived, and so I hope to die before you all.

L. C. J. Upon my word, she is very kind, she has a mind to die before us: 'Tis a sign she lives a good Life, she's so ready to die.

Mr. *At. Gen.* So, my Lord, you see that the 17th of *August* he departed from my Lord *Aston's*. Now we shall call Mrs. *Harwell* to give you an account, whither he went on the 17th. Swear Mrs. *Jane Harwell*. [*Which was done.*]

Mr. *Sol. Gen.* Where do you live, Mrs. *Harwell*?

Mrs. *Harwell.* I live now in *Town*, my Lord.

Mr. *Sol. Gen.* Where did you live in the Year 78?

Mrs. *Harwell.* At *Wolverbampton*.

Mr. *Sol. Gen.* Did you know Mr. *Ireland*, he that was executed?

Mrs. *Harwell.* Very well, my Lord.

Mr. *Sol. Gen.* What time did he come to your House at *Wolverbampton*?

Mrs. *Harwell.* The 17th of *August*, 1678.

Mr. *Sol. Gen.* What Day of the Week was it?

Mrs. *Harwell.* Upon *Saturday*.

Mr. *Sol. Gen.* From whence did he say he came at that time?

Mrs. *Harwell.* I do verily believe it was from *Tixball* that he came; I cannot positively say.

Mr. *Sol. Gen.* How long staid he there?

Mrs. *Harwell.* He came to my House the 17th of *August* 1678. He supped there that Night, and I think he lay in my House every Night till the 26th of the same Month. Upon the 19th Day, after Dinner, I went with him a good part of the Town of *Wolverbampton*; and upon *Friday* following, which was the 23d, he went a little way out of *Town*, to a Fair hard by, and return'd the same day, and staid at my House the next day, being *Bartolomew-day*. The next day being the 25th, being *Sunday*, he was at my House, and he staid, as I said, every Night, and lay at my House; and went away on *Monday* the 26th of *August*. It was, to the best of my remembrance, in the Morning.

Mr. *Sol. Gen.* Whither did he say he was going, when he went from your House on the 26th?

Mrs. *Harwell.* I think to *Tixball*, he said.

Mr. *Sol. Gen.* When did you see him again after that?

Mrs. *Harwell.* He returned to me again the 4th of *September* following. That Night he supped at my House, and lay there; and he staid at my House *Thursday* the 5th of *September*, *Friday* the 6th, and he went away on the 7th from me for good and all.

Mr. *At. Gen.* Whither did he go then?

Mrs. *Harwell.* To *Tixball*, I think, I cannot tell.

Mr. *At. Gen.* Whence did he say he came, when he came last to your House; which was *Wednesday* the 4th of *September*?

Mrs. *Harwell.* Then he said, he came from *Boscobel* and *Black-Ladies*, and that way.

Mr. *Sol. Gen.* Can you tell any thing that makes you remember he was at *Boscobel*?

Mrs. *Harwell.* I have some Circumstances that make me believe and remember it.

L. C. J. Ay, tell us what they are.

Mrs. *Harwell.* My Lord, upon *Monday* the 2d of *September*, I heard Mr. *Ireland* would be at *Boscobel*, and I said to my Friend that told me so, *Sure Mr. Ireland will not be there that Night, and I so near him. Yes, said she, he will. Then, said I, I will write to him; and so I did. And I tell you the 4th of September, which was Wednesday, he came to my House, and staid that*

Night, and the two next Days with me, and went away upon the *Saturday* after.

L. C. J. You say, you did write to him upon the 2d of *September*?

Mrs. Harwell. Yes, I did so.

L. C. J. What was the occasion of your writing to him at that time?

Mrs. Harwell. One *Madam Dormer* was then in those Parts, and he being gone a visiting his Friends at *Black-Ladies*, I writ to him, and desired him to give her a Visit, for I knew she would be glad to see him.

L. C. J. He came back to you the 4th of *September*, you say?

Mrs. Harwell. Yes, he did so, my Lord.

L. C. J. Did he own upon the fourth of *September*, that he had received your Letter?

Mrs. Harwell. He said he had been at the Place, my Lord, but I know not whether he had received my Letter or no; but I am sure he waited upon my Lady, for she told me so afterwards.

Oates. I desire to know, whether this Gentleman was at *Ireland's* Trial?

Mrs. Harwell. No, my Lord; but I heard that upon the 17th of *December* following, *Mr. Ireland* was tried at the *Old-Bailey* for High-Treason. Upon the 19th, I was informed by the Post what was sworn against him; and particularly as to this time, which I knew to be false: And upon my own Cost and Charges I sent an Express away to Town here to a Friend that I knew, upon reading the Letter that was written to me, that *Mr. Ireland* was falsely accused; and by that Express also I sent a Petition, humbly beseeching his late Majesty, that we might bring in Witnesses to prove, that *Mr. Ireland* was in *Staffordshire*, when *Mr. Oates* swore he was in Town; and upon that the King staid the Execution about five Weeks. We did hope for a second Trial, but we could not obtain it; and he was executed. I did it at my own Cost and Charges: For I thought it my Duty, if I could, to save his Life, knowing that to be false which was sworn against him.

L. C. J. She speaks gravely and soberly, upon my Word.

Mr. Just. Withins. So she does indeed.

Mr. At. Gen. We have abundance of them, my Lord. Swear *Mr. William Rushton*.

[Which was done.]

Mr. Sol. Gen. Tell my Lord what you know of *Mr. Ireland's* being at *Mrs. Harwell's* in *August* 1678, at *Wolverbampton*.

Mr. Rushton. My Lord, in the Month of *August* 1678, I did see *Mr. William Ireland* at *Wolverbampton* in the County of *Stafford*; and it was upon the 18th of *August*, and I saw him there, from the 18th to the 25th, every one of the days but one, and that I cannot be positive in. He went that day to *Litchfield*, which was upon the 23d, as I take it, but I cannot be positive; but all the rest of the days I did see him there once, if not twice or thrice a day.

Mr. At. Gen. Where did he lodge then?

Mr. Rushton. At *Mr. Jyfford's*, or *Mrs. Harwell's*.

Oates. Were you at any of the Trials of *Ireland*, or the five Jesuits, Sir?

Mr. Rushton. No, I was never at one till now.

Oates. Pray, my Lord, what Religion is this Gentleman of, I desire to know?

Mr. Rushton. Not of your Worship's Religion, *Dr. Oates*.

L. C. J. But answer his Question.

Mr. Rushton. I am a Catholick.

Oates. A Roman Catholick he means, I suppose.

Mr. Rushton. Yes; I am a Roman Catholick, and a loyal Subject.

Mr. Sol. Gen. Swear *Mrs. Katherine Winford*.

[Which was done.]

Mr. At. Gen. *Mrs. Winford*, pray did you see *Mr. Ireland* at *Mrs. Harwell's*, in the Year 1678?

Mrs. Winford. Yes, I did, Sir.

Mr. At. Gen. Pray tell the Court what you do know of that matter.

Mrs. Winford. I did hear at *Wolverbampton*, that *Mr. Ireland* came to Town the 17th of *August*, and I did see him there the 18th, and I did see him there the 19th, and I did see him there the 20th; and I saw him there upon the 22d, 23d, 24th, and 25th, and that was the last time I saw him there.

L. C. J. At *Mrs. Harwell's* was it that you saw him?

Mrs. Winford. Sometimes at *Mrs. Harwell's*, and sometimes at my Father's House, who lived in that Town.

Oates. My Lord, I desire to know how she comes to remember those Days so particularly?

Mrs. Winford. I remember them, because *St. Bartholomew's* Day was the 24th of *August*, and that was the *Saturday* after he came to Town; and the first day I saw him was the *Sunday* before, and so I reckon it to be on those days I saw him.

L. C. J. Have you any other Questions to ask her, *Mr. Oates*?

Oates. No, my Lord, I have not: She was a Witness before at *Whitebread's* Trial, and was not believed there.

L. C. J. Well, make your Remarks by and by, and let them now go on with their Evidence.

Mr. Sol. Gen. Then swear *Mr. William Stanley*.

[Which was done.]

Mr. At. Gen. Pray, did you see *Mr. Ireland* at *Wolverbampton*, and when?

Mr. Stanley. Upon the 18th of *August* 78. It was *Sunday*, I saw *Mr. Ireland* in *Wolverbampton* in the Morning, and in the Afternoon he was in my own House. Upon *Monday* the 19th I saw him twice that day at my own House; I positively speak that, and I verily believe I did see him on *Tuesday* the 20th, and *Wednesday* the 21st; but *Thursday* and *Friday* I cannot say I did see him those two Days: For he went upon one of them to *Litchfield*. But upon *Saturday* and *Sunday* I am sure I saw him, and two or three times some days.

Oates. Pray, *Mr. Stanley*, did you know him before?

Mr. Stanley. No, I did not, Sir.

Oates. Was you at his Trial?

Mr. Stanley. No, I was not.

Oates. Were you at the five Jesuits Trial?

Mr. Stanley. No, I was not in *London* since, till the last Term.

Oates. What Religion are you of, Sir?

Mr. Stanley. What Religion are you of, *Mr. Oates*?

L. C. J. Nay, do not ask Questions, but answer the Questions he asks.

Mr. Stanley. I am a Roman Catholick.

Mr.

Mr. *At. Gen.* Mr. *Stanley*, pray can you recollect any Circumstance how you came to remember that it was such and such Days that you saw him?

Mr. *Stanley*. Yes, my Lord, I can.

L. C. J. What are they, tell them us?

Mr. *Stanley*. I buried a Child that Morning, being Sunday the 18th of *August*, and he came to my House in the Afternoon, and I entertained him with those things that I had provided for to entertain my Friends at the Funeral. On Monday was a Wake, and the young People went all to the Wake, and left Madam *Harwell* alone; and so she came with him to my House, and I entertained him with the same kind of Entertainment that I did the Day before.

L. C. J. That is a remarkable Circumstance indeed.

Mr. *At. Gen.* Swear Mrs. *Dorothy Purcell*.

[Which was done.]

What say you Mrs. *Purcell*, when did you see Mr. *Ireland* at *Wolverhampton*?

Mrs. *Purcell*. I saw him the 18th, 19th, 20th, 21st, 22d, and 23d Days of *August*, 1678.

Mr. *At. Gen.* Where did you see him?

Mrs. *Purcell*. At a Friend's House in *Wolverhampton*.

L. C. J. How came you to remember those Days of the Month?

Mrs. *Purcell*. I remember them by particular Circumstances.

L. C. J. What are those particular Circumstances? Let us hear them, how come you to name those very Days, the 18th, 19th, and so on?

Mrs. *Purcell*. I can remember it as well as any thing in the World.

Oates. I desire, my Lord, that she may tell how she does remember it.

Mrs. *Purcell*. That's enough, and as much as need to be said, I remember very well.

Oates. But I desire to know how you come to remember it?

Mrs. *Purcell*. I remember it, I tell you, very well; and I do affirm I saw him there.

Oates. But you do not tell what Circumstances you remember it by.

Mrs. *Purcell*. No, there is no need of it, I am sure I saw him there then.

Mr. *At. Gen.* Tell him some Circumstances.

Mrs. *Purcell*. Those were the Days before *Bartholomew Eve*.

Oates. My Lord, is this any thing of Evidence?

L. C. J. The Jury hears it, and they will consider of it.

Oates. What Religion are you of, Mistress?

Mrs. *Purcell*. Must I tell what Religion I am of?

L. C. J. Yes, answer his Question.

Oates. I dare say, she is a Papist; she need not trouble her head to answer it.

Mr. *At. Gen.* Swear Mr. *Scott*. [Which was done.] Were you at *Wolverhampton* when Mr. *Ireland* was there?

Scott. Yes, I was.

Mr. *At. Gen.* Did you do any service for him there?

Scott. I look'd to his Horse.

Mr. *At. Gen.* When did he come thither, do you remember?

Scott. I cannot tell just the time that he came in.

Mr. *At. Gen.* What Day of the Week was it that he came thither?

Scott. It was of a Saturday.

Mr. *At. Gen.* What Month was it?

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Scott. I cannot tell very well what Month it was; it was in *August* I think.

Mr. *At. Gen.* How long did he continue there?

Scott. The space of a Fortnight off and on.

Oates. Is that Evidence, my Lord, that he has delivered?

L. C. J. It is but very small Evidence. It is only circumstantial to confirm the other Testimony.

Mr. *At. Gen.* How long was it before *Ireland* was tried and executed, can you tell that?

Scott. No, I know nothing of it.

Mr. *At. Gen.* Then swear Mr. *John Stamford*.

[Which was done.]

Mr. *Sol. Gen.* Did you see Mr. *Ireland* at *Wolverhampton*, and when was it, I pray you?

Mr. *Stamford*. My Lord, in the Year 1675, I was sent beyond Sea to *St. Omers*, to fetch over two young Gentlemen that were Students there; and there I became acquainted with Mr. *Ireland*, who was then Procurator of the Jesuits at *St. Omers*. And in *August* 78, I did see him in *Wolverhampton*, upon the Sunday after the Assumption of our Lady; which was the 15th of *August*, he came to see me, and I saw him there that Day.

L. C. J. What Day of the Month is the Assumption of our Lady?

Mr. *Stamford*. That is always the 15th of *August*, my Lord.

Mr. *At. Gen.* How often did you see him there?

Mr. *Stamford*. I saw him Sunday and Monday, and till that seven-night; I saw him every Day in that Week but one, when he went to *Litchfield*.

Oates. My Lord, I desire to know how he comes to remember that it was at that time?

L. C. J. He tells you a Reason for it, because it fell out to be upon the Sunday after the Assumption of our Lady, which is always the 15th of *August*.

Oates. My Lord, he says he came acquainted with Mr. *Ireland* at *St. Omers*.

L. C. J. Yes, he says, that was in the Year 1675.

Oates. I desire to know, my Lord, what business he had there?

L. C. J. He tells you, he went to fetch over two young Men that were Students there.

Oates. Pray, my Lord, I desire to know what Religion he is of.

L. C. J. What Religion are you of?

Mr. *Stamford*. I am a Roman Catholick.

Oates. I desire to know what is his Profession?

Mr. *Stamford*. I am a younger Brother of a good and loyal Family as any of the County of *Stafford*, and that suffered as much as any for the late King.

Oates. I believe if it were look'd into, he is somewhat else besides a younger Brother.

Mr. *At. Gen.* Yes, he says he is of a loyal Family.

L. C. J. I am sure there is such a Family in that County that were great Sufferers for King *Charles I.* and the late King; and were very instrumental in Services for the late King, at his Escape from *Worcester*: but whether he be of that Family or no, I cannot tell.

Mr. *Stamford*. The Doctor thinks I am a Jesuit, but I'll assure him I have a Wife and Children.

Mr. *At. Gen.* Mr. *Oates* was about to have made him a Priest, but it seems he hath a Wife and Children, and so is out of danger.

Mr. *Sol. Gen.* Pray, swear Mrs. *Katherine Fowler*.

[Which was done.]

Mr. *At. Gen.* Did you see Mr. *Ireland*, Mrs. *Fowler*, at *Wolverhampton* in 1678?

Mrs. Fowler. Yes, I did.

Mr. At. Gen. When was it?

Mrs. Fowler. I did see him on *Saturday* the 17th of *August* at *Wolverhampton*; he came that day to my Mother's House, where I was.

Mr. At. Gen. How long did he stay there?

Mrs. Fowler. Till the 27th, which was *Monday* was Seven-night after: I was in his Company every day in that time unless it were *Friday*, which day they say he went to *Litchfield* to the Fair.

L. C. J. Is Mrs. *Harwell* your Mother?

Mrs. Fowler. Yes, my Lord, she is, and I lived at that time with my Mother.

L. C. J. How do you remember this? Have you any Tokens that you can give us, why you remember it was then?

Mrs. Fowler. My Lord, I recollected my self after Mr. *Ireland's* Trial, in which Mr. *Oates* swore that he was here in Town between the 8th and 12th of *August*, that that was the very Month that Mr. *Ireland* was in *Wolverhampton*, and thereupon I concluded that Mr. *Oates* had not sworn true by that Recollection when it was fresh in my Memory, being within half a Year after.

Oates. Madam, are you Mrs. *Harwell's* Daughter?

Mrs. Fowler. Yes, I am so, Sir.

Oates. Did you not know one Mr. *Jennison*?

Mrs. Fowler. Which *Jennison*?

Oates. Mr. *Robert Jennison*.

Mrs. Fowler. Yes, I do know him.

Oates. Are you not a-kin to him?

Mrs. Fowler. Yes, but I am sorry to own I have such a Relation.

Mr. At. Gen. Swear Mr. *Gifford*.

[Which was done.]

Mr. Sol. Gen. Did you see Mr. *Ireland* in *Staffordshire*, and when I pray you?

Mr. *Gifford*. I saw him there at *Wolverhampton* the 17th of *August* 1678, and he continued there till the 26th; I saw him there every day.

Oates. Pray, my Lord, be pleased to ask this Gentleman, whether he were at the Trial of *Ireland*?

Mr. *Gifford*. No, I was not in Court, nor examined as a Witness.

Oates. Were you at the Trial of the five Jesuits, Sir?

Mr. *Gifford*. I was there, but was not examined.

L. C. J. Was it every day, say you, that you saw him at *Wolverhampton*?

Mr. *Gifford*. Every day.

L. C. J. They say, he was one day out of Town at *Litchfield*.

Mr. *Gifford*. He was out of Town that day, but I saw him.

Mr. At. Gen. Swear Mrs. *Elizabeth Gifford*.

[Which was done.]

Mr. Sol. Gen. You hear the Question, did you see Mr. *Ireland* in *Staffordshire* in 78, and when?

Mrs. E. *Gifford*. Mr. *Ireland* came to *Wolverhampton* the 17th of *August*, and continued there till the 26th.

Mr. At. Gen. How do you remember it?

Mrs. *Gifford*. By a Wake that was just hard by, that was at that time: and he came to my Uncle's House upon the *Sunday* following the Assumption of our *Lady*.

Mr. At. Gen. Did you see him every day till the 26th?

Mrs. *Gifford*. I remember I did see him every day but two days that I was abroad at the Wake.

Oates. My Lord, I desire to know, whether she was examined at any of the former Trials?

Mrs. *Gifford*. Yes, at the five Jesuits Trial, I was.

Oates. Were you not at *Ireland's* Trial?

Mrs. *Gifford*. No, I was not.

Oates. There was one *Gifford* examined there.

Mr. At. Gen. Swear Mrs. *Elizabeth Keeling*.

[Which was done.]

Mr. Sol. Gen. Did you see Mr. *Ireland* at *Wolverhampton*, and when?

Keeling. Yes, my Lord, I did see Mr. *Ireland* at *Wolverhampton*.

Mr. Sol. Gen. Pray tell when it was.

Keeling. It was the 17th of *August* he came to my Mistress's House.

Mr. Sol. Gen. What *August*?

Keeling. *August* before the Plot.

L. C. J. Who was your Mistress?

Keeling. Mrs. *Harwell*, my Lord.

Mr. Sol. Gen. How long did he continue there?

Keeling. He came on the *Saturday*, and I saw him there till the *Monday*. When I was sent for to my Mother's Burying, I left him and Madam *Dormer* at Dinner, and came back on the *Thursday*. And in his Chamber I heard him discourse, but I did not see him. Upon the *Friday* he went abroad, and returned again that Night. Upon the *Saturday* I saw him, and he continued there till *Monday* Morning, and then he went away, and returned on *Wednesday* the 4th of *September*, and staid till *Saturday* the 7th; and then went away from *Wolverhampton*.

Oates. I desire to know what Religion this Woman is of?

Keeling. I am a *Roman* Catholick, God be thanked.

Mr. At. Gen. Mrs. *Keeling*, when did Mr. *Ireland* return again, do you say, after he went first to *Wolverhampton*?

Keeling. It was the *Wednesday* seven-night after, Sir.

Mr. At. Gen. That was the 4th of *September*.

L. C. J. How long staid he there then?

Keeling. Till *Saturday* in the Forenoon.

Mr. At. Gen. Whither did he say he was going then?

Keeling. He said he went to *Bellamour* to Dinner.

L. C. J. Did you see him at any time after?

Keeling. No, my Lord, I saw him no more.

Mr. At. Gen. Then swear Mr. *Richardson*.

[Which was done.]

Mr. Sol. Gen. Pray, Sir, will you give an account when you saw Mr. *Ireland*, and where, in the Year 78?

Mr. *Richardson*. My Lord, I saw a Gentleman that I was informed was Mr. *Ireland*, at *Wolverhampton*, at a Wake; which was *Monday* the 19th of *August*.

Mr. At. Gen. Where did he lodge?

Mr. *Richardson*. At Mrs. *Harwell's*.

Mr. At. Gen. What are you, a Tradesman?

Mr. *Richardson*. Yes, an Apothecary in *Wolverhampton*.

L. C. J. How many Days did you see him at *Wolverhampton*?

Mr. *Richardson*. I saw him only one Day in the Market-place.

L. C. J. You did not know Mr. *Ireland* before?

Mr. *Richardson*. But I was informed that was he.

L. C. J. What became of that *Ireland* that you were informed was at *Wolverhampton* then?

Mr. *Richardson*. I heard presently after that, upon Mr. *Oates's* Plot, he was secured and executed.

Mr. *At. Gen.* What Religion are you of, pray, Sir?

Mr. *Richardson*. I am of the Church of *England*.

Oates. Pray, Sir, I would ask you this Question.

Mr. *Richardson*. As many Questions as you please, Mr. *Oates*.

Oates. Who told you it was Mr. *Ireland*?

Mr. *Richardson*. Mrs. *Harwell*.

Oates. When was it she told you it was *Ireland*?

Mr. *Richardson*. To the best of my remembrance, it was before he was apprehended as a Traitor.

Oates. He is uncertain when he was told so.

L. C. J. Well, make what advantage you can of it by and by.

Mr. *At. Gen.* Swear Mrs. *Eleanor Graves*.

[Which was done.]

Mr. *Sol. Gen.* Pray, Mistress, did you see Mr. *Ireland* at *Wolverhampton* at any time?

Mrs. *Graves*. Yes, I did, my Lord.

Mr. *Sol. Gen.* When was it?

Mrs. *Graves*. The first time was six Years ago in *August*, it is now going on seven Years since.

Mr. *At. Gen.* What time in *August* was it?

Mrs. *Graves*. The first Day was the 20th or 21st, I am sure I saw him upon the 22d; for I dined with him, and was with him all the Afternoon, and suppd with him. Upon the 23d we went to *Litchfield* together, which was *Bartholomew Eve*. And I saw him the 25th, which was *Sunday* after.

L. C. J. Are you sure it is the *Ireland* we are now speaking of?

Mrs. *Graves*. They said it was the same Mr. *Ireland* that was executed. They call'd him so.

L. C. J. Nay, there is no great doubt, but only for Mr. *Oates's* Satisfaction.

Mr. *At. Gen.* At whose House did he lie at *Wolverhampton*?

Mrs. *Graves*. At Mrs. *Harwell's*.

Mr. *At. Gen.* Where was it you suppd with him, I pray you?

Mrs. *Graves*. He dined and suppd at a Relation's House of mine.

L. C. J. Who was that? name him.

Mrs. *Graves*. It was at my Uncle *Winford's*.

L. C. J. Did you go along with him to *Litchfield*, do you say, on the 23d?

Mrs. *Graves*. Yes, and so did my Uncle; and at Night we came back together.

Mr. *Sol. Gen.* What Religion are you of, Mistress?

Mrs. *Graves*. I am of the Church of *England*.

Oates. My Lord, I desire to ask her, how did she know it was the same *Ireland* that was try'd?

Mrs. *Graves*. It was the same *Ireland* that they said was afterwards executed. I know no more.

Mr. *Sol. Gen.* Did you go back with him to Mrs. *Harwell's* from *Litchfield*?

Mrs. *Graves*. I did, to my Uncle *Winford's* House.

Mr. *At. Gen.* Now we come, my Lord, to another Period of Time, which is from the 26th of *August* to the 29th; and for that, we first call Sir *Thomas Whitegrave*, who is a Justice of the Peace, and a worthy Gentleman; a Member of the Church of *England* in that County.

[Which was done.]

Mr. *Sol. Gen.* Pray, Sir *Thomas*, will you be pleas'd to give the Court an account, whether you saw Mr. *Ireland* in *Staffordshire* 1678, and what time it was?

Sir *Thomas Whitegrave*. I saw Mr. *Ireland* upon the 29th of *August* before the Popish Plot; it was upon a *Thursday* in the Afternoon upon *Tixball* Bowling-green; and I discours'd with him: he told me he was to go home that Night with Sir *James Simmons*, and Mr. *Heveningham*. They told me afterwards he went on *Saturday* to *Hildersham*, and went thence on *Monday* following towards *Boscobel*: some time after that, a Rumour came down that Mr. *Ireland* was accused with others, of being in a Plot of the Papists; and myself, and some others that were in Commission for the Peace in that County, did reflect upon the time that *Ireland* was in the Country; and we were a little disturbed, because he had been at particular Places among our Neighbours, whom we knew to be Catholics.

Mr. *At. Gen.* Can you remember no Day but that one, Sir *Thomas*?

Sir *Thomas Whitegrave*. Only the 29th I saw him there, and discours'd with him; and afterwards there was word sent to me, to desire me that I would come up to *London* at his Trial.

L. C. J. And did you come up, Sir *Thomas*?

Sir *Thomas Whitegrave*. No, I did not; I had no *Subpœna*; and being a Justice of the Peace, I did not think fit to leave the Country at that time without a *Subpœna*.

Oates. My Lord, I desire to know of this Gentleman, how long he had been acquainted with Mr. *Ireland*.

Sir *Thomas Whitegrave*. I never saw him before, nor since.

L. C. J. He goes no further than the 29th.

Mr. *At. Gen.* No, my Lord, he does not. Then swear Mr. *William Fowler*.

[Which was done.]

Mr. *Sol. Gen.* Pray, will you give an account when you saw Mr. *Ireland*, and where?

Mr. *Fowler*. I saw Mr. *Ireland* upon the 27th of *August* 78, in *Staffordshire*, at a Horse-Race at *Etching-bill*. The Race was run between Sir *Henry Gough*, and Captain *Chetwind*.

Mr. *Sol. Gen.* Did you see him any other Day in that Month?

Mr. *Fowler*. Yes, the 19th of *August* I saw him at *Tixball* Bowling-green.

Mr. *Sol. Gen.* When else did you see him?

Mr. *Fowler*. I saw him the 10th of *August* before.

Mr. *Sol. Gen.* Where, at *Tixball*, at my Lord *Aston's* House?

Mr. *At. Gen.* Do you remember Sir *Thomas Whitegrave* was upon the Bowling-green the 27th of *August*?

Mr. *Fowler*. Yes, he was, and did discourse with Mr. *Ireland* there.

L. C. J. What became of Mr. *Ireland* afterwards?

Mr. *Fowler*. He went about the Country for some time, my Lord.

L. C. J. Was it the same *Ireland* that was executed?

Mr. *Fowler*. Yes, it was the same.

L. C. J. You say you saw him the 29th at *Tixball* Bowling-green.

Mr. *Fowler*. Yes, I did so.

L. C. J. When you heard he was taken up for the Plot, what did they say whither he went at that time?

Mr. *Fowler*. I think he went to Mr. *Heveningham's*, or thereabouts.

Oates. I would fain know this Gentleman's Religion.

Mr. *Fowler*. I am a *Roman* Catholic.

L. C. J. We ask it only because Mr. Oates desires to be satisfy'd in that Point.

Mr. At. Gen. Pray swear Mr. Howard.

[Which was done.

Mr. Sol. Gen. What time in August 78, did you see Mr. Ireland in Staffordshire, and where?

Mr. Howard. I came out of Shropshire upon the 27th of August, to the Horse-race at Etching-hill; and there I saw this Mr. Ireland upon the 28th. I dined at one Mr. Herbert Aston's Houfe at Bellamore, and there I saw him again.

Mr. At. Gen. What other time did you see him?

Mr. Howard. Never any other time.

Oates. How does he know it was the same Mr. Ireland?

Mr. Howard. I came up to Town soon after, and they told me that knew him, that it was the same Ireland that suffer'd.

Mr. At. Gen. Swear Mr. Drayton.

[Which was done.

Mr. Sol. Gen. Where did you see Mr. Ireland?

Mr. Drayton. At Etching-hill Race.

Mr. At. Gen. What Day was that?

Mr. Drayton. That was the 27th of August 1678.

Mr. At. Gen. When did you see him after?

Mr. Drayton. The next Day following I did not see him; but the Thursday following I saw him at Tixball, and he went home with Mr. Heveningham to Aston; and I saw him on Friday, he was with us there, and went a fishing, and we catch'd a great Pike of a Yard long, which was not ordinary with us. Upon the 31st, which was Saturday, my Master went to kill a Buck in the Park, and Mr. Ireland went along with him; and they went to a little Village hard by, and there I parted with him, and did see him no more that day. Mr. Gerrard of Hildersham was to meet my Master a hunting, but he was sick, and did not: Then upon Sunday the 1st of September, I was sent to see Mr. Gerrard of Hildersham, and there I saw Mr. Ireland.

L. C. J. Who was your Master, pray you?

Mr. Drayton. This Lord Gerrard of Bromley's Father.

Mr. At. Gen. He was accused by Dugdale of the Plot, and died afterwards in Newgate.

Oates. Pray ask Mr. Drayton what Religion he is of?

Mr. Drayton. I am a Roman Catholick.

Mr. At. Gen. Swear Sir James Simmons.

[Which was done.

Mr. Sol. Gen. When did you see Mr. Ireland, Sir James?

Sir J. Simmons. Upon Tuesday the 27th of August 78, I remember very well I saw Mr. Ireland at the Horse-race at Etching-hill, between Sir Henry Gough and Mr. Cbetwind; and I remember particularly, that Sir Henry Gough's Horse distanc'd him. I did not see him before he came to the Inn; but there we met, and drank together. And Thursday the 29th of August, being at Tixball Bowling-green, Mr. Ireland was there, and came home with my Father Heveningham and me, and some Gentlemen in the Country; and came to Aston, and staid there that Night. I remember the next Day was Pancras's Fair, and I went to the Fair, and did not come home.

Mr. At. Gen. What Day of the Month is that Fair usually kept?

Sir J. Simmons. It is an unconstant Time; now and then in September, now and then in August; and that Year we had a Subscription to get it regulated to a certain Day.

L. C. J. Did you see him after?

Sir J. Simmons. My Lord, I cannot swear to the Saturday, because I cannot so well tell whether I came back from the Fair on Friday Night; I think I did not.

Mr. At. Gen. Swear Mr. Green. [Which was done.

Mr. Sol. Gen. Did you know Mr. Ireland?

Mr. Green. Yes, my Lord, I did.

Mr. Sol. Gen. When did you see him in 78?

Mr. Green. The first time was Etching-hill Race the 27th of August.

Mr. Sol. Gen. What other Days do you remember?

Mr. Green. Thursday the 29th I saw him; I belong to Sir James Simmons, and Mr. Ireland came home with him, and some other Gentlemen, to Mr. Heveningham's at Aston, and was a setting with him on Friday the 30th in the Afternoon. And Saturday the 31st he was a hunting with Mr. Gerrard. Nay, more than that, I saw him drawn on the Sledge, but not executed; and that was the same Man that was there at that time.

Oates. What Religion is this Gentleman of?

Mr. Green. I was ever a Roman Catholick.

L. C. J. Pray, were they a fishing that Day?

Mr. Green. In the Morning he was, and they got a great Pike; I saw the Pike, and did eat part of it.

Mr. At. Gen. Swear Mr. Fallas. [Which was done.

Mr. Sol. Gen. When did you see Mr. Ireland, Sir?

Fallas. Upon the Thursday after Sir Henry Gough's Race, which was Thursday the 29th of August, Mr. Ireland came to Mr. Heveningham's, and I look'd to his Horse there. Upon Friday Morning they went a fishing, and got a great Pike; and I did see them go out a setting after Dinner, he and Mr. Green, with my Lady and the Keeper; and I saw him come in again: and I saw him drink a Glass of Table-Beer in the Hall. Upon Saturday Morning, which was the 31st of August, they went a hunting in Mr. Gerrard's Park, and kill'd a Buck; and afterwards my Master ask'd him to go home with him again, but he would not; for he said he must go to Mr. Lowe's at Four, and we parted at Three. And I came here, and saw him executed; but while he was at my Master's Houfe, his Horse was never out of the Stable, but I brought it to him.

Mr. At. Gen. When did you see him executed?

Fallas. It was the 24th of January afterwards, I think.

Oates. What Religion are you of?

Fallas. I am for the Church of England, a Protestant; I always was so.

Oates. Pray, my Lord, ask him when he was acquainted with Mr. Ireland?

Fallas. The first time was the 29th of August, when he came to my Master's Houfe.

Oates. That does not come to my time, my Lord.

Mr. At. Gen. But it comes very close to it; it reaches to the 31st of August.

L. C. J. It is within a Day of you, upon my word.

Mr. Sol. Gen. And I'll tell your Lordship what is yet more considerable; this Place is an hundred and twenty Miles from London: but we shall not leave him there.

Oates. I desire to know whose Servant he is?

Fallas. I am a Servant to Mr. Heveningham, and I serve the King; I come to testify the Truth. I was here before, but then we must not be heard; all

all the Cry was against us, that we were Rogues, and must be knock'd on the head.

L. C. J. Were you here at any of the Trials?

Fallas. I was at the Council-Table, and there I was in great danger of being knock'd on the head.

Oates. Would they have knock'd him on the head at the Council-Table, does he say?

Fallas. I have been in the Room by the Council-Table, where they have cried, knock them down, hang them Rogues; do they come to be Witnesses against the Saviour of the World? And they came about me there, and asked me if I knew any of them, or was of their Company? And I was glad to say I came thither about a Suit of Law I had with a Brother of mine; and then they pitied me.

Mr. Sol. Gen. Now we have brought him, my Lord, every Night where he lodged from the 3d of August to the 31st.

Mr. At. Gen. And then we shall prove that he went to Mr. Gerrard's at Hildersham that they speak of; there he was the 31st and 32d—

L. C. J. How, Mr. Attorney, the 32d? I doubt you will hardly be able to tell us where he was then.

Mr. At. Gen. The 1st of September I mean, my Lord.

L. C. J. Ay, we understand you very well.

Mr. At. Gen. Swear Mr. John Proctor.

[Which was done.]

Mr. Sol. Gen. When did you see Mr. Ireland in 78?

Proctor. I saw him the 31st of August 78.

Mr. Sol. Gen. Where?

Proctor. At Fulford.

Mr. Sol. Gen. At whose House?

Proctor. At Mr. Lowe's.

Mr. Sol. Gen. That was the Place the other Witness said Ireland told him he was to be at four of the clock, and therefore went away at three.

Mr. At. Gen. When did you see him afterwards?

Proctor. I saw him the next day, the 1st of September.

Mr. At. Gen. Where?

Proctor. At Esquire Gerrard's.

Mr. At. Gen. How far is that from Mr. Lowe's?

Proctor. It is a Mile and an half.

Mr. Sol. Gen. Did you see him afterwards?

Proctor. Not there, I did not.

Mr. At. Gen. What Religion are you of?

Proctor. I am a Protestant.

L. C. J. What did you hear became of that Ireland afterwards?

Proctor. I saw him executed at Tyburn afterwards, and it was the same Man.

L. C. J. Where did you live then?

Proctor. I lived at Fulford then.

L. C. J. What, with Mr. Lowe?

Proctor. Yes, my Lord.

Oates. It seems he was a Servant to a Papist.

L. C. J. What then, what of that?

Oates. My Lord, I desire you would ask him, whether he ever saw Ireland before the 31st of August which he speaks of?

Proctor. No, I did not.

L. C. J. But you are sure it was the same Man you saw executed?

Proctor. Yes, I am sure of it.

Mr. Sol. Gen. What Circumstance can you tell that he was the 1st of September at Mr. Gerrard's?

Proctor. I went to Dinner thither that Day: I rode before Madam Brooke.

L. C. J. What Day of the Week was that 1st of September?

Proctor. It was upon a Sunday, my Lord.

Mr. At. Gen. Was that about Pancrass Fair-time?

Proctor. Yes, my Lord, it was.

Mr. Sol. Gen. He can tell you another Circumstance how he comes to remember him w. Mr. Lowe's the 31st of August.

L. C. J. Ay, by what Token do you remember that he was there the 31st of August?

Proctor. I went that day to . . . ; pay some Money, and came home again in the Afternoon; and just as I came in, he came thither.

Oates. How does he say he knows him to be the same Man?

L. C. J. He has told you twice, he saw him executed.

Oates. What Religion is he of, does he say?

L. C. J. He is a Protestant.

Mr. At. Gen. Then swear Mr. John King.

[Which was done.]

Mr. Sol. Gen. Pray, do you acquaint the Court and the Jury where you saw Mr. Ireland, and when.

Mr. King. I saw Mr. Ireland at Mr. Gerrard's of Hildersham the 1st of September, that Year that the Plot broke out, which was in the Year 78. There I saw him on Sunday; there he staid all Night, and so did I; and on Monday Morning I went to Mrs. Crompton's where I liv'd, and he came thither to Millage as soon as I, which is within a Mile of Hildersham, and dined there the same day.

L. C. J. How far is that from London, pray you?

Mr. King. An hundred and ten Miles.

L. C. J. And he was there at Dinner, you say?

Mr. King. Yes, he was.

L. C. J. How long was it before Dinner was done?

Mr. King. I believe he might go thence about two of the clock.

L. C. J. Where did he say he designed to go then?

Mr. King. He designed to go to Bosobel that Night.

L. C. J. Do you remember any body else was at Mr. Gerrard's then when you saw him?

Mr. King. Yes, Mr. Jerman Drayton was at Hildersham at that time.

Oates. Pray, what Religion is this Gentleman of?

Mr. King. I am a Roman Catholick, Mr. Oates.

Mr. At. Gen. Pray swear Mr. Francis Lee.

[Which was done.]

Mr. Sol. Gen. Pray, tell my Lord and the Jury where you saw Mr. Ireland, and when.

Lee. I was a Servant to Mr. Gerrard, and Mr. Ireland upon Saturday Night came to my Master's House, and staid all Night and all Day on Sunday, and went away on Monday to Millage.

L. C. J. What Time and what Year was it?

Lee. It was in 78; but I am not certain of the Day of the Month: It was on a Saturday he came, and I have Witnesses to prove I was there at that time.

L. C. J. What Month was it?

Lee. It was in August, as I think, the last Day; but I am not certain. And he went on Monday

to *Millage*, and there dined at Mrs. *Crompton's*; and from thence he went to *Pancrass*, and thence he did go to *Boscobel*, and staid all Night there.

Mr. *At. Gen.* That was the 2d of *September*.

L. C. J. How do you know he went to these Places?

Lee. I was told so.

Oates. My Lord, I desire to know how long this Man was acquainted with *Ireland* before?

Lee. I never saw him but at that time.

Oates. How does he know it is the same Man then?

Mr. *King.* Here is a Man that saw me with him, and was present at *Ireland's* Execution.

L. C. J. Who is that, *Proctor*?

Mr. *King.* Yes, my Lord.

L. C. J. Then call *Proctor* again. [*Who came in again.*] Who went along with you to Dinner on *Monday*?

Lee. My Lord, he did see me at *Hilderbam* at Mr. *Gerrard's*.

L. C. J. What say you, *Proctor*, was this Gentleman there at that time?

Proctor. Yes, my Lord, I did see him there.

L. C. J. Was that the same Man that was executed, which you saw at Mr. *Gerrard's*.

Proctor. Yes, it was.

L. C. J. Did you dine with Mr. *Ireland* on *Monday* at Mrs. *Crompton's*?

Lee. Yes, my Lord, I did, and went afterwards with him to *Pancrass*, and staid there two Hours, and then he went to *Boscobel*.

Mr. *Sol. Gen.* There are the two Days gone which Mr. *Oates* swore to, and in which he was so positive that it was either the 1st or 2d of *September*.

Mr. *At. Gen.* Then swear Mr. *Biddolpb.*

[*Which was done.*]

Mr. *Sol. Gen.* Pray, Sir, when did you see Mr. *Ireland*, and where?

Mr. *Biddolpb.* My Lord, I was in *Staffordshire* the latter end of *August* and the beginning of *September*, and I was at Mrs. *Crompton's* House, which is my Aunt, the 2d of *September* being *Monday*, where I saw Mr. *Ireland*, and dined with him that day; and after Dinner he went with Mr. *Gerrard's* Son, who was to go to School to *Boscobel*. And I will give your Lordship a particular Circumstance that may satisfy you that I am not mistaken in the time: As I came thorough *Northamptonshire* that Summer, I was at my Lord *Cullen's*, and he desired me to be at a Horse-Race at *Newton-Slade*, where there is a Plate always run for upon the first *Thursday* in *September*, and that Year it was the 5th of *September*. Now when I dined at my Aunt *Crompton's*, she would have had me staid all Night at her House, but I excused myself, and told her I had promised to come to my Lord *Cullen's* to be at the Race, and I must needs be there before, to be as good as my Word to my Lord; and therefore I went away to *Pancrass*, and so on my Journey, otherwise I had staid with my Aunt all Night: And I am sure this was *Monday* before this Horse-Race.

Oates. My Lord, this Gentleman speaks to no Year particularly.

Mr. *Biddolpb.* It was in 1678, the Year before Mr. *Oates's* Plot broke out.

Mr. *At. Gen.* Now we will call Mrs. *Crompton*: Swear her.

[*Which was done.*]

Mr. *Sol. Gen.* Pray, when did you see Mr. *Ireland*, Mrs. *Crompton*?

Mrs. *Crompton.* He was at my House at *Millage* in *Staffordshire* at Dinner, the same Day that my Nephew *Biddolpb* did dine there: As for the Day of the Month, I cannot so well tell it, because when my Friends dine with me, I do not use to note down the Day particularly; but it was, I remember, a pretty remarkable time, for it was about *Pancrass-Fair*. Mr. *Gerrard* of *Hilderbam* came with him, and Mr. *Ireland* being a Stranger, I asked who he was, and they told me it was Mr. *Ireland*: He never was at my House before nor after; he was a meer Stranger to me.

L. C. J. What Day was it, say you?

Mrs. *Crompton.* It was the same Day my Nephew *Biddolpb* dined there.

L. C. J. Was it *Monday* the 2d of *September*, do you remember?

Mr. *At. Gen.* He says he was at her House at *Millage* that Day, and she says it was the same Day he dined there.

Mrs. *Crompton.* But I never note down the particular Days when my Friends dine with me, except I had particular occasion to do it, as I had none at this time.

Oates. My Lord, I desire to know what Religion this old Gentlewoman is of?

Mrs. *Crompton.* I am a *Roman* Catholick, my Lord.

Mr. *At. Gen.* Swear Mrs. *Palmer.*

[*Which was done.*]

Mr. *Sol. Gen.* Mrs. *Palmer*, where did you see Mr. *Ireland*?

Mrs. *Palmer.* I was at Dinner at Mrs. *Crompton's* at *Millage*, where there was a Gentleman called Mr. *Ireland* that did dine there.

L. C. J. When was it?

Mrs. *Palmer.* I cannot tell truly what Day it was.

L. C. J. Who was there besides you at Dinner that Day?

Mrs. *Palmer.* 'Tis so long since, I cannot remember.

L. C. J. Was Mr. *Biddolpb* there?

Mrs. *Palmer.* Not that I remember, my Lord;

L. C. J. What do you bring her for, Mr. *Attorney*?

Mr. *At. Gen.* She dined there that Day it seems; but if she cannot remember it, I cannot help it.

L. C. J. But these kind of Witnesses do but slack your Proof.

Mr. *Sol. Gen.* My Lord, I think we do over-do our Business indeed.

Mr. *At. Gen.* We have one Witness more to this Point, and that is Mrs. *Mary Holmes*; swear her. [*Which was done.*] Where did you see Mr. *Ireland* in the Year 78?

Mrs. *Holmes.* I saw him at *Millage*, my Lord.

L. C. J. When?

Mrs. *Holmes.* The first, or the beginning of *September*, I am sure.

Mr. *Sol. Gen.* What Day of the Week was it?

Mrs. *Holmes.* *Monday*.

L. C. J. You have Proof enough of this, Mr. *Attorney-General*.

Mr. *At. Gen.* Truly, I think so, my Lord.

Mr. *Sol. Gen.* Pray swear Mrs. *Ejiber Gifford*. [*Which was done.*] Mrs. *Gifford*, when did you see Mr. *Ireland*?

Mrs. *Gifford.* Upon the 2d of *September* 78, I saw Mr. *Ireland*, above a hundred Miles from this Place.

Mr. *Sol. Gen.* Where?

Mrs. Gifford. At Pancrafts.

Mr. Sol. Gen. What time of the Day was it?

Mrs. Gifford. In the Afternoon about four or five a-clock.

Mr. Sol. Gen. Did he stay there all night?

Mrs. Gifford. I cannot tell indeed.

Mr. At. Gen. Swear Mr. Pendrel.

[Which was done.

Mr. Sol. Gen. Now, my Lord, we are come to the 2d of September in the Evening; we shall prove where he was that Night and the 3d, and then we shall return to the 4th of September, when Mrs. Harwell swears he came back to *Wolverbampton*.

Mr. Hansfs. When did you see Mr. Ireland, Mr. Pendrel?

Mr. Pendrel. I saw him upon the 2d of September.

Mr. At. Gen. Where did you see him?

Mr. Pendrel. At *Boscobel* at my House, there he lodg'd with me that night.

Mr. Sol. Gen. In what Year was it?

Mr. Pendrel. In the Year 1678.

Mr. At. Gen. Was it the September before the Plot, and before Mr. Ireland was executed?

Mr. Pendrel. Yes, my Lord, it was.

L. C. J. Did you know him before?

Mr. Pendrel. No, I did never see him before, as I know of.

L. C. J. How long did he stay there?

Mr. Pendrel. He staid that Night and the next Day all day, and went away the 4th of September to *Black-Ladies*.

Mr. Sol. Gen. Whose House is that?

Mr. Pendrel. It is Mr. *John Gifford's*.

L. C. J. You say you live at *Boscobel*; did you hear any thing of a Letter came to your House for Mr. Ireland?

Mr. Pendrel. Not that I know of, my Lord, there was not any that I remember.

Mr. At. Gen. Then swear Mrs. Pendrel.

[Which was done.

Mr. Sol. Gen. Pray, Mistress, will you give an account where you saw Mr. Ireland?

Mrs. Pendrel. I saw him at *Boscobel*, at the Royal Oak; he came there the 2d Day of September.

Mr. Sol. Gen. Can you tell what Year it was?

Mrs. Pendrel. It was the first beginning of the Plot.

Mr. Sol. Gen. How long did he stay there?

Mrs. Pendrel. He staid *Tuesday*, and *Wednesday* he went to *Black-Ladies*, and so away to *Wolverbampton*.

Mr. Sol. Gen. We have but one Witness more, my Lord, for *Wednesday* the 4th of September, and then we have done. Swear Mr. *Charles Gifford*.

[Which was done.] When did you see Mr. Ireland?

Mr. C. Gifford. May it please your Lordship, I saw Mr. Ireland at my Father's House at *Black-Ladies*—

Oates. My Lord, I would ask Mrs. Pendrel a Question before she goes: Whether she was not a Witness at the five *Jesuits* Trial?

Mrs. Pendrel. I was in Court, but they would not suffer me to swear.

Oates. Did she not give Evidence there?

L. C. J. She was examin'd, but she could not be sworn, because she came to testify against the King in a Capital Cause.

Mr. At. Gen. Pray, what say you, Mr. *Charles Gifford*?

Mr. C. Gifford. My Lord, I say I saw Mr. Ireland at my Father's House at *Black-Ladies*, and he staid there an hour and an half, and went thorough

Chillington, and said he would go to *Wolverbampton*.

Mr. At. Gen. What Day of the Month was it?

Mr. C. Gifford. I am morally certain, it was the 4th of September, and so he went to *Wolverbampton*, as I am inform'd. He came to our House to see a Lady that was there.

L. C. J. What Lady was it?

Mr. C. Gifford. It was one Madam Wells.

Mr. At. Gen. Thus, my Lord, we have lodg'd him the 4th of September at *Wolverbampton*, when Mrs. Harwell says, he return'd to her; and so, my Lord, we have given an Account where he was from the 3d of August to the 14th of September.

Mr. Sol. Gen. We have prov'd where he was every Day in that time, but only the 8th of September, and for that we must leave it to the Jury. We have proved that he came away from Mrs. Harwell's the 7th, and he said he was to go to *Tixball*; and the 9th he did go from *Tixball* in Sir *John Southcoat's* Company, and came to *London* the 14th.

L. C. J. Well, what say you to it, Mr. Oates?

Oates. Has Mr. Attorney done his Evidence, my Lord?

Mr. At. Gen. We shall call no more Witnesses, unless you go about to support your own Credit, and then we have other Witnesses to call.

Oates. I do not value any Witnesses you can bring against my Credit.

Mr. At. Gen. Well for the present, we do not design to call any more Witnesses.

L. C. J. Then let us hear what you say to it.

Oates. My Lord, here is an Indictment exhibited against me, which sets forth, that I should swear at Mr. Ireland's Trial, that Mr. Ireland was in Town the 1st and 2d of September; and it sets forth, that in truth he was not in Town: And likewise it sets forth, that I swore at the Trial of the five *Jesuits*, that Mr. Ireland took his leave of me and others here in Town at his Lodging in *Ruffel-street*, between the 8th and 12th of August: whereas the Perjury there assigned, is this, That he did not take his Leave of me, or any other Person, betwixt the 8th and 12th of August, at his Lodging in *Ruffel-street*. Now, my Lord, I was not the only Witness of Mr. Ireland's being in Town in the Month of August, nor the only Witness of his being in Town about that time in September. My Lord, my Prosecutors have endeavour'd to maintain this Charge against me thus: The first thing they have gone upon, as far as I can remember in the Indictment, is as to the 1st or 2d of September, or rather, they have endeavour'd to prove both under one. Now in answer to all this Evidence, my Lord, the first thing I shall offer to your Lordship's Consideration, and the Consideration of the Jury, is the great Hardship I lie under, after six Years time, to be put to disprove what the Counsel here have now offer'd against me. My Lord, I observe first, that this Indictment, which is now upon Trial, is founded upon the Trial of *Ireland*, which was the 17th of December 1678, at the *Old-Bailey*, and it is now six Years after that Evidence of mine was delivered. A second thing is, that the Indictment is found by special Commission, as appears by the Indictment it self. Now I must recommend to the Consideration of your Lordship and this Jury, why the Prosecution of this pretended Perjury has been delay'd so long, when it appears by the Evidence which has been produced, that the Witnesses to prove it were known six Years since, as much as they are now; and there is no colour of Evidence

offered, that any new Fact has been lately discovered which was not then known. There is no Reason, my Lord, that is assigned or can be assigned for this Delay, but only that the Hardship might be the greater upon me: For now it is difficult, if not impossible for me to maintain the Evidence I then gave, so many Persons being since dead, or gone beyond the Seas, and many things that were fresh then, are now grown out of Memory; and I beg your Favour to insinuate upon this, and I think it cannot be denied me. If such a Practice as this be admitted, no Witness is safe in giving his Testimony against any Conspirators whatsoever. For, my Lord, I must desire leave to offer another thing to your Consideration, before I speak to the particular Evidence, and that is this; That here is nothing but a bare Point of Time upon which this Perjury is assigned; when the Substance of the Testimony that I gave at the Trials of Mr. Ireland and the rest about the Popish Plot, is not assigned as any Perjury at all; it is only a Circumstance of Time and Place. And, my Lord, I shall offer this to your further Consideration, that Ireland was convicted for a treasonable Resolution to murder the late King, and not for being in Town in August or September 78, or elsewhere; and he was not convicted for his being in his Chamber in *Russel-street*, and taking his leave there in August, which is one matter of the Perjury now assigned. Next, my Lord, 'tis hard and unreasonable to tie up Witnesses that come to discover Plots and Conspiracies, to speak positively as to Circumstance of Time and Place, and every little Punctilio in their Evidence, to bind them up to such Niceties in the delivery of their Testimonies, as to Time and Place. It is usual to speak with latitude, as to such kind of things, and 'tis probable my Evidence which is now in question, was not that Ireland was the 1st or 2d of September positively here in Town; but, my Lord, I did (I believe) give myself a latitude, and would not confine myself to either the 1st or 2d, 5th, 6th, 7th, or 8th; but, my Lord, that he was in September there, I am positive. I must therefore beg your Lordship's and the Court's Opinion, whether that Mr. Foster did prove that I was positive and precise to the Days of the 1st and 2d of September 78?

L. C. J. In my Opinion it is a plain Evidence that you did swear positively to those two Days; and you spoke to a Circumstance very material in your Evidence, that either the 1st or 2d of September you had twenty Shillings of him in Town here: Now that Circumstance of his Kindness to you, was not a Circumstance either of Time or Place.

Oates. Then, my Lord, I shall begin with my Proofs: but, my Lord, I desire I may have free Liberty to mind my Business; for here is a Gentleman behind me that will not let me be at quiet, but is either meddling with me or my Papers.

L. C. J. Who is it? Let me know him, and I will take care to make him quiet, or set him further off. You, Gentlemen that are at the Bar should know better, one would think: He must have liberty to make his own Defence; and if he complains and lets me know who meddles with him, they had better do somewhat else.

Oates. My Lord, the first thing that I offer, is, that Ireland was convicted of Treason, and for that you have the Record.

L. C. J. It is allowed of all sides, that Ireland was convicted and attainted of Treason.

Oates. Then, my Lord, the principal Defence

which, as near as I can remember, Mr. Ireland made at his Trial, was an Endeavour to prove that he was not in Town between the 8th and 12th of August, nor the 1st and 2d Days of September, which are the Points now in Issue; and he then produced one Mr. Gifford and his Sister and Mother; and fifteen or sixteen Witnesses were produced at Mr. *Whitebread's* Trial, of which there is another Record, that being six Months after Mr. Ireland was tried: There Mr. *Whitebread* produces several Witnesses, Mr. Gifford, I say, and several others, I think to the number of sixteen, which were to prove Ireland's being out of Town in these times that these Witnesses speak of. Now, my Lord, all those several Witnesses being produced to prove Ireland then out of Town, the very Point that is now in Issue, was then so; and notwithstanding all those Witnesses, the Jurors who tried Mr. Ireland, and the Jurors who tried Mr. *Whitebread* and the other four Jesuits, found them guilty; tho' they endeavour'd with all their force imaginable to oppose my Testimony, and it was left to the Consideration of the Jury what their Witnesses had said. If your Lordship pleases to remember, my Lord Chief Justice *Scroggs* did observe to the Jury, that the Evidence of the Prisoner at the Bar did consist only in Punctilio's of Time; which, as near as I can remember what he says, he called a Nicety of Time; and in *Whitebread's* Trial he was pleased to call it catching in Point of Time. And it was observ'd at Ireland's Trial, that his Defence was so weak, that my Lord Chief Justice *Scroggs*, upon the Integrity of *Bedloe's* Evidence and mine, uses these Words to the Jury, (tho' he then endeavour'd to do what these Witnesses do now:) It is most plain the Plot is discovered, and that by these Men, and that it is a Plot, and a villanous one. Which shews not only the Fullness and Satisfactoriness of our Proof that we gave, but does also take notice of the little Shifts and catching Tricks he made use of to prove himself out of Town; which would not weigh with the Court. Therefore I observe, it is but the same Objection that then was made, and is not a new one now. And my Lord Chief Justice that then was, speaking of that Proof he brought (which the Court heard with patience, but could easily see thro' the Vanity of it) said, What Arts they have of evading this, I know not; for as they have turn'd their Learning into Subtily, so they have their Religion too. All this is well remembered by those that were by, and heard that Trial: And tho' Ireland laboured to disprove me in that Circumstance of Time, yet still the Court did justify the Evidence that Mr. *Bedloe* and myself had given. And the same Chief Justice said, I leave it to you to consider, whether you have not as much Evidence from these two Men as can be expected in a Case of this nature; and whether Mr. *Oates* be not rather justified by the Testimony offer'd against him than discredited. This was after his Plea was debated and considered: and I must further observe to your Lordship, that tho' Mr. Ireland by his false Witnesses pressed this matter as far as he could then, and urged the Court to believe it; yet when the Jury brought in their Verdict and found him guilty, the Chief Justice expressed the Satisfaction of the Court in these Words: You have done, Gentlemen, like very good Subjects and very good Christians; that is to say, like very good Protestants: and now much good may their 30000 Masses do them. This, my Lord, was the Case of Mr. Ireland, at his Trial; and

and the same Point of his being out of Town was again managed before a second Jury at the Trial of the five Jesuits; but the Court saw the Design of the Popish Party to blemish the Evidence given of the Plot: but yet they look'd upon it only as a Trick. And my Lord Chief Justice *Scroggs*, in summing up the Evidence at that Trial, says, They fall foul upon Mr. *Oates*, meaning myself; he appears to have been their Agent, and whilst so, bad enough: But if he had not had a mind to become a good Man, he would not have done us that good he has done, in the Discovery of the Design they had engaged him in. And if your Lordship please to remember, that at that Trial of the five Jesuits, when all Arts were used to prove *Ireland* out of Town, and me at *St. Omers*, in the same Charge to the Jury, my Lord *Scroggs* did take notice that the Jesuits were very exact at catching in a Point of Time; but now says, that is a thing that no Man can precisely charge his Memory withal; and therefore he does there persuade the Jury, that that should not be too strictly the Measure of their Judgments about Truth and Falshood, by the Mistake of seven or eight Days: For, said he to the Jury, examine your selves how often every day you do mistake things that have been transacted half a Year ago, and err in point of Time, taking one Week for another, and one Month for another; and therefore you are not to lay too great a Weight upon the Point of Time. Now, if too great Weight, my Lord, be not to be laid upon a Point of Time, then this Charge that is now brought against me is not of weight at all. And besides, my Lord, this ought to be considered, if this were the great Objection then, and then answered, it ceases to be an Objection now. And, as the Court did observe at the summing up of the Evidence, that they made their Defence about the Uncertainty of a Point of Time, which was no Defence at all; so that, my Lord, the whole Course of my Plea is this: 'Tis a hard case for a Man, after six Years, to be indicted for a Circumstance of Time. I will first offer the Testimony of one Witness that is dead, and that is Mr. *Bedloe*, who at his Death confirmed all that he had sworn of the Popish Plot to be true, and affirmed that he had rather spoken less than the Truth, than more; and for that I desire that my Lord Keeper may be called, who took his dying Examination.

L. C. J. As for that, Mr. *Oates*, it is a thing very well known to the World, and particularly to a worthy Gentleman that sits by you, [*Pointing to Mr. North*] that Mr. *Bedloe*, when he was sick, did make some such Protestation.

Oates. Then, my Lord, I desire that Mr. *Blaney* may be sworn, to give an account what Mr. *Bedloe* testified at *Ireland's* Trial.

Then Mr. Blaney was sworn.

Oates. Mr. *Blaney*, pray will you see in your Notes of *Ireland's* Trial, whether Mr. *Bedloe* did not swear that Mr. *Ireland* was in Town, the latter end of *August* 78, or the beginning of *September*?

Mr. *Blaney*. Whereabouts in the Trial is it, Sir?

Oates. It is in the printed Trial, folio 41.

Mr. *Blaney*. My Lord, I do find these Words in my Notes, that Mr. *Bedloe* should say, about the latter end of *August*, or the beginning of

September, but I believe it was the latter end of *August*, Mr. *Ireland* was at *Harcourt's* Chamber, and being asked the Question by my Lord Chief Justice *Scroggs*, Whether he said positively, it was the latter end of *August*; he said it was in *August*, he would not be positive to a Day, but he thought the latter end.

L. C. J. 'Tis very well known that too, that *Bedloe* did swear *Ireland* was in Town the latter end of *August*, or beginning of *September*; and to confirm it upon Mr. *Ireland's* denial, you swore he was in Town the 1st or 2d of *September*, and gave you twenty Shillings, that was the Occasion of your Oath.

Oates. Then, my Lord, I desire to call some Witnesses to testify to the Deposition that was taken of Mr. *Jennison*, about *Ireland's* being then in Town.

L. C. J. When was that Deposition taken, and before whom?

Oates. It was taken in the Year 79, by Sir *Edmund Warcup*.

L. C. J. But we cannot admit that in Evidence, unless the King's Counsel will consent.

Oates. My Lord, I will then produce what he swore at another Trial.

L. C. J. Why, where is he, is he dead?

Oates. My Lord, it has cost me a great deal of Money to search him out; but I cannot any where meet with him, and that makes my Case so much the harder; that I cannot, when I have done all that Man can do, get my Witnesses together. I sent in the depth of Winter for him, when I thought my Trial would have come on before; but I could never hear of him.

L. C. J. We cannot help that.

Oates. Will what he said at any other Trial be Evidence here?

L. C. J. Look you, though in strictness, unless the Party be dead, we do not use to admit of any such Evidence; yet if you can prove any thing he swore at any other Trial, we will indulge you so far.

Oates. Have you the Record of Sir *George Wakeman's* Trial there, Sir *Samuel Astry*?

Mr. *A. Gen.* Here it is; if Mr. *Oates* have any use for it, we will lend it to him.

L. C. J. Put it in; and now prove what you can, what *Jennison* swore at that Trial.

Oates. Mr. *Blaney*, have you your Notes of Sir *George Wakeman's* Trial here?

Mr. *Blaney*. No, Sir, the Ticket of your *Subpœna* did only mention *Ireland*, *Whitebread*, and *Langborn's* Trials. But I did formerly upon another Occasion look for the Trial of Sir *George Wakeman*, but could not find it among all my Notes.

Oates. Sir, can you remember then what *Jennison* swore at that Trial, about *Ireland's* being here in Town?

Mr. *Blaney*. Truly, my Lord, I can never trust my Memory at all when I take Notes; and it is now so long since that Trial, that I dare not undertake to say I remember any Particulars of it.

L. C. J. He says it is so long since, that he cannot remember any thing. But there is Sir *Edmund Warcup* now; is he sworn?

Cryer. Yes, my Lord.

L. C. J. What do you ask him then?

Oates. I would desire to examine Sir *Edmund Warcup*, my Lord, about the Deposition of *Jennison* that he took,

L. C. J. But we tell you that cannot be admitted as Evidence, without they will consent to it on the other side.

Oates. My Lord, he proves *Mr. Ireland* here the 19th of *August*, and that contradicts these Witnesses.

L. C. J. If they will admit, well and good; else we cannot do it.

Mr. At. Gen. My Lord, we will be so fair with *Mr. Oates*, if he will admit *Mr. Jennison's* Letter, that is under his hand, wherein he does own that he was mistaken in his whole Evidence about that matter, we will consent his Deposition be read.

Mr. Just. Wilkins. If he will not consent to that, there's no reason you should consent to the other, *Mr. Attorney.*

L. C. J. Look you, *Mr. Oates*, *Mr. Attorney* makes you this Offer; you desire to have *Mr. Jennison's* Depositions read, which cannot be done without their Consent; they tell you they will consent, if you will let them prove what he has own'd since about that Business.

Oates. My Lord, I will consent with all my heart; let them read any Letter under his hand.

L. C. J. Well, do it on both sides by consent; and now, *Mr. Oates*, do you produce his Examination.

Oates. Pray, *Sir Edmund Warcup*, will you please to give the Court an account, what Deposition *Mr. Jennison* made before you, about *Ireland's* being in Town in *August* 78?

Sir Edmund Warcup. If my Lord commands me, I will.

L. C. J. Ay, you must answer his Question.

Sir Edmund Warcup. This *Mr. Jennison* did make one Information before me, and according to the Duty that was incumbent upon me, I deliver'd it in to the King and Council, and there it has lain ever since; for me to remember the Particulars of it, is impossible.

L. C. J. Have you his Examination here, *Mr. Oates*? If you have, shew it him.

Sir Edmund Warcup. If I see my Hand to it, attesting it was sworn before me, I can say somewhat to it.

Oates. My Lord, he says he deliver'd it in to the Council; but it is printed.

L. C. J. That is no Evidence, Man.

Sir Edmund Warcup. I can say nothing to it, unless I saw it under my own hand.

Oates. That is impossible for me to have, my Lord.

L. C. J. I cannot tell how to help it.

Sir Edmund Warcup. You have no more to say to me, *Sir*, have you?

Oates. No, *Sir*, I have not. Pray call *Sarab Batten*.

Mr. At. Gen. Is that the same that was *Sarab Paine*?

Oates. I think so, *Sir*; I am not sure it is she, till she come hither.

Cryer. Here is *Sarab Batten*.

Oates. Pray swear her, and call *Sir Thomas Doleman*. [*Which was done. But Sir Thomas Doleman did not appear.*]

Oates. Pray was not your Name *Sarab Paine*?

Batten. My Lord, I desire my Charges before I speak.

L. C. J. What is your Name, good Woman?

Batten. My Name is *Sarab Batty*.

Oates. Was not your Name *Sarab Paine*, once?

Batty. No, my Maiden-Name was *Sarab Edwunds*.

Oates. Was not you a Witness at the Trial of *Mr. Ireland*.

Batty. No, *Sir*.

Oates. Did not you live with my Lord *Arlington*?

Batty. No, *Sir*.

Oates. Then I have been at all this Charge for nothing. Are you sure your Name was not *Sarab Paine*?

Batty. No, indeed, *Sir*.

Oates. They told me that she liv'd at *Usbridge*, and thither I sent.

Batty. I do live at *Usbridge*, *Sir*.

Oates. Upon your Oath, were you a Witness at any of the Trials, or no?

Batty. No, my Lord, I was not.

Oates. Then I have nothing to say to her.

L. C. J. What other Witnesses have you to call?

Oates. We have labour'd all we could to find her out, and searched for her with all the care imaginable; and here we thought we had had her, but it seems it is not she.

L. C. J. We cannot help it.

Batty. I hope, my Lord, you will consider my Charges in coming up hither.

Oates. I will take care of thee, Sweet-heart.

L. C. J. Who do you call next?

Oates. Pray call *Mr. Charles Clare*.

Cryer. He is not here.

Oates. Pray call *Mr. Percival*. My Lord, I desire *Mr. Bane* may give an account what he swore about *Ireland's* being in Town, seeing I cannot have her here.

L. C. J. That we cannot do neither, without *Mr. Attorney* will consent: For this, as well as the other, is an extraordinary thing.

Oates. You see by my bringing this Witness, my Lord, that I have done what I could to find her out.

L. C. J. What say you, *Mr. Attorney*, will you consent?

Mr. At. Gen. No, my Lord, it is so irregular, that we cannot consent to it.

Oates. Pray call *Mr. Percival* and *Mr. Vaughan*.

Cryer. They do neither of them appear.

Oates. Then I must lose the benefit of her Testimony.

L. C. J. Have you done?

Oates. No, my Lord, I will have done immediately.

L. C. J. Take your own Time.

Oates. I desire *Sir Michael Wharton* may be call'd.

Cryer. He is not here.

Oates. Pray call *Mr. Charles Chetwind*.

Cryer. He is not here.

Oates. Pray call *Mr. Robert Bowes*.

Cryer. He is not here.

Oates. Pray call *Mr. John Savile*.

Cryer. He is not here.

Oates. My Lord, I have served all these with *Subpœna's*; and if they will not come, I cannot help it.

L. C. J. Nor we neither.

Oates. *Mr. Jennison* was used as a Witness in the Trial of *Sir George Wakeman*, and so was *Mr. Bowes*, and *Mr. Burnet*, who was produced to prove the Circumstance of *Mr. Jennison's* Evidence: But, my Lord, since I cannot have the benefit of his Evidence, nor of *Sarab Paine's*, I must only sum up all I have to say in two or three Words. My Lord, besides that what I did deliver in Evidence at

those Trials, I gave in upon Oath; you have Mr. *Bedloe's* Evidence at the Trial of *Ireland*, testified by Mr. *Blaney*: and the Testimony of him as a dying Man, given in to my now Lord Keeper, wherein he averr'd, that what he had spoken of the Plot, was all true. And you hear that he swore, Mr. *Ireland* was here in Town in *August*, and so did *Sarah Paine* too; and I think upon myself as very hardly us'd, to have such a part of my Testimony brought in question, after Witnesses are dead, or gone out of the way. As for Mr. *Jennison*, his Evidence was formerly made use of; and his Evidence was approv'd of too, as is well known to those that sat Judges upon the late Viscount *Stafford*. But this is that, my Lord, I must needs say for myself, that as I hope to see the Day of Salvation in another World, whatever I have sworn about Mr. *Ireland's* being here in Town betwixt the eighth and twelfth of *August* 78, and in the beginning of *September*, is true, as I shall answer it before God another day. And, my Lord, as to the Evidence this day brought against me, I desire you would but observe, though that there are many of those Witnesses, yet a great part of them do not come up to the eighth or twelfth of *August*: And I hope your Lordship will remember, and remark to the Jury, what little credit those of them had that came to testify in the behalf of Mr. *Ireland* at his Trial, and at the five Jesuits Trials, of which there are two Records before you; and they do first justify this, that *Ireland* and the rest of them were guilty of what they were accus'd of; and then, that these Witnesses did not testify the Truth.

Besides these two Trials, my Lord, you have a third Verdict, and that is at the Trial of Mr. *Langhorn*: Now the whole Popish Plot almost was laid forth in those three Trials; and, my Lord, I believe verily I am the first Precedent in all *England*, of any one's being indicted for Perjury, that was a Witness for the King in such a case as this, after six Years time elapsed; after Verdict upon Verdict, and Judgment and Execution upon these Verdicts; and when no new Objection is now offer'd, but what was then started; and no new Circumstance occurs now, but was as forcible then, except it be the Change of the Season. And I desire it may be consider'd when all the Judges of *England* were Commissioners of *Oyer* and *Terminer* at those Trials, these Matters were fully discuss'd and debated; and then they did look upon all the Objections as fully answer'd and confuted.

My Lord, I am confident if I had been a Witness in any other Cause, than of a Conspiracy of the Papists, I might have had fairer quarter than I have now: And I do verily believe, that at this rate, it is more safe for Papists to be Traitors, than for any Protestant to discover a Popish Plot.

My Lord, and Gentlemen of the Jury, I beseech you to take my Case into your serious Consideration, as to the Hardship of it; and since all my Witnesses are in Places unknown, or they are such as, considering the Times, dare not appear, some of them being Lawyers, and under fear they shall fare the worse in their Practice; and others being Persons that depend upon the Law, and think they shall be look'd ill upon, as I am now look'd upon with a hard Eye by the Popish Party and their Adherents: yet I hope, you that are sworn to do Justice, will not let me be ruined by a number of false Witnesses, by the Evidence of Papists that are Parties. For if your Lordship please to consider that Vote of the Lords House, which is a Court of

Record, wherein they do declare, that they are fully satisfied by the Proofs they have heard, that there then was, and for divers Years last past had been, a Horrid and Treasonable Plot and Conspiracy, contrived and carried on by those of the Popish Religion, for the murdering of his Majesty's Sacred Person, and for subverting the Protestant Religion, and the ancient and establish'd Government of this Kingdom: which Vote of Parliament, say Lord, does make the Papists to be all Parties in this Case; and where they are Parties, I hope they shall not be admitted as Evidence, or at least not be believed; because there is a Turn to be serv'd by them against me, and a Revenge they are resolv'd to take upon me: for they have hopes now of bringing in their Religion, and are to welcome that in with my Ruin; and this is the Cause of this Prosecution. Their Eyes do see now what their Hearts so long desired, that is, the Death of a great Man, who died but lately, and against whose Life they had conspired so often, and so long. My Lord, if this had been the first Conspiracy that ever the Papists were guilty of, there might have been some more Scruple and Objection in the case: But if you cast your Eyes upon *Campion*, and others in *Queen Elizabeth's* Time; of *Garnet*, and the *Powder-Jesuits* in *King James's* Time; and the Designs of the Popish Party in the Time of the late King *Charles* the First, discovered to the Archbishop of *Canterbury*: If these things do pass for Truth, and there is no Averment against so many Records as we have of their Conspiracies, then my Discovery is no such improbable a thing; and I hope then the Gentlemen of the Jury will take it into their Considerations, who they are that are Witnesses in this Case; Men whose very Religion is Rebellion, and whose Principles and Practices are pernicious to the Government, and thereby they are to be look'd upon as dangerous Persons in Church and State. But, my Lord, if the Letters of *Coleman* be well consider'd, they will justify me; that he corresponded with *le Chaise* the *French King's* Confessor, for the promoting of Popery in *England*, is notorious to all Mankind, that have either read or heard that Trial: Your Lordship was of Counsel for the King in that case, and heard how it was opened, and plainly proved upon him. And when his Letters have been made so publick, and proved under his own hand, nay, and confessed by himself; I think no Man will doubt but that must be a plain Proof of the Plot, and will be enough to vindicate me.

My Lord, I have one Word more, and then I have done, and leave it to your Lordship and the Jury. My Lord, as they would now sling the Popish Plot upon me, so there is an evident Design to sling the Murder of *Godfrey* upon a Protestant Peer; and because an Indictment was, upon the Testimony of the Traitor *Fitzbarris*, against that noble Lord, they have resolv'd to have profligate Villains to take his Life for that Murder: that is apparent; and so they will go on step by step, if they be let alone; and think at length to wipe their Mouths with *Solomon's* Whore, and say, they have done no mischief. My Lord, I leave these things to the Consideration of the Court and Jury; I will not detain you any longer. I have called what Witnesses I could get, but the distance of Time has made it impossible for me to have those here now, that did give Evidence in this matter before.

My Lord, I have one Favour to beg of the Court; I had but a bad Night last Night, and am now in great

great pain; I desire that you would grant me one Request, that I may have Counsel assign'd me, to argue the Errors in yesterday's Indictment: My Lord, I am but a poor Man, and cannot be at the Charge of seeing Counsel.

L. C. J. We did assign you Counsel before, you may have who you will for Counsel.

Oates. Will your Lordship be pleas'd to do me the Favour to let me have some time to prepare and instruct Counsel.

L. C. J. Ay, what Time would you have?

Oates. A Week's time, if your Lordship please.

L. C. J. Give him till this Day seven-night, there may be no hurt in that.

Oates. Till Monday come seven-night, if your Lordship please, let me have.

L. C. J. No, no, we cannot do that; we give you a Week's time, which is more than ordinary: for by the Rules of the Court there are but four Days allow'd, and those would be out Monday or Tuesday.

Oates. I thank your Lordship for that Time you have given me; but I hope you will be pleas'd to take the Particulars I have mention'd into your Consideration; and I desire I may have liberty to go home, because I am not well.

L. C. J. Ay, you may go, if you will.

Mr. Sol. Gen. May it please your Lordship, and you, Gentlemen of the Jury, the Question that you are to try, is a Perjury, which is charg'd on the Defendant *Titus Oates*, for swearing that *William Ireland* was in Town upon the first or second of *September 78*. And likewise, for swearing, that he took his leave of him at his Chamber in *Russel-street*, between the eighth and twelfth of *August 78*. And we do assign the Perjury in both those Points, that he is forsworn in both; and the Evidence of that Perjury is, that it is impossible to be true what *Oates* did swear, because *Mr. Ireland* was not in Town between the eighth and twelfth of *August*, nor the first or second of *September*.

Gentlemen, you have heard the Evidence that has been given, and there has been no less than between forty and fifty Witnesses produced, to shew that it is really impossible what *Oates* did swear should be true: He tells you that this Matter is in a Circumstance of Time, wherein it is difficult for a Man to be positive to a Day, and a Man may be allow'd some Latitude in such a Case; nay, it is usual with Witnesses in Points of Time, to swear with a Latitude. But, my Lord, to shew that, if we should grant that false Doctrine to be true (and false most certain it is, and of mischievous consequence it would be, if, when things are charged upon Men, that depend upon Circumstance of Time and Place, the Witnesses should not be strictly kept to those Circumstances) yet, I say, granting that Position, it is impossible it should do him any service in the Case before you: For between the beginning of *August*, and the 14th of *September* (which includes both the Times he swears to, and the Latitude of above twenty Days to boot) there is not any one Moment of Time, wherein his Oath could be true.

Gentlemen, you observe what the Witnesses have said, how they have given you an account of every particular Day of both Months, from the 3d of *August*, when he first left *London*, to the 14th of *September*, when he return'd back again: We did ask the Witnesses, that it might appear to be plainly true, what they swear, if they had any particular Circumstances that made them to remember it; and

they have given a great many, and now it lies upon us to shew you that it is Demonstration, that what they have said and testified must be true; and that those Days they speak of, he was in the Places they named.

For take the Periods of Time, and you will find you have him from the 3d of *August* to the 16th, with my Lord *Aston*, going from *London* to *Tixball*; upon the 17th they give you an account of him at *Mrs. Harwell's* to the 26th; from the 26th to the 4th of *September*, there are others that give you a particular account, by remarkable Circumstances, where he was every day in *Staffordshire*; from the 4th to the 7th you find him at *Wolverhampton*. For the 8th indeed we do give no particular account where he was that Day; but we prove that upon the 9th he was at *Tixball*, and from thence he came away with *Sir John Southcoat* towards *London*; and there you have a particular Account where he was, every Day till the 14th, when he return'd to his Lodging.

And now, Gentlemen, I shall shew you, that, if you believe these Witnesses saw him in these Months; that certainly it was upon those Days they speak of, that they did see him.

First, that he went out of Town in *August*, you have these Witnesses, *Anne Ireland*, *Eleanor Ireland*, *Mrs. Duddle*, *Mrs. Quino*, and my Lord *Aston*. Well, how come they to remember it was upon the 3d of *August*? Why the four Women remember it by this particular Remark; three Days before there was a Holiday, which they keep in memory of *Ignatius*; and upon that Day they remember *Mr. Ireland* went abroad to take a Recreation, and came home again that Night, tho' the rest of the Company staid there; because he was to go out of Town upon the third Day after, which must be the 3d of *August*; for *Ignatius's* Day, you hear, is always the last Day of *July*. And they do positively swear, that upon the 3d of *August*, he took his leave of *Anne Ireland* and *Eleanor Ireland*. *Mrs. Duddle* remembers that he went out that Day. *Mrs. Quino*, whose Husband was his Taylor, says, he did stay a little to have somewhat in his Clothes mended; and she saw him in his Boots, and he said he was to go out of Town. *Mrs. Anne Ireland* says, they took the liberty to lodge a Gentlewoman in his Chamber, and saw him not again till a Fort-night before *Michaelmas*: And that he did go out of Town upon the 3d of *August*, is further prov'd by my Lord *Aston*, who noted it down in his Book at that time, that *Ireland* came to his House at *Standen* in *Hertfordshire*; so that here is as strong an Evidence as can be, that he did go on the 3d of *August*, and that they remember it to have so been, by all the Circumstances that can be imagin'd.

Well, the 3d of *August* he went out of Town. The 4th of *August* we give an account where he was: he staid that Day with my Lord *Aston* at *Standen*. The 5th of *August* he set out with my Lord *Aston's* Company, and went to *St. Albans*. The 6th, he went to *Northampton*. The 7th, to *Coventry*. The 8th, to *Tixball*; and the Company that went with him proves it, which was *Sir Edward Southcoat*, and *Mr. John Southcoat*; and *Harrison* and *Holson*, who saw him go in the Company; and *Mr. North*, who says he saw him every day; and *Ingletrop*, the Coachman that drove the Coach: all these remember it positively, and some of them speak of a remarkable pretty Horse, which he rid upon.

Now when he comes from *Tixball*, (for we have brought him hither by manifest Proof, by Men that

that could not forget, by Men that saw him in the Company) there he remain'd (as they all testify) till the 13th of *August*, and that was the *Tuesday* after his Arrival at *Tixball*; and from thence he went that day a Journey into *Flintshire*, to *Holy-Well*; and that is proved by the Witnesses, that were in his Company in that Journey. They tell you, the 13th he lay at *Nantwich*. The 14th at *Holy-Well*. The 15th, at *Chester*. And the 16th he came back again to *Tixball*. And so here you have abundance of Witnesses, that give you a particular account where he was, in what Company they saw him, from the 3d of *August* to the 16th. If he were then in this Company from the 3d to the 16th, he could not be in his Chamber in *Ruffel-street*, between the 8th and the 12th.

Then we came to the 17th, and then we find him to be at *Wolverbampton*, where he continued to the 26th; and that it must be between the 17th and the 26th, is plain: For after that time which *Mrs. Harwell* speaks of, the other Witnesses give such Circumstances, that it cannot be otherwise. You find him on the 27th at a Horse-race, which is a remarkable Circumstance; and these are things, that Men do very well remember what days of the Month they happen upon. We then give you an account of the 29th; that at *Tixball* he was seen in company upon the Bowling-green, with Persons of Quality; *Sir Thomas Whitegrave*, and others: so we give you an account where he lodged. The 28th he was at *Bellamore*. The 29th he went to *Mr. Heveningbam's*, there he lodg'd till the 1st of *September*; and this is remember'd by particular Circumstances, that he went a fishing, and a setting, and a hunting. Then the next day, which is the 1st of *September*; and the next day after, the 2d of *September*, they saw him at *Mr. Gerrard's*; he din'd upon the 2d at *Mrs. Crompton's*, and lay at *Bosobel*: there he continued the 3d, and the 4th he came to *Wolverbampton* again.

So that this shews, that what *Mrs. Harwell* did speak of, was true; for if *Mrs. Harwell* did see him, as 'tis not at all doubted but she did, it must be in that Interval of Time between the 16th and the 27th; where we give you an account of him by other undeniable Circumstances, that he lodged at other Places, and could not lodge at her House at *Wolverbampton*.

Besides, Gentlemen, the particular Circumstances that they do remember him by, proves it to be on those Days. *Mrs. Harwell* gives her positive Oath, that he did come there the 17th, and lay there every Night to the 26th, which was on the *Monday* Seven-night after; and that he came again the 4th of *September* after, and lay there till the 7th.

Then there is *Ruston*, another Witness, that saw him at her House, the 18th, 19th, 20th, 21st, 22d, and 25th. And, I say, it must be those Days, because we have given an account, by other Witnesses, of all the other Days. And it must be that very time that *Oates* speaks of; for it was the Summer before *Ireland* was apprehended and executed for the Plot, which was *Michaelmas* 1678.

Mrs. Winford, she remembers him at *Wolverbampton*, the 18th, 19th, 22d, and 24th.

Stanley remembers the 18th and 19th; and if you ask him how he remembers it, he tells you, by a Circumstance that most Men would remember; he buried his Child that day, and entertain'd *Ireland* with the Provision for the Funeral. Now Men usually remark such Accidents as these; for that is a thing a Man cannot forget, that has any Concern

in the World for those that are so nearly related to him; and therefore such Circumstances must of necessity evince the Truth of what he speaks, because it is brought to his mind, by an Accident that cannot be forgotten.

Mrs. Purcell, which is the next Witness; and she remembers to have seen him the 18th, 19th, 20th, 21st, 22d, and 23d; for she remembers the last of them was the day before *Bartholomew-day*, which was a remarkable day.

Then there is another Man, that look'd to his Horse whilst he was there, but his memory will not serve him to speak to any particular Time; he only evidences, that he was there; and the other Witnesses speak to the Time.

Mr. Stamford, he remembers it to be at that time, because he saw him on the *Sunday* after the Assumption of our Lady, which is always the 15th of *August*: and the like says *Mrs. Gifford*. These Circumstances verify her Testimony.

And *Mr. Gifford* remembers, he came on the 17th Day; and he saw him every day, till the 26th Day.

And *Mrs. Fowler*, who is *Mrs. Harwell's* Daughter, she remembers he came the 17th day; and she was in his Company every day, till the 26th, except one day, when he went to *Litchfield*; that was the day before *Bartholomew-day*, which was *Friday*.

Mrs. Keeling, she swears, that upon the 17th day he came there, which was *Saturday*. She saw him on the *Sunday*, and on the *Monday*; and went on the *Monday* in the Afternoon, to the Funeral of her Mother, which is another Circumstance, that she must needs remember; and by that, has the Remembrance of the Day of the Month when he was there: And she return'd back again on *Thursday*, and heard him that day, but did not see him. But she saw him every day after, till he went away; and she remembers his going away was upon the 27th. And she remembers likewise, that he return'd the 4th of *September* after.

Mr. Richardson, he proves, that he saw him upon the 19th Day of *August* at *Wolverbampton*; as he was told, it was he: And being ask'd, when he was told so? He says, *Mrs. Harwell* told him so, some time before he was apprehended; so that she could not tell it him then, to serve a Turn. And he is a Protestant too.

So is likewise *Eleanor Graves*; who gives you an account, that she saw him there on the 20th, 21st, and 22d; and on the 23d, she went to *Litchfield* with him; and upon the 25th, she supp'd with him at *Mr. Winford's*.

Now, Gentlemen, you have a full account of it, even to a Demonstration, that he must be in these Places at this time, if you will believe one thing, that is, that these Witnesses saw him at all. And sure none can doubt, but these Witnesses did, upon the Circumstances they have testified, see him in *August* and *September*: and then it must be those particular Times, that they speak of.

At *Wolverbampton* then you have him to the 26th: The 27th day, you have an account of him at the Horse-race at *Etching-bill*. The 28th, *Mr. Howard* gives you an account, he din'd at *Bellamore*, at *Mr. Aston's*. The 29th, you find him at the Bowling-green at *Tixball*; and from thence to *Mr. Heveningbam's*, where he lodg'd that Night, and staid there the 30th; which is prov'd by the Circumstances of fishing in the Morning, and setting in the Afternoon. And the next day, which

was Saturday the 31st, you hear he was at the killing of a *Buck*; where Mr. *Gerrard* was expected, but Sickness prevented his coming. And you have him the 1st of September, which was Sunday, at Mr. *Gerrard's* Hoafe, where several of the Witnesses did see him.

And besides, one *Proctor* tells you, he saw him the 31st of August, at *Fulford*, at Mr. *Lowe's*. And he very well remembers that to be the Time, by a remarkable Circumstance: For (says he) *the last Day of August I went to pay some Money, (which is a thing Men are generally very punctual in) and when I came home again, I found him there.* And he swears he saw him at Mr. *Gerrard's* House, the 1st of September, the Day after.

Mr. *King* remembers he saw him at Mr. *Gerrard's* of *Hilderham*, the first of September; and that he dined at Mrs. *Crompton's*, the second of September; and staid there till two of the clock in the Afternoon; and went from thence, with an intent to go to *Boscobel*.

Lee says, he saw him at Mr. *Gerrard's* House and at Mrs. *Crompton's*: that he dined there, and went from thence to *Pancras*, and from thence to *Boscobel*.

Mr. *Biddolph* remembers, he dined with him on the second of September, at his Aunt's; and that by this Circumstance, he was desired by my Lord *Cullen*, to see an Horse-Race in *Northamptonshire*; and promised my Lord *Cullen* to come: Which Horse-Race is always on a certain Day, the first Thursday in September; and that Year it happen'd to be the fifth of September: And it was the Monday before, that he dined at his Aunt's; and because of his Promise to my Lord *Cullen*, he would not stay all Night. And so it must be the second Day of September, that he saw him there.

Mrs. *Crompton* says, it was the same Day, that her Nephew, Mr. *Biddolph*, dined there: For he was a Stranger, and she never saw him before, nor after.

And there is another Gentlewoman, Mrs. *Palmer*, that swears, he dined at Mrs. *Crompton's*; but she cannot tell the particular time when.

Mrs. *Gifford* saw him at *Pancras*, between the Hours of four and five in the Afternoon, upon the second of September: And *Lee* went along with him to *Pancras*; and from thence he went to *Boscobel*.

Mr. *Pendrel* says, he saw him the second of September at Night; for he came to his House. Which agrees with all that the other Witnesses say, which was, that he intended to go to *Boscobel* that Night. He and his Wife both testify, that there he lodged upon the second of September, and staid there the third of September; and went from thence the fourth, to *Black-Ladies*: where Mr. *Gifford* tells you, he dined.

And we have given you an Account before, where he was the Fourth at Night: For then he was returned to *Wolverhampton*; and there he lodged to the seventh of September. And after the seventh of September, though we do not give you a positive Evidence, That upon the seventh of September, at Night, or upon the eighth, he was at my Lord *Alton's*; yet we have given you that, which amounts almost to a Demonstration, that he must be there upon the eighth of September. For he went from thence with Sir *John Southcoat*, to go towards *London*, on the ninth. And our Evidence is the more credible, because they swear cautiously all of them: Unless they remember some remarkable Circumstance, they will not take upon them to fix upon a particular time.

Then, *Gentlemen*, we give you an account, by the Persons that were in his Company where he was every Day, all along from the time he left *Tixball*, down to the time he came to Sir *John Southcoat's* House in *Surrey*. And this Journey took up the ninth, tenth, eleventh and twelfth of September: There are four Days; and he staid there one Day. Then he sold Mr. *Southcoat* his Horse. Mr. *Southcoat* lent him his Horse to come to Town; and the next day he did come to Town. And so we have brought him to Saturday the Fourteenth of September.

And now, let all the World be judge, if there be any possible room left, that any one word Mr. *Oates* has said, can be true; even giving him the Latitude of Time, he himself desires, and says all Witnesses must be allowed. No, there is not one Minute for him, wherein he can be verified in any one Tittle of his Evidence, as to *Ireland's* being in Town. And this is that which I call (and sure, well I may so call it) a *Demonstrative Proof*, that what *Oates* did swear is utterly false.

Gentlemen, the Jury had not this Evidence at the Trial of *Ireland*: Some there were, that went out of the Town with him; and some, one or two of *Wolverhampton*, were at the five Jesuits Trials; but not above five or six in all of these forty odd, that now appear. True indeed it is, all these were not there; and *Ireland* upon that, unfortunately suffered; for so I may take leave to say, it was *Unfortunately*.

Mr. *Oates* has said one thing unto you, which he lays much stress upon: He would have you look upon it as a great Hardship, that this Prosecution comes so late; and that it is strange, after six Years time spent, this should not be set on foot.

But, Gentlemen, I cannot but with much Sorrow remember to you, and I know you all remember it too well; That there was a time, when the City of *London* was so far corrupted, that it was become a Refuge and a Sanctuary for High-Treason; when there was no Justice to be had for the King there; when Men lodged themselves within those Walls, as a Protection for their Conspiracies: we all remember the Time, when Indictments were preferred, and a plain Evidence given to a Grand-Jury, even to the publick Satisfaction of all that heard it; and yet they have refused to find the Bill: And not only so, but were so abetted by the Rabble, that it was scarce safe for the Judges to sit upon the Bench. These are things none of us can forget, but must be perpetually remembered, to the shame of the Authors and Contrivers of them: And therefore it is no wonder an Indictment was not preferred against Mr. *Oates*, at that Time, when the plainest Proof against Criminals could not be admitted. And this will give every Man Satisfaction, why it has been delayed; and I hope at the same time give every Man a Caution, how they fall into the like Circumstances again.

But, Gentlemen, you have heard the Evidence that is now offered, to prove this Matter of Fact; and it is a plain Demonstration, if you will believe that Mr. *Ireland* was seen by these Men at all, he was seen at those very times they have particularly declared: For upon Consideration of the Circumstances, it is impossible it should be at any other times; and so I leave it to you to judge upon the whole, whether the Defendant be perjured or no.

L. C. J. Gentlemen of the Jury, this Case has taken up a great deal of Time; but it is a Case of that moment and consequence, that sure no time ought to be thought too long, that is employed

for the discovering of the Truth, so necessary to be discovered, as the Matter now in question. For as I said at the beginning upon this Occasion, and I cannot but say it again now; I confess, I cannot without Horror and Trembling, reflect upon the many Mischiefs and Inconveniencies we have been run into, if the Testimony given this Day in this Cause against *Oates* prove true, as I cannot in the least imagine, where there should remain the least Objection against the Truth of it; I cannot, I say, but bewail, that so many innocent Persons (to the Reproach of our Nation be it spoken) have suffered Death upon this account.

God deliver me, from having the least stain of *innocent Blood* imputed to me; and it is more to be lamented, when we see that Impudence, which has brought that Infamy upon our Land, continues with a brazen Face, defying all Shame to this day. But by this we may be informed, how some Men's Consciences are seared, and that there are some People that do indeed live without the Fear of God in the World. For if that Man, who has assumed to himself the Habit and Character of one that should preach to others, Religion, Virtue, and the Things that become true Christians, shall become such a Monster of Impiety and Impudence, in defiance of Heaven and Earth; what greater and more manifest Proof can there be of a seared Conscience?

I cannot but lament likewise the Wickedness of our Age, when I reflect upon the Testimony of that other Wretch, (indeed I cannot use Terms severe enough for him) that when he was going into another World, should persist in such gross Falsities; I mean *Bedloe*, infamous *Bedloe*; and let his Name be for ever infamous to all Mankind, that have any regard, or deference for the Truth; that he should with his latest Breath dare to affirm, that every Word he had said of the *Papish Plot*, was true: when it is as clear as the Sun, by the Testimony of this Day, that every Word he swore about *Ireland*, was utterly false. *Good God of Heaven! What an Age have we lived in, to see Innocence suffer Punishment, and impudent Falsity reign so long!*

Gentlemen, I hope all Eyes are opened, (I wish they had been so long since;) let us lay the Burden, the Infamy and Reproach of these Things, upon them that deserve it; for we cannot but know, we are reckoned as a By-word to all our Neighbours, and shall remain Monuments of Ignominy to all succeeding Ages and Times, if we do not endeavour to discharge our selves, and our Religion, and the Justice of our Nation from these Scandals.

Gentlemen, I think I am obliged, in the first place, to take notice of what Mr. *Solicitor General* has mentioned, concerning the Insolency of those Times, wherein the Faction was grown to that extravagant Height, that, in truth, a Man durst not appear, with safety of his own Life and Fortune, to testify the Truth. And, is it not a shame, that it should be remembered, what one of the Witnesses this day testified? That when he came to appear at the Council-Table, to attest a Matter of Fact, before this innocent Blood was spilt, (for so I must call it, if that which has been sworn this Day is true) the Rabble should be so boisterous, as to cry out, *Where is that Villain, that dares come to give Evidence against OATES, the SAVIOUR of the NATION?* Oh, horrid Blasphemy, that no less an Epithet should be given to such a profligate Wretch as *Oates*, than that which is only proper to our Blessed LORD! As though *Oates* had merited more than all Mankind; and so indeed he has, if

we take it in a true Sense: He has deserved much more Punishment, than the Laws of this Land can inflict.

And I must needs say, Gentlemen, That this is an Instance, why there seems not to have been Punishment enough ordain'd in Law for Perjury, because our Law-makers did not foresee, that there could ever be such Villains, such Miscreants, as these.

We have indeed another Instance in the Law, of a Crime for which there is no adequate Punishment; and that is in the Case, where a Child kills his Father: Parricide has no peculiar Judgment assigned for it; but we are forced, because these Things have been sometimes practised, by a Construction in Law, to make that Child as a Servant to his Father, and so punish him with the Judgment of Petty-Treason: but take him immediately as he is a Child, and not as a Servant, and I say there is no particular Provision in Law, to punish such an Offence: And, what is the reason of it? Because it is so unnatural, and against the Imaginations of Mankind to believe, there ever could be such a wicked Child in the World.

If that be not to be imagined, how could it be imagin'd, that there should be such horrid Villains, as should attempt the Destruction of the Government of three Kingdoms? Good Lord! What times do we live in? Surely, 'tis such an Age, as was never known, from the Creation of the World to this day.

And to this must be added, what aggravates the Mischiefs, that all this is done under the Umbrage, Countenance, and Pretence of Law; the Proceedings of Law, the usual Methods of Justice, are made the Instruments of the most horrid Injustice. The Murder of our late blessed Sovereign, King CHARLES the Martyr, of ever-happy Memory, though a Crime as high in it self, as the Law knows of; yet I may say, it was aggravated very much, that that unfortunate, but glorious King, should be brought to the Block, by a Pretext of Law, and cut off by a colourable Method of Justice; 'tis that which makes that Murder ten times more base and infamous. So, Gentlemen, the Destruction of poor innocent Persons, by false Accusations, by the pernicious Evidence of perjur'd Witnesses, in a Court of Justice, makes their Crime infinitely more odious, than common Murder.

Gentlemen, I cannot but speak with warmth in a Case of this nature; and I the rather speak so, because, at the time when those things were done, we all know, the Nation was in a hurry, and a sort of ill-minded Men had crept in among us, who had blown us up to such an height, that nothing but what comply'd with their malicious and devilish Designs, was to be believed; when the King could not get common Justice done against real Traitors; but the very Streams of Justice were all corrupted, though the Fountain (God be thanked) was preserved pure.

When the Faction (by Cabals and Intrigues) had got Sheriffs of their own Party, and laboured to get all other Officers of their own wicked Principles, then came all those Mischiefs we so long labour'd under. When those Fellows, that had so great a share in the late Rebellion, were the only fit Men to be trusted with the Government; and all the while were designing to destroy it, and to bring us into the same miserable Condition we formerly were in.

Was it ever (I speak to you, Gentlemen of the Jury, Citizens of *London*, who know its antient Constitution, and have too well experienced its late Convulsions) was it ever known, till Justice was designed to be corrupted, that there was any labouring to be Sheriffs? No, Endeavours were always used to be excused, and Fines paid to get off from that Office: And the reason is plain; for never was there a wife and wealthy Citizen, that had a mind, out of a principal Part of his Estate, to squander away so much as is necessary to defray the Charge of that Office: But it was the Design that those Rascals had upon the Government, that made them so greedy of those Places; and they thought they had now an Opportunity to effect their Design, upon these Fellows pretended Discovery. They believed, that because we were hurried into the Mischiefs of the late Times, by Pretences of *Popery*, the same Bait would be swallowed now: Therefore the Cry must be set up, *Popery was a coming in*. They concluded, if they could but make use of the same Engines, they should have the same Effect: Witness a Peer, that is now dead, one that was a main Instrument of our Confusion in the late Times, and thereby experienced in Villany, was made use of as the chief Tool in these late Contrivances.

But alas! when they found those Pretences and Projects would take no longer, then they fly to that, which was indeed the bottom of all; I mean, *The bloody Conspiracy*. When they found they could not overthrow the Government by Methods of Law, they betake themselves to downright Treason. For by this time the Eyes of the honest Citizens were opened; and they found what Interest was driving on: And it was time to have them open, when a Cause in *Guild-Hall* was always tried according to the Characters of the Client, and not the Merits of the Cause; when, if a Man was blasted with the Name of a *Tory*, he was sure to lose it: But if a whining Rascal was sanctified with the name of a *Whig*, he was sure to have it go on his side: Witness the famous Cause of Mr. *Loades*, about his *Lemons*.

But when Sheriffs came to be elected in due manner, such as were fit to be trusted with the City Business; what do they, but break out into a horrid Conspiracy, to take away the Life of that blessed King, that merciful Prince, so lately deceased, to the Grief and Sorrow of all his loving and loyal Subjects? And not only so, but to rob us of his sacred Majesty, our present most Gracious Sovereign; whom I pray GOD to preserve long to reign over us. [*To which, the Auditory gave a great Acclamation, saying, Amen.*]

Gentlemen, When these Things are thought upon, you must give me leave to observe (let others think what they please) that was the real Plot, the true Plot: For there is one thing observable, that attends this whole Affair, that every Man who suffered for the Plot, which the Witnesses truly call *Oates's Plot*, to a Man denied it even to the last Gasps; and took it upon their Deaths and Salvations, that they were innocent: Nay, when they had not those Hopes *Bedloe* had of Life, (for I cannot believe, that he could have been so egregious a Villain, as to have attested such notorious Lyes, if he had not hoped to have recovered, and thereby increased his own Reputation) yet not a Man of the others, but disowned it with their dying Breath. Now, on the other side, there was not a Man, that was concerned in the Conspiracy, of which this was

to be the Blind and the Colour, had the Confidence to deny it, when they came to suffer for it. All this ought to be put in the Balance, and duly weighed.

For, Gentlemen, because it is a Matter that is not only publick here, but all the World over, we must have the Justice of the Nation vindicated, and its Dis-reputation wiped off. And having taken notice of these Things, which I could not well omit upon this Occasion, I must now put you in mind, what is necessary for you to take into your Consideration, as to the particular Case before you. And,

First, You must observe, that this Indictment against *Oates*, is for committing wilful and corrupt Perjury; which is also said to be done maliciously. And if it were false, surely it was malicious; because by his false Oath, he was innocent Men been convicted, condemned, and executed.

Secondly, You are to consider, how far the Thing goes, to make it material to the Issue: For if it were upon a Nicety only, or a Catch, or any of those fine Words, that he has been pleased to make use of; it were not fit to perjure him upon it. But it is certainly very material: For Time and Place are Matters substantial to discover Truth and Falshood by; as in the Case of *Suffanab*, the Perjury of the *Elders*, as you may remember, was detected by those very Circumstances. But I shall shew you the Occasion of this Oath; and that will manifest it to be a material Part, in respect of the Time. For,

First, Here was a Consult held, as he testified, the 24th of *April*, 1678; and then he swears *Ireland* was in Town, and present at the Consult: But all that *Oates* swore, would not do the Feat, because that he was but one Witness. Then comes *Bedloe*, his worthy Yoke-fellow (a Brace of such Witnesses, as the Lord deliver all Mankind from) and he assigns another Fact upon Mr. *Ireland*, in the Month of *August*, the latter end of it, or the beginning of *September*; which is material, and makes two Witnesses against *Ireland*, which *Oates* knew well enough: For he is his Arts-Master; he knows all the Tricks, and can tell the very Nick that will do. And therefore, when he finds Mr. *Ireland* so positively affirming, that he was then out of Town; and if so, *Bedloe* did not swear true: then does this *Oates* come in, (and thereby makes his Testimony material to the Point then in Issue,) says he, *The first of September, or (at least) the second, I will swear he was in Town; for he gave me twenty Shillings*. And that is given as a Token, why he does remember it. And thus he did prop up *Bedloe's* Testimony, against Mr. *Ireland's* Defence. This is proved to you by Mr. *Waterhouse*, who was one of the Jury. And the same thing does the next Gentleman swear, which is Mr. *Byfield*: They do both agree in that Circumstance punctually, that he swore he had then of him twenty Shillings.

As, (but says he for himself, because I would remove the Objections out of the way, as they occur to me) 'tis very hard, this being now some six or seven Years ago, that I should be called to question about such a thing; when they might have had a time to disprove it before.

Besides, Gentlemen, the Answer that has been truly given to you, concerning the Miserableness of the Times; when, the truth of it is, there was no Justice to be had for Protestants, if we speak of the *Church-of-England Men* under that Name: For either they were Papists in Masquerade, or Popishly

Popishly affected; or the Names of *Tory* and *Tantivy*, and I know not what, was enough to do their work for them: And no body was reckon'd of the Sober, Virtuous, Godly Party, but those that were under *Affociations* and *Covenants*; as tho' there was no Sanctity to be found in any but those who were bent to destroy all Virtue and Religion. I say besides that, there is another Answer, which I am sorry has so much weight in it: Could any Man have believed that *Oates* should dare so impudently to swear a Falshood, and that in a Cause where Life was concern'd; and the Man hang'd upon his Testimony? To what purpose then should his Relations interpose to disprove *Oates*, after his Death? That would not revive him. But you find there was an Inclination that way; and I wish to God, with all my heart, it had taken effect: For what says the old Gentlewoman? As soon as she heard what Mr. *Oates* had sworn, which she knew to be false, immediately she dispatch'd an Express to London; and sent a Petition to the King, *That either Ireland might have a new Trial, or his Execution might be repriev'd, till they brought up such Witnesses, as would have made it apparent, and as clear as the Light, that what this Fellow had testified, was notoriously false.* But such, such, I must say, was the Misfortune of the Time we were in, that stop'd the Fountain of Mercy it self, from letting forth its wonted Streams; and even compell'd that compassionate Prince, rather than he would give any disturbance to his People, to permit that Execution against his own Inclination; because there was a Verdict, and Judgment in the Case. For as he was really the Fountain of Justice, so was he of Mercy too. And it is well known to those that had the happiness to be near his Person, how oft he expressed his Concern for having consented to this Execution. And this continued with him even to his dying Day, as the business of my Lord of *Strafford* did with his Royal Father.

And, Gentlemen, I chose to mention this Passage concerning his late Majesty, for this reason, That when we live in such tumultuous Times, when things are put so hard upon Princes, as to compel them to refrain their Mercy, where they think it due, rather than seem to stop the Current of Justice; this should not be remember'd with any Reflection upon them, but with Infamy to those that are the Causes and Grounds of it: When such prodigious Wretches, as *Oates* and *Bedloe*, for there appears no Evidence before you, but of those two profligate Villains, who came out of Goals, and after having been guilty of Villanies almost of all sorts that ever were committed, came to be sanctified by committing more; and were therefore call'd, *The Saviours of the Nation.*

Gentlemen, The next Objection that is made against the Evidence for the King, is, *That they are all Papists; who design nothing but to destroy the Government, and ruin the Protestant Religion.* And this must be taken to be the whole Design of all these Persons of Quality, and others, that they come to forswear themselves, and damn their Souls to all Eternity, on purpose only to destroy Innocent, Protestant Mr. *Oates.* Alack-a-day! When at the same time, I must tell you, if it were necessary, you have about seven or eight Protestant Witnesses of the Church of *England*, that confirm the Testimony of the rest: Not that we must think, or ought to have any such Conception among us, but that *Roman* Catholicks in point of Law, are good Witnesses; and are to be credited as much as any other

Witnesses whatsoever; unless there be some Objection made to them; which would be the same against a Protestant as a Papist: For there remains a Right in them, and they ought to have equal Credit given to their Testimony, with those of any other Persuasion, if a regular Objection be not started against them. And sure I am, that has been always the Law; and shall be my Practice, while I have any thing to do with the Administration of Justice. Let the Sober Party, as they call themselves, make what Reflections they please upon it, or trouble themselves as they will about it, I value them not, nor their Opinion: Let them send as many Penny-Post Letters and Libels as they have a mind to do; two of which I receiv'd last Night, about yesterday's Trial. This I am sure of, Lying is as much the Talent and Inclination of a Presbyterian, as ever it can be of a Papist: Nay, more; for it is as inseparably incident to a Presbyterian (and such sniveling, whining, canting Knaves) to lye, as to speak. They can no more forbear Lying than they can forbear Speaking; for generally, as often as they do the one, they do the other.

Besides, I must observe to you, with what Caution, Care and Sobriety, both of Expression and Action, all these Gentlemen and Women have delivered their Testimony, with the greatest Tenderness and Care that possibly could be: And as well as they have given it with Caution, so I cannot but put it home to you, Gentlemen at the Bar, to give it its due Consideration.

For tho' the other Juries did believe *Oates*, and not them at that time; yet that is not to be your Measure, because you have not the same Reason to do it. Could any Person think, that there should be such Villains upon Earth, as impudently to swear downright Treason against their Fellow-Subjects, if there were no Truth in the Accusation? That was the thing that guided those Juries, who were all of them, no doubt, very honest Men; and that was it, which influenc'd the Parliament to do what they did in the matter. For it was morally impossible to be thought, any such Wickedness could be so publicly attempted.

But God be thanked, the Eyes of all honest and understanding Men are opened. And we see the fault was in our Credulity; and that these were Fellows should not have been believed: And it concerns us, when the Truth has been so debauch'd, and our Credulity so imposed upon, to shew the World our just Resentment thereof.

And this I say to you, Gentlemen, with a purpose to vindicate those Persons who were concern'd as Jurors, in the Trials of all those Causes; because that is the thing much harp'd upon, and aim'd at: That because he was believ'd before, to disbelieve him now, would cast a Reflection upon the Juries; whereas, if that Opinion hold, never will there be any such thing as Perjury detected, so long as the Sun and Moon endure: For if a Verdict be obtain'd upon false Testimony, and it shall be enough for the Witness to say, I was believ'd at such a Trial, and therefore do not you offer to prosecute me for Perjury: That would be the finest Doctrine that could be taught, to give a Licence to destroy all Truths, Justice, and human Society.

Therefore I leave it home upon you: Upon your Consciences be it; for, in the presence of the Great God of Heaven and Earth, that sees all our Hearts, and will judge us for our inward Thoughts at the last Day, *Liberavi animam meam.* If you can find all these Persons (in number forty-seven) guilty of

wilful, downright, malicious, and corrupt Perjury, when you must acquit the Defendant.

For the Particulars of the Evidence, which abound in many material Circumstances in point of Time and Place, I shall run them over as short as I can, and remind you of them; not because I think it extraordinary necessary, as tho' there were the least doubt of the Fact, but for the Satisfaction of all Mankind, that are not under invincible Prejudice against the Truth. And I am sure, upon yesterday's Business there remain'd not any doubt with any that heard it, save one, who I know had a great share in the Design, that was at the bottom of it; and I doubt, was one of those Persons that set this Villain on work: his Name may be conceal'd for the present, but a few days will discover it here, or in some other place.

Gentlemen, what Mr. Attorney, or Mr. Solicitor-General, or any of the King's Counsel have said, or what the Defendant has said for himself, if not proved, and made plain by Evidence, is to be no Guidance at all to you, who are only to go according to the Testimony given to you; for that is pursuant to your Oath, which Oath is the Rule of your Enquiry.

The Witnesses that prove, that he did swear so in both the Points in the Indictment; I need not mention, they were so full: They tell you he swore, that *Ireland* was in Town from the 8th to the 12th of *August*; but because he fixed upon the 8th at first, there was Caution given him, *Be not so precise to a Day, consider with your self.* Then comes he to stab the Business to the quick, and to rivet it home: If I cannot be positive to the 8th, I will be positive between the 8th and 12th. And as to the other Point, I did observe before that, because *Bedloe* was at a stand, upon *Ireland's* denying his begin in Town the latter end of *August*, or the beginning of *September*, therefore comes *Oates* up again, to fix it home; and, says he, I am sure he was in Town the 1st or 2d of *September*, because he gave me twenty Shillings. That he swore this, is testified by three Gentlemen, who were Jury-men at those Trials.

Now, that this is notoriously false, false to a tittle; and, as Mr. Solicitor does observe, not the least time left to give any sort of countenance to what he swore, is thus made out to you.

First, you are to take notice, that upon the 3d of *August*, being *Saturday*, it is sworn by three or four Witnesses, that he went out of Town; and this is not sworn as Mr. *Oates* gave his Evidence positively without Circumstances, but they give you an account how they remember it; because upon the *Wednesday* before, which was a publick Day of Note among them, and always kept as a Festival in memory of St. *Ignatius*, upon the last day of *July*, as both they and Mr. *Oates* himself do affirm, there went Mr. *Ireland*, Mrs. *Anne Ireland*, and their Mother out of Town to a Friend's House to dinner. Mrs. *Ireland* did desire him to stay there all night, as she did. No, says he, I cannot stay all night, because I must go out of Town on *Saturday*, and I must provide things necessary for my Journey: Nay, that is not all; for it goes yet further. Says his Sister unto him, Why do you begin your Journey on a *Saturday*? That is an improper Day. Oh! says he, I do it, because I am that Night to go to my Lord *Aston's* House in *Hertsfordshire*; where I am to meet with Sir *John Southcoat*, and go down with them into the Country: This does the Mother swear, and the Sister. And then the Maid-Servant, and the Taylor's Wife, do

give you another Token, that it was *Saturday* the 3d of *August*, because he had something to be mended in his Clothes, and staid for them; and he was to go out of Town, for he had his Boots on.

There is yet this Circumstance further, wherein those four do all agree, That as he went out of Town the 3d of *August*, so he did not return till the 14th of *September*; for they say it was the *Saturday* Fortnight before *Michaelmas*, and the same Day of the Week that *Michaelmas-day* was of. So that you will find, that there is a constant Proof, and as plain a one as any possibly can be in the world, as to the time of his going out and coming home. And where he was in the mean time, proved directly by a great Company of Witnesses, except one Day. For you see, the 3d of *August* he went to my Lord *Aston's* at *Standon*: Several there are that saw him there the 4th, and dined with him there; particularly, Sir *Edward Southcoat*. And to shew that it is not a thing they are positive in, and swear it roundly without Consideration, they give you an account of the Reasons of their Knowledge. You are to consider also the Testimony given by my Lord *Aston*, a Person of great Honour and Quality: Says he, tho' I dare venture all I am worth in the World upon the Truth of it, that *Ireland* did go along with me all the Journey; yet, because I did not take such particular notice of the rest of the time as I did of those two Days, I will not take upon me to swear it. If Mr. *Oates* had had the fortieth part of that Caution in his Evidence, I dare say, you had not had the trouble of this Day's Trial.

The Fifth, you have a great many Witnesses who give you an account that he came on *Monday* night to *St. Albans* with my Lord *Aston*; there is Sir *Edward Southcoat*, Mr. *John Southcoat*, my Lord *Aston*, the Coachman, and all the Servants. Sir *Edward* tells you, that *Monday* was a hot Day, and my Lord *Aston* took him into his Coach; but he rode a horseback all the rest of the way, and had a fine going Horse, which Horse Mr. *John Southcoat* bought of him when the whole Journey was ended. They tell you likewise, upon the 6th and 7th Days, the very Inns they lodged at upon the Road; and particularly at *Northampton*, they lay at the *George*, which was Sir *William Farmer's* House, which was then lett to an Inn-Keeper, because of the Fire in that Town. And, which is most material of all, for Mr. *Oates's* Satisfaction, you have for these times no less than four Witnesses, that are Protestants of the Church of *England*, who give you the same account. There are in all no less in number than fourteen to this Point; and whether you will believe those fourteen to be wilfully perjured, without Evidence to the contrary, is left to you; and if they do swear true, *Oates* that was yesterday found perjured, must be convicted of Perjury againto-day: For in short, the Question is, Whether you will believe Persons of Credit, that have no stain upon their Reputation, or *Oates*, that upon plain Evidence was found guilty of Perjury yesterday.

When we come to *Tixball*, we have no less number, that testify where he was from day to day, and from night to night, to the 17th, and from the 17th to the 26th. You have fifteen Witnesses more, all as direct and positive, as can be in the world, swearing where he was from time to time. It seems he came to *Tixball* on *Thursday* the 8th; there he staid till *Thursday* following, and then he went to *Holy-Well*: he lay the first Night at *Nantwich*; the next Night at *Holy-Well*, at the Sign of the Star, a notorious Inn there; he came to *Chester* on *Thursday*, and

and some of the Company left him there, but others came back with him to *Tixball*; who say, he went away on *Saturday* Morning, which happens to be the 17th. And thus you have a full account of him, quite from the 3d to the 17th, beyond all controversy, plainly proved by Persons of undoubted Credit. And if he were, where they say he was, from the 3d to the 17th, how could *Oates* swear true, that he took his leave of him here in Town, between the 8th and 12th?

Now let us come from the 17th to the 26th, and you have no less than fifteen Witnesses, four whereof are Protestants; which I urge not as a necessary Qualification to be a Witness, but to answer *Oates's* Objection, as tho' this was a Popish Design to destroy him. They have given you an account where he was from time to time, by convincing Circumstances, which you have heard; particularly of one Day that he went to *Litchfield*; one of the Witnesses went with him, and a Protestant Witness too, that came back with him again, and suppd with him at her Father's House. The Apothecary tells you, the Day that he saw him was a Wake-day, which is a remarkable Time in the Country. You are told of the Funeral of one Woman's Mother, that made her stay away from *Monday* till *Thursday*: of another Man's Child. I mention them but shortly to you, because I know you have taken Notes of them, and they are only used as Instances to manifest the Integrity of the Witnesses, that this was not a thing contrived on purpose to make a Story of, but did really happen in the Order they tell it. And I must remember you of another Circumstance some of them do swear, that whereas *Oates* had a mind to evade their Testimony by that Question; whether this was the same *Ireland* that was tried? It was most certainly he; for that is made too evidently to appear, by their seeing him executed at *Tyburn*, I am sorry to say, innocently.

From the third of *August* to the twenty-sixth, there is not one Night, but you hear where he was: And from the twenty-sixth of *August* to the seventh of *September*, you hear where he was, at the Horse-match, upon the Bowling-green, at *Mr. Heveningham's*, *Mr. Lowe's*, *Mr. Gerrard's*, *Mrs. Crompton's*, *Mr. Pendrel's*, *Mr. Gifford's*, and *Mrs. Harwell's*: And from the seventh to the fourteenth, save only one day, *viz.* the eighth, you have a particular Account too; and it does not appear by a rambling Evidence, but a faithful Account is given of all the Time, save that eighth day; which shews the Caution of the Witnesses. And it cannot but be easily presumed, he was either at *Tixball*, or thereabouts; because he was at *Wolverhampton* the seventh, coming to *London* the ninth. How easy is it to imagine him there the eighth; and the rather, because where he was the eighth, is not material to the Point in question before you, but where he was the first and second?

And, Gentlemen, if in case you had a mind to imagine, he was the eighth at *London*, it must be by a strained Imagination: for you must take him to beat *Wolverhampton* the seventh, and make him ride post to *London* that Night, and return post from *London* the eighth to *Tixball*, to be ready there early in the Morning upon the ninth, or take four days Journey back again; or else you cannot give the least countenance to any other Imagination, but that he was about *Tixball* the eighth of *September*.

Well, at *Tixball* you have him the 9th of *September*; and from thence, you have it testified by

all the Persons that came along with him all the way, that he lay one Night at *Coventry*, another at *Banbury*, a third at *Agmondisham*: That he baited at *Uxbridge* the fourth, which was the 12th of *September*; and came to *Sir John Southcoat's* House that Night, being *Thursday*. He staid there *Thursday* Night, and *Friday*; and upon *Saturday* the 14th of *September*, *Sir John Southcoat's* Man went along with him to *London*, whither he rode upon the Horse he sold *Mr. Southcoat*: the Man saw him at his Lodging; and he says, they wonder'd when he came in, that he had staid so long.

And when we return to the four Witnesses they begun with at first, who make all this Testimony to stand well together; that he went away the 3d of *August*, and was never in Town till the 14th of *September*; and every day, but the 8th of *September*, which makes nothing to the business, is particularly spoke to: and he must be there that day too, except you will put him upon very hard Service, to ride post to *London* and back again, in twenty-four Hours; for no other reason, but only to commit a Treason, that none ever found out, but *Mr. Oates*. And, I am sure, if he did, he took a great deal of pains, to a very little purpose.

Gentlemen, I have taken up much of your Time, and detained you the longer in this matter, because I cannot but say, with grief of heart, our Nation was too long befotted; and of innocent Blood there has been too much spilt, 'tis high time to have some account of it. 'Tis a Mercy we ought to bless Almighty God for, that we are prevented from spilling more innocent Blood! God be blessed, our Eyes are opened; and let us have a care for the future, that we be not so suddenly imposed upon by such Prejudices and Jealousies, as we have reason to fear, such Villains have too much fill'd our heads with of late.

Gentlemen, 'tis incumbent upon you, to try, according to the Evidence that has been given, whether the Defendant be Guilty, or Not Guilty. And 'tis incumbent upon us that sit here as Judges, to see the Law executed, as we will answer it at the Tribunal of the great Judge of Heaven and Earth; before whom we must appear, and receive our Trials at the Great Day. And God forbid, but we should use our utmost Endeavours, to inflict the greatest Vengeance, that the Justice of the Nation can permit us to inflict upon such Villains as these are; that have contracted so much Mischiefe and Reproach upon us, and so much Guilt upon themselves.

Gentlemen, I am sorry, I say, I have kept you so long. 'Tis a Case of such Importance, that I could not but say what I have done in it. There may be other Circumstances arising from the Evidence, which I may have omitted; but were very largely and fully spoken to by *Mr. Solicitor*. Whatsoever has been forgotten by him, or by me, I am sure, will be sufficiently supplied by your own Observations; for I know you to be Gentlemen of great Knowledge and Experience in Matters of this nature.

Then the Jury withdrew, to consider of their Verdict; and, after half an Hour's recess, return'd to the Bar; and, answering to their Names, deliver'd in their Verdict, That the Defendant was guilty of the Perjury whereof he stood indicted: Which being recorded, the Lord Chief Justice spoke to the Gentlemen of the Jury to this effect.

L. C. J. Look ye, Gentlemen, because there has been some notice taken to-day, as there was yesterday,

day, concerning the Opinions of Judges, about Verdicts that have been given, I would say a word or two to you: not that I much admire the doing of it, at any time; nor would I do it now, for your sakes; because, I am sure, you act according to your Consciences, and affect no Commendation. But because it may be necessary, for the Satisfaction of some People, that they should know our Opinions also in this matter; I must tell you, you have given a Verdict, that becomes your Honesty, Integrity, and Loyalty. And I declare, in the presence of Almighty God, the Searcher of Hearts, that had I been of the Jury, I must have given the same Verdict. Gentlemen, 'tis an honest and just Verdict, that you have given; and by it, you have contributed, as much as in you lies, to vindicate the Nation from the Infamy it has so long lain under.

Mr. Just. *Witbins*. For my part, I think, if you had given any other Verdict, you had found against plain Demonstration; the Evidence was so full and clear.

Mr. Just. *Holloway*. The Court is very well satisfied with the Verdict; and you have acquitted yourselves like worthy, honest Gentlemen.

Mr. Just. *Walcot*. There is nothing can be said to the Verdict, but that it is a just Verdict, and according to the Evidence.

[And then the Court arose.]

Die Luna, 11 Maii, 1685.

THIS Day Mr. *Wallop* moved, that in regard the Court was pleas'd to give the Defendant time, till Saturday next, to move in Arrest of Judgment, upon the Conviction on Friday last; they would please to give to the same day, to move in Arrest of Judgment, upon the Conviction on Saturday; which the Court granted. But afterwards, upon the Motion of Mr. Attorney-General, they order'd, that a Note of the Exceptions to both Indictments, should be sent to the King's Counsel, some days before Saturday.

Die Sabbati, 16 Maii, 1685.

THIS Day being appointed for the Defendant to move what he could in Arrest of Judgment, upon the two Convictions of Perjury; he was brought by Rule from the Prison, to the King's-Bench Court.

L. C. J. Mr. Attorney-General, have you any thing to move?

Mr. At. Gen. My Lord, I pray your Judgment upon *Oates*, who is convicted upon two Indictments, for two notorious Perjuries.

L. C. J. Who is Counsel for *Oates*?

Mr. At. Gen. Mr. *Wallop* moved for him.

L. C. J. What is it that Mr. *Wallop* has to say.

Oates. My Lord, I desire I may speak one Word. It was Thursday Night before my Attorney could make an end of examining the Records; Sir *Samuel Astry* knows it very well: Then I sent the Rule to those Gentlemen that were assign'd to be my Counsel; and the Exceptions were deliver'd in but yesterday. I pray I may have a Day or two more, that my Counsel may be prepared to argue for me.

L. C. J. We cannot do that; we gave you beyond the ordinary Rules, in extending it till today.

Mr. At. Gen. My Lord, he talks of examining the Records; he had Copies of them all this long Vacation.

Oates. My Lord, my Attorney will be ready to make Oath, that he finish'd the examining but on Thursday Night.

L. C. J. We do all know they were pleaded to the last Term; and you have had all this Vacation, to consider of them: And we have indulg'd you beyond the ordinary Time.

Oates. My Lord, I desire but a day or two more.

L. C. J. No, we cannot do it; we have done more already than we ordinarily do. Persons that are convicted, use to have but four Days allow'd them to move in Arrest of Judgment; but you, instead of having but four Days after, had eight.

Oates. If your Lordship pleases to give me time till Monday.

L. C. J. I tell you, we cannot do it. If Mr. *Wallop* have any thing to say for you, we'll hear him.

Mr. *Wallop*. I have nothing to say.

Mr. At. Gen. Here are four Exceptions deliver'd to me last Night, as made by Mr. *Wallop*.

L. C. J. But he says he has nothing to say. We know not whose these Exceptions are.

Oates. I do deliver in those Exceptions, my Lord; pray let them be read.

L. C. J. Read them, Sir *Samuel Astry*.

Cl. of Cr. Reads. *Dominus Rex versus Oates*. The Defendant's Exceptions.

I. That a Witness sworn in the behalf of the King in a Process of High Treason, cannot be punish'd for Perjury by the King.

II. That it does not appear, that the Indictments of *Ireland*, &c. found in *Middlesex*, were legally transmitted into *London*; and consequently, all the Proceedings thereupon were *coram non Judge*.

III. That the Perjuries assign'd, are in Matters foreign to the Issue.

IV. It is *Resolutio Signat'* in that part of the Indictment, that mentions what the Defendant swore; and in the Perjury assign'd, 'tis *Resolutio Signanda*; and it is no good Assignment of the Perjury.

Mr. Just. *Witbins*. These are doughty Exceptions indeed.

L. C. J. Mr. Attorney, what say you unto them?

Mr. At. Gen. Truly, my Lord, I think I need not say much to them. The first Exception is a plain Mistake of the Indictment: For had Mr. *Oates* been indicted upon the Statute, it had been something; but at the Common Law, certainly he may be prosecuted by the King, tho' he was Witness for the King before. As to the second, that it does not appear *Ireland's* Indictment was well transmitted from *Middlesex* to *London*; that, sure, is well enough: For after it is recited, that they were so and so indicted, it does set forth, that the Trials were had upon Records there depending before the Commissioners of *Oyer* and *Terminer*, and Goal-delivery; and it shall be taken, that they were well brought before them. As to the third Exception, that the Perjuries assign'd are foreign to the Matter in Issue; that is not so: For it is apparent, one of the Indictments is in the express Point of the great Treason charg'd against them, that is, the Consult of the 24th of *April*. And as to the second Indictment, it appear'd upon the Evidence, that there was a treasonable Meeting sworn in *August*; and he swore *Ireland* was here in *Town* in the beginning of *August*,

August, and in the beginning of *September*. And then for the fourth matter, that he swore he saw them sign it; and the Perjury assigned is, that he did not carry it to be signed; that receives a plain Answer: For we alledge, he falsly and corruptly swore that he was present, and that he carried the Resolution to be sign'd, and he saw them sign the Resolution. Now, in these two things we have laid the Perjury; 1. We say he was not there: And, 2. He carried no such Resolution to be sign'd. Indeed, we do not say that he did not see it sign'd, nor we need not; for if he were not there, nor did carry it, he could not see them sign it. There is nothing in the Exceptions, my Lord; and therefore, I pray your Judgment.

L. C. J. Is there any body of Counsel for Mr. *Oates*, that will say any thing to these Exceptions?

Oates. I pray, my Lord, that I may have liberty but till *Monday*, for my Counsel to prepare.

L. C. J. No, we cannot do it: Indeed, if there had been any colour, or weight in the Exceptions, it might have been something; tho' we have indulg'd in this case already, more than ever we used to do in Cases of this nature; for it is known to every body, that knows any thing of the Course and Practice of the Court, that after Conviction, no more than four Days are allow'd, to move in Arrest of Judgment. And being the Practice of the Court, it is the Law of the Court; and I am sure, as little Favour ought to be shewn in a Case of Perjury, as in any Case whatsoever: But yet, however, because he should not think that the Extremity of the Law was aimed at by the Court in this Case, and he hinder'd in his legal Defence, the Court did indulge him more time than is usually granted in such Cases. Now, as for the Exceptions, certainly they are very frivolous.

For the *First*, It would be admirable Doctrine indeed, in case it should obtain, that if a Man be a Witness in any Case for the King, and forswear himself, he should not be prosecuted for Perjury at the King's Suit: For we know that no Man can be prosecuted for his Life, (except it be in Cases of Appeal) but at the Suit of the King; and to be sure, all Prosecutions for Treason must be at his Suit. If then Witnesses come and forswear themselves, to take away Men's Lives, and they should not be called in question for it, criminally, by the King; that were a fine way to sanctify the greatest Villany, and make the Process of Law to become an Instrument of the most infamous Cruelty in the World. I presume, no Gentleman at the Bar would think that an Exception fit to put his Hand to.

Then as to the *Second*, That the Perjury is not assigned in Points material to the Issue, that is plainly otherwise; for the time must needs be very material, because it was impossible that Mr. *Ireland* could be guilty of the Treason sworn against him, at his Chamber in *Russel-street*, between the 8th and 12th of *August*, if he were not in Town between the 8th and 12th of *August*: Nor could he be privy to the Treason sworn by *Bedloe* the latter end of *August*, or the beginning of *September*, in *Harcourt's* Chamber, if he were out of Town from the 3d of *August* till the 14th of *September*; and therefore both those Perjuries were in the very Points in Issue.

And then for the 24th of *April*, which is the main Perjury of all; it is not laid in this Indictment, that there was no Consult of the Jesuits upon that Day: nor is there any notice taken, that there was

no Consult at the *White-Horse* Tavern; but it says only, that *Oates* did swear, there was a Consult there, and that he was present at it; and that he saw the Resolution written down by *Mico*, if I do not misremember the Name: And that upon the 24th of *April*, he went with it from Chamber to Chamber, to have them sign it. And then comes the Indictment, and assigns the Perjury, *Ubi reverè* he was not at the *White-Horse* Tavern that Day; and I think it is pretty plain he was not, for he was then at *St. Omers*.

Then admitting all that Matter about the signing of the Resolution, to be out of doors, a plain Perjury is assign'd and prov'd. For it was most proper for them to lay it as they did; and so it was in the other Point too, he swore he carried the Resolution from Chamber to Chamber, and saw it signed. Now, say they, he did not carry it from Chamber to Chamber, to be signed; and if so, then he could not see it signed; and it will all be well enough sure. And if any one part of the Oath he swore proves false, that is sufficient to maintain this Verdict; and 'tis notoriously plain, it was false throughout.

And of this Matter he now stands convicted, upon as full and plain an Evidence as ever was given in any Case in the World; and I am sorry to think that any Man, who is guilty of such an Offence, should continue so obstinate and hardened in Villany as he appears to be.

But I think it not amiss for me to say something upon this occasion, for the Satisfaction of some that hear me; and for an Example for the future. The Crime whereof this Man stands convicted, is certainly a very heinous one, attended with such dismal Consequences that ensued upon it, that I think no Man can have a true Christian Spirit in him, but he must begin to melt with the Consideration of the great Mischiefs his Perjury has brought upon himself and us: It has brought the Guilt of innocent Blood upon many; to be sure it hath on his own Head, and I pray God deliver all Men from having any hand in innocent Blood.

And as the Crime is great, so it is to be known, that a proportionable Punishment of that Crime can scarce by our Law, as it now stands, be inflicted upon him. But that you may see we have considered how to punish it, as such a Crime does deserve; we have consulted with all the Judges of *England*, that if the Law would allow it, he might have such a Judgment for this heinous Offence, as might be proper to terrify all others from committing the like again. For Punishment is not intended only for the sake of the Offender, to reward him according to his Deserts; but it has a Prospect also of Example and Terror to all others, that they should take care how they offend in any such manner, and that is as considerable a part of the End of the Law as any other.

Gentlemen, it is known, that by the old Laws of *England* Perjury was punished with Death; it grew a little more moderate afterwards, not to make the Crime the less, but because of the Danger there might be of Malice of some revengeful Persons, by endeavouring by Perjury to convict others of Perjury. But the next Step was cutting out of the Tongue, to shew that the Law in all Ages had an Abhorrence of false Oaths, and punished that impious Crime of Perjury with the most terrible Punishments.

Since that time our Ancestors have yet been more moderate, and have not extended the Judgment to Life and Member; but by the unanimous

Opinion

Opinion of all the Judges of *England*, whom we purposely consulted with upon this Occasion, it is conceived, that by the Law, Crimes of this nature are left to be punished according to the Discretion of this Court, so far as that the Judgment extend not to Life or Member.

And I tell you this, Gentlemen, the rather, because I observe our Law-Books are more silent here, in regard the Judgments for these Offences are not so solemnly and particularly entered up, as they are in *Cases Capital*: But they are left more discretionary; because that Crimes of this nature may be attended with particular Circumstances either to aggravate, or lessen the Punishment: And therefore the Punishment might be distributed accordingly.

And for that reason, Gentlemen, it is well known to us all, that that was the occasion of taking away the Court of *Star-Chamber*, as the Preamble of the Act for taking it away does manifest: That inasmuch as the Authority, for the Correction of all Offences whatsoever, was by the common Law of this Land originally fixed in the Court of *King's-Bench*; and the Proceeding by Information in the *Star-Chamber*, when it might be by Process in this Court, was look'd upon as a double way of Vexation; therefore that Court is abolished, and the Authority of the *King's-Bench* Court left entire. And it is notoriously known, how Punishments, of all sorts and kinds, were inflicted by the Court of *Star-Chamber* for Perjury, and such like Offences, while that Court was up; and since that time, in *Fox's Case* and others that you have heard of, it has been according to the Discretion of this Court, punished, as severely as this Court thought fit, so as the Sentence did not extend to Life or Member.

Now I thought it proper for me, not only for the sake of the Case now before us; but also for your Learning sake, to tell you, this was the Resolution of all the Judges of *England*, upon Consideration of the Precedents, and of all the Rules of Law; which have been fully debated, and considered of: And this, I declare, is their unanimous Opinion.

If then this be so, and it is left to the Discretion of the Court to inflict such Punishment as they think fit; far be it from this Court at any time, as on the one side to inflict Punishment heavier than the Crimes deserve, (no, we would rather use Commiseration, than extraordinary and exorbitant Severity;) so, on the other side, to let go Crimes so notorious and heinous as these, without the severest Mark that can, by Law, be put upon them. When a Person shall be convicted of such a foul and malicious Perjury, as the Defendant here is, I think it is impossible for this Court, as the Law now stands, to put a Punishment upon him any way proportionable to the Offence, that has drawn after it so many horrid and dreadful Consequences: We do therefore think fit to inflict an exemplary Punishment upon this villanous perjur'd Wretch, to terrify others for the future; which is not my part to pronounce: But what it is, my Brother will tell you.

Mr. *At. Gen.* My Lord, you will be pleased to remember there are two Judgments.

L. C. J. There are so, we know it very well, Mr. *Attorney.*

Mr. *At. Gen.* That which was tried first, was about the Consult about the 24th of *April*; we desire that some particular Mark may be set upon that Day.

Then the Judges consulted a little together, and Mr. Justice Withins pronounced the Sentence thus.

Mr. Just. *Withins.* Titus Oates, you are convicted upon two Indictments for Perjury; I say, for Perjury: I must repeat the Word twice, because you are doubly convicted. One of the greatest Offences, that our Law has cognizance of; 'tis so in its own nature: But your Perjury has all the Aggravations that can be thought of to heighten it. If a Man kills another with his Sword, and there be forethought Malice in the Case, he is to be hang'd for it: But when a Man shall draw innocent Blood upon himself by a malicious, premeditated, false Oath, there is not only Blood in the Case, but likewise Perjury, corrupt, malicious Perjury: I know not how I can say, but that the Law is defective that such a one is not to be hang'd. For, if we consider those dreadful Effects which have followed upon your Perjury, we must conclude our Law defective; they are such, as no Christian's Heart can think of, without bleeding for that innocent Blood which was shed by your Oath; and every knowing Man believes, and every honest Man grieves for. God be thanked, our Eyes are now opened; and indeed we must have been incurably blind, if they had not been opened first by the Contradictions, Improbabilities, and Impossibilities in your own Testimony; but likewise by the positive, plain, direct and full Proof of forty-seven Witnesses to one particular Point. Against whom you had not one Word to object, but they were Papists and *Roman* Catholics; which is no Objection at all: tho' at the same time, it did appear, that nine or ten of them were Protestants of the Church of *England*. That was all you had to say; you had not one Word to justify your self from that great and heinous Perjury you were accused of. I hope, I have not been thought a Man of ill-nature; and, I confess, nothing has been so great a Regret to me in my Place and Station, as to give Judgment, and pronounce the Sentence of Law against my Fellow-Subjects, my Fellow-Creatures: But as to you, Mr. *Oates*, I cannot say, my Fellow-Christian. Yet, in this Case, when I consider your Offence, and the dismal Effects that have follow'd upon it, I cannot say, I have any Remorse in giving Judgment upon you. And therefore having told you my Thoughts shortly about your Crime, and how readily I pronounce your Sentence; I shall now declare the Judgment of the Court upon you. And it is this:

First, *The Court does order for a Fine, That you pay a Thousand Marks upon each Indictment.*

Secondly, *That you be stript of all your Canonical Habits.*

Thirdly, *The Court does award, That you stand upon the Pillory, and in the Pillory, here before Westminster-Hall Gate, upon Monday next, for an Hour's time, between the Hours of Ten and Twelve; with a Paper over your Head (which you must first walk with round about to all the Courts in Westminster-Hall) declaring your Crime. And that is upon the first Indictment.*

Fourthly, (On the second Indictment.) *Upon Tuesday, you shall stand upon, and in the Pillory, at the Royal Exchange in London, for the space of an Hour, between the Hours of Twelve and Two; with the same Inscription.*

You shall upon the next Wednesday be whipp'd from Aldgate to Newgate.

Upon Friday, you shall be whipp'd from Newgate to Tyburn, by the Hands of the Common Hangman.

But, Mr. Oates, we cannot but remember, there were several particular Times you swore false about: And therefore, as annual Commemorations, that it may be known to all People as long as you live, we have taken special care of you for an annual Punishment.

Upon the 24th of April every Year, as long as you live, you are to stand upon the Pillory, and in the Pillory, at Tyburn, just opposite to the Gallows, for the space of an Hour, between the Hours of Ten and Twelve.

You are stand upon, and in the Pillory, here at Westminster-Hall Gate, every 9th of August, in every Year, so long as you live. And that it may be known what we mean by it, 'tis to remember, what he swore about Mr. Ireland's being in Town between the 8th and 12th of August.

You are to stand upon, and in the Pillory, at Charing-Cross, on the 10th of August, every Year, during your Life, for an Hour, between Ten and Twelve.

The like over-against the Temple Gate, upon the 11th.

And upon the second of September, (which is another notorious Time, which you cannot but be remember'd of) you are to stand upon, and in the Pillory, for the space of one Hour, between Twelve and Two, at the Royal Exchange: And all this you are to do every Year, during your Life; and to be committed close Prisoner, as long as you live.

This I pronounce to be the Judgment of the Court upon you, for your Offences. And I must tell you plainly, if it had been in my power to have carried it further, I should not have been unwilling to have given Judgment of Death upon you; for, I am sure, you deserve it.

L. C. J. Mr. Attorney, we will take care, that the Clerk shall distinguish the Judgments in the Entries. [Then the Prisoner was taken away.]

This Sentence was afterwards executed with great Severity; but immediately after the Revolution, the House of Commons came to this Vote.

Tuesday the 11th of June, 1689.

Resolv'd, That the Prosecution of *Jacobus Oates* upon two Indictments for *Perjury* in the Court of King's-Bench, was a Design to stifle the *Popish Plot*, and that the Verdicts given thereupon were *corrupt*, and the Judgments given thereupon were *cruel* and *illegal*.

There was an Attempt to get this Judgment revers'd, but still continuing his Disability as a Witness; but this Attempt did not succeed, only the House of Lords address'd the King to grant him a Pardon, which was accordingly done.

CXXXIII. The Trial of the Lady ALICE LISLE*, at Winton, for High-Treason, August 27, 1685. 1 Jac. II.

Cl. of Ar.  LICE Lisle, hold up thy Hand. [Which she did.] Thou standest here indicted by the Name of *Alice Lisle*, of the Parish of *Ellingham*, in the

County of *Southampton*, Widow; for that thou, as a false Traitor against the most illustrious and most excellent Prince, *James the Second*, by the Grace of God, of *England, Scotland, France, and Ireland* King, thy supreme and natural Lord, the Fear of God in thy Heart not having, nor weighing the Duty of thy Allegiance; but being mov'd and seduced by the Instigation of the Devil, the Love and true, due and natural Obedience, which a true and faithful Subject of our said Lord the King, towards him our said Lord the King, should, and of right ought to bear, wholly withdrawing, and with all thy might intending the Peace and common Tranquillity of this Kingdom of *England* to disturb, and War and Rebellion against our said Lord the King, within this Kingdom of *England* to stir up and move, and the Government of our said Lord the King, within this Kingdom of *England* to subvert,

and our said Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of this his Kingdom of *England* to depose, cast down, and deprive, and our said Sovereign Lord the King to Death and final Destruction to bring and put, the 28th Day of *July*, in the first Year of the Reign of our said Sovereign Lord *James the Second*, by the Grace of God of *England, Scotland, France, and Ireland* King, Defender of the Faith, &c. at the Parish of *Ellingham* aforesaid, in the County aforesaid, well knowing one *John Hicks*, of *Keinsham* in the County of *Somerset*, Clerk, to be a false Traitor, and as a false Traitor traitorously to have conspired and imagined the Death and Destruction of our said Lord the King, and War, Rebellion and Infurrection against our said Lord the King, within this Kingdom of *England* traitorously to have levied and raised: Thou the said *Alice Lisle* afterwards, to wit, the same 28th Day of *July* in the first Year of the Reign of our said Sovereign Lord the King that now is, at the Parish of *Ellingham* aforesaid, in the County aforesaid, the said *John Hicks* in thy Dwelling-House, situate at the Parish aforesaid.

* Burn. Hist. of his own Times, Vol. I. p. 649. She was the Widow of *John Lisle*, who was Lord President of the High Courts of Justice, in the time of *Oliver Cromwell*, one of the Lords Commissioners for the Custody of the Great Seal, and had been one of King *Charles the First's* Judges; but his Lady was very averse to it.

aforefaid in the County aforefaid, secretly, wickedly and traitorouſly didſt entertain, conceal, comfort, uphold and maintain; and that thou the ſaid *Alice Liſle* then and there, for the comforting, upholding and maintaining of the aforefaid *John Hicks*, Meat and Drink unto the ſaid *John Hicks* then and there maliciously and traitorouſly didſt give and deliver, and cauſe to be given and delivered, againſt the Duty of thy Allegiance, againſt the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. How ſayeſt thou, *Alice Liſle*, art thou Guilty of the High-Treaſon contained in this Indictment, or not Guilty?

Liſle. Not Guilty.

Cl. of Ar. Culyprit, by whom wilt thou be tried?

Liſle. By God and my Country.

Cl. of Ar. God fend thee a good Deliverance.

Then Proclamation was made for the Jurors impanel'd to try the Iſſue between our Sovereign Lord the King, and the Priſoner at the Bar, to appear. And the Priſoner deſiring, by reaſon of her Age and Infirmities (being thick of hearing) ſome Friends of her's might be allow'd to ſtand by her, and inform her of what paſſ'd in the Court; one Matthew Brown was named, and allow'd of by the Court to give her all Aſſiſtance that he could in that matter. Then the Names of the Jurors were call'd over, and the Appearance recorded: And it being a Cauſe of great Expectation and Moment, the Lord Chief Juſtice order'd the Sheriff to take care, that a very ſubſtantiall Jury ſhould be returned, of the beſt Quality in the County.

Then Proclamation for Information and Evidence was made in uſual manner, and the Priſoner was bid to look to her Challenges, and the Jury was ſworn in this Order.

Sworn.

Gabriel Whiſtler, Eſq;
Henry Dawley, Eſq;
Francis Morley, Eſq;
Francis Pawlett, Eſq;
Richard Godfrey, Eſq;
Thomas Dowſe, Eſq;
Dutton Gifford, Eſq;

Sworn.
Thomas Crop,
Richard Snatt.

Challenged.
Lawrence Kerby,
John Fletcher,
William Clarke,
John Haily,
Richard Sutton,
Richard Snatt,
Robert Burgeſs.

Gabriel Whiſtler,
Henry Dawley,
Francis Morley,
Francis Pawlett,
Richard Godfrey,
Thomas Dowſe,

} *Jur* { *Dutton Gifford,*
 John Cager,
 Thomas Crop,
 Richard Snatt,
 Matthew Webber,
 John Fielder.

Challenged.

Robert Barton,
Godſon Penton,
William Taylor,
Thomas Wavell,
Anthony Talden.

Sworn.
John Cager.

Challenged.
Robert Forder,
Thomas Lloyd,
Thomas ———
Philip Rudſby.

Sworn.
Matthew Webber.

Challenged.
George Prince,
Stephen Steele,
Thomas Merrot.

Sworn.
John Fielder.

So the Twelve Sworn were theſe:

Cl. of Ar. Alice Liſle, hold up thy Hand: You Gentlemen of the Jury that are ſworn, look upon the Priſoner and hearken to her Charge: She ſtands indicted by the Name of *Alice Liſle, &c.* Upon this Indictment ſhe hath been arraigned, and upon that Arraignment ſhe has pleaded thereunto, Not Guilty; and for her Trial has put her ſelf upon God and the Country, which Country you are: Your Charge is to inquire, whether ſhe be Guilty of the High-Treaſon whereof ſhe is indicted in manner and form as ſhe ſtands indicted, or Not Guilty: If you find her Guilty, you are to enquire what Goods or Chattels, Lands or Tenements ſhe had at the time of the High-Treaſon committed, or at any time ſince: If you find her Not Guilty, you are to enquire whether ſhe did fly for it; if you find that ſhe did fly for it, you are to enquire what Goods or Chattels ſhe had at the time of the Flight, as if you had found her Guilty. If you find her Not Guilty, nor that ſhe did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. Mundy. May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, This is an Indictment of High-Treaſon againſt *Alice Liſle*, the Priſoner at the Bar; and the Indictment ſets forth, that ſhe, as a falſe Traitor againſt our Sovereign Lord King *James* the Second, her ſupreme and natural Lord, not having the Fear of God in her Heart, nor regarding the Duty of her Allegiance, but being moved and ſeduced by the Intigation of the Devil, and withdrawing the Love and true Obedience which ſhe owed to him as her Sovereign, and intending, as well as in her lay, to diſturb the Peace of the Kingdom, and to depoſe the King and put him to death, the 28th day of *July*, in the firſt Year of this King, well knowing one *John Hicks*, late of *Keinſham* in the County of *Somerſet*, Clerk, to be a falſe Traitor, and to have raiſed War and Rebellion againſt the King, ſhe did then at *Ellingham* in this County, in her Dwelling-Houſe traitorouſly entertain, conceal and comfort the ſaid *John Hicks*, and for his maintenance and comfort then gave him Meat and Drink. This is laid to be againſt the Duty of her Allegiance, againſt the Peace of the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided: To this ſhe has pleaded Not Guilty; if we prove this Fact, you muſt find her Guilty.

Mr. Pollexfen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the King. The Priſoner that ſtands now at the Bar, *Alice Liſle*, is the Widow of one *Liſle*, who was in his Life-time ſufficiently known: The Perſon mentioned in the Indictment to be entertained and concealed by her, *John Hicks*, is a Conventicle-Preacher, and one, that for bringing the traitorous Purpoſes intended in this late horrid Rebellion to effect, was one of the greateſt and moſt active Inſtruments: for he was perſonally in this Rebellion, and did perſuade and exhort ſome loyal Perſons, that happened to have the Miſfortune of being taken Priſoners by that rebellious Crew, to quit their Duty and Allegiance to the King their Sovereign Lord, and become Partakers with them and the reſt of his traitorous Accomplices, in taking Arms under their falſe pretended Prince. This, my Lord, we ſhall prove to you by plain, evident and undeniable Teſtimony of thoſe very Perſons whom this Seducer thus applied himſelf to. Gentlemen, after it pleaſed God, by his Bleſſing on the victorious Arms of the King, that the Rebels were defeated, their pretended Prince

and Head, with some of the chief of his Accomplices, were taken Prisoners, and that in a place near the House where the Prisoner lived, when all the Country was full of hurry in pursuit after those wicked Rebels, thus, by God's Blessing and Providence, dissipated, and forc'd, like Vagabonds, to skulk up and down: then does this *Hicks*, having got from the Battle as far as *Warminster* in the next County, send a Messenger, one *Dunne*, to the Prisoner's House, to desire her and request her, that she would receive and harbour him and his Friend, (who that was, will appear by and by.) Mrs. *Lisle* returns an Answer by the Messenger, that she would receive him, but does withal give particular Direction, that the time when they did come should be late in the Evening. Accordingly he comes in the beginning of the Night, at 10 of the Clock, booted and spurred, and brings with him another Arch-Rebel, one *Nelthorp*, that stands outlaw'd for a most black and horrid Treason. When they come to the Prisoner's House, they turn their Horses loose at the Gate; for the Danger was so great, and their Apprehensions of being taken so urgent upon them to conceal and shift for themselves, that they thought it convenient to let their Horses go where they would. When they came there, the Messenger, as we shall prove by himself, was convey'd away to a Chamber; but Mrs. *Lisle* causes Meat and Drink to be set before Mr. *Hicks* and *Nelthorp*, and they supped with her, and afterwards they were lodg'd by her particular Order and Direction. The next Morning Colonel *Penruddock*, who had some intimation, in his search after the Rebels, that some Persons lay conceal'd in Mrs. *Lisle's* House, comes thither, and tells her, after he had beset the House, *Madam, you have Rebels in your House, I come to seize them, pray deliver them up.* She denied that she had any in her House; but upon Search, *Hicks*, and *Nelthorp*, and that other Fellow, the Messenger, were all found there, and the thereupon secured with them. The Method wherein we shall give our Evidence, will be this; we shall first begin with this piece of Evidence, that we shall prove, that *Hicks* was actually in the Army, and in the Rebellion; and then we shall prove the several subsequent Facts as have been opened. We desire Mr. *Pope*, Mr. *Fitzberbert*, and Mr. *Taylor* may be sworn.

Lisle. My Lord, as for what is said concerning the Rebellion, I can assure you, I abhor'd that Rebellion as much as any Woman in the world—

L. C. J. Look you, Mrs. *Lisle*, because we must observe the common and usual

Methods of Trial in your Case, as well as others, I must interrupt you now: You shall be fully heard when it comes to your turn to make your Defence, but any thing you say now beforehand is altogether irregular and improper. You, it may be, are ignorant of the Forms of Law, therefore I would inform you: You are first to hear what your Accusation is; you shall ask any Questions of the Witnesses that you will, after the King's Counsel have examin'd them, as they go along; and when all their Testimony is delivered, you shall be heard to make your own Defence, and have full scope and liberty to enlarge upon it as long as you can: it is a business that concerns you in point of Life and Death; all that you have or can value in the World lies at stake, and God forbid that you should be hinder'd, either in time or any thing else, whereby you may defend yourself; but at present it is not your turn to speak, for the Forms of Law require

your Accusers first to be heard; and it is absolutely requisite, that the usual Forms and Methods of Law be inviolably observ'd, and be sure it does the Prisoner no injury that the Law is kept so strictly to; and we have that Charity, as well as Justice, that it becomes, and is not below all Courts to have for Persons in your Condition; and we are obliged to take care, that you suffer no Detriment or Injury by any illegal or irregular Proceedings. For tho' we sit here as Judges over you by Authority from the King, yet we are accountable, not only to him, but to the King of Kings, the great Judge of Heaven and Earth; and therefore are obliged, both by our Oaths, and upon our Consciences, to do you Justice, and by the Grace of God we shall do it, you may depend upon it. And as to what you say concerning your self, I pray God with all my heart you may be innocent. Pray call your Witnesses.

Mr. *Pollexfen.* Swear Mr. *Pope*, Mr. *Fitzberbert*, and Mr. *Taylor.* *[Which was done.]*

L. C. J. Who do you begin with?

Mr. *Pollexfen.* Mr. *Pope*, pray will you tell my Lord and the Jury what you know concerning this *Hicks*: Pray tell your whole Knowledge.

Mr. *Pope.* My Lord, I had the misfortune to be taken Prisoner by *Monmouth's* Army, going about some Business of my own; and after I had been taken some few days, we happened to be brought to *Keisbam*, and we were put into Sir *Thomas Bridges's* Stables, and kept under a Guard there. Whilst we were there, I did see that Gentleman that goes by the Name of Mr. *Hicks*, who is now in *Salisbury* Goal, and there I saw him yesterday; he came and asked for the Prisoners, which were about four or five in number, and he asked them how they did? They made him little reply. Then he desired to know how we were dealt with, whether we were kindly used, or no? I replied, no, for we had had but a piece of Bread these two Days. He made me answer, that he was sorry for that, for it was otherwise intended. And there was with him another Gentleman that was called the King's Chaplain, that is, the Duke of *Monmouth's*; and afterwards he pretended he would do us a Kindness in speaking to the King (as he called him) for us. He talked with us some little time, and by and by he began to ask us what was the reason that we were there? We told him we were taken Prisoners; upon which, saith he, this King (meaning, as I suppose, the late Duke of *Monmouth*) is a good King and a Protestant; and a great deal to that purpose, with some reflecting Words on the Government, and upon the Person of the King: and he told us, he wondered what we had to say for our selves, being Protestants, that we did what we did in serving a Popish Prince, and not obeying a Protestant one. This is the Substance of what I have to say upon this matter.

L. C. J. Tho' you were pleas'd to phrase it, Sir, in the beginning of your Testimony, a Misfortune that you were taken Prisoner by the Rebels; yet, I suppose, you could not be without the Consolation of a good Conscience, that you suffer'd in the way of doing your Duty.

Mr. *Pope.* My Lord, I am very well satisfied I did suffer in a good Cause.

L. C. J. There is one piece of happiness in it; that by that means you are able to give this Testimony this day, and do the King this piece of Service. But pray Sir, let me ask you this Question:

Are you sure the Man you saw yesterday at *Salisbury*, is the same Man that you spoke with at *Keinsbam*, that goes by the Name of *Hicks*?

Mr. *Pope*. Yes, my Lord; and when I was there yesterday with him, I asked him whether he knew me; and told him, said I, you may well remember you saw me at *Keinsbam*. Saith he, I do not remember that ever I saw your Face before. Said I, you remember Sir *Thomas Bridges's* Stables there? Said he, I remember I did see some Prisoners. Said I, was not it there you saw me, and had such a Discourse with me? He seemed to deny it, but I told him, a Man of your Coat should not tell Untruths, you cannot but remember you saw me there. Saith he, I will recollect my Memory if I can; and he afterwards sent to the *George* in *Salisbury* for me, and then he told me, he did recollect that he saw and talked with such a Person there.

Mr. *Rumsey*. Sir, I would ask you this one Question; did you see him in the Army about the time of the Fight?

Mr. *Pope*. I think I saw him about a day or two before.

L. C. J. Had he any Weapon on?

Mr. *Pope*. I think not, my Lord.

Mr. *Pollexfen*. Our next Witness is Mr. *Fitzberbert*. Pray, Sir, will you give an account to my Lord and the Jury, what you know of this *Hicks*.

Mr. *Fitzberbert*. My Lord, during the time that I was a Prisoner with this Gentleman at *Keinsbam*, the 25th of *June*, I saw this Man, *John Hicks*, who held a Discourse with Mr. *Pope* near an Hour's time, disparaging the Government and his Majesty, and extolling the Duke of *Monmouth*, what a brave Prince, and how good a Protestant he was.

L. C. J. Then he was among them, was he?

Mr. *Fitzberbert*. Yes, my Lord, he was, and I saw him yesterday at *Salisbury*.

L. C. J. Is that the same Man that you saw in *Monmouth's* Army?

Mr. *Fitzberbert*. Yes, he owns himself to be the same Man.

Mr. *Pollexfen*. How often did you see him there besides that time when he discoursed with Mr. *Pope*?

Mr. *Fitzberbert*. I saw him sometimes out of the Town, but I never discoursed him.

L. C. J. Did you see him there before or after that Discourse?

Mr. *Fitzberbert*. It was after.

L. C. J. Would the Prisoner ask this Witness, or the other, any Questions?

Lisle. No, my Lord.

Mr. *Pollexfen*. Then, Mr. *Taylor*, what say you to the matter?

Mr. *Taylor*. My Lord, I saw him at the same time that these Gentlemen speak of, at Sir *Thomas Bridges's* at *Keinsbam*.

Mr. *Pollexfen*. Were you a Prisoner there, Sir?

Mr. *Taylor*. Yes, I was.

Mr. *Pollexfen*. What Place was it you saw him in?

Mr. *Taylor*. It was in the Stables the first time that I saw him.

L. C. J. What Discourse had you with him? What did he say to you?

Mr. *Taylor*. He said, he wonder'd at us, that we should take up Arms against so good a Prince, and a Protestant, as the Duke of *Monmouth*, and against the Protestant Religion, and hold up with Popery: Saith he, *York* is but a Papist; and a great many such Words.

L. C. J. Did you see him afterwards?

Mr. *Taylor*. Yes, my Lord; but I cannot tell particularly the Time and Place; up and down the Army.

L. C. J. Did you see him at *Salisbury*?

Mr. *Taylor*. Yes.

L. C. J. Is that the same Man?

Mr. *Taylor*. Yes, it is.

Mr. *Pollexfen*. Next, my Lord, we come to prove the Message and Correspondence between this same *Hicks*, and the Prisoner Mrs. *Lisle*.

Mr. *Jennings*. Swear Mr. *James Dunne*.

[Which was done.]

Mr. *Pollexfen*. If your Lordship please to observe, the Times will fall out to be very material in this Case: The Battle at *King's-Edgmore* was the 6th of *July*; three or four days after, was the taking of *Monmouth*, and my Lord *Grey* at *Ringwood*; upon the 26th of *July*, ten or twelve days after the taking of *Monmouth*, was this Message sent by *Dunne* to Mrs. *Lisle*: so we call *Dunne* to prove what Message he carried upon the 26th, and what Answer was return'd; he will tell you, that *Tuesday* was the time appointed for them to come, in the Night, and all the other Circumstances. But withal, I must acquaint your Lordship, that this Fellow, *Dunne*, is a very unwilling Witness; and therefore, with submission to your Lordship, we do humbly desire your Lordship would please to examine him a little the more strictly.

L. C. J. You say well: Hark you, Friend, I would take notice of something to you by the way, and you would do well to mind what I say to you. According as the Counsel that are here for the King seem to insinuate, you were employ'd as a Messenger between these Persons; one whereof has already been proved a notorious Rebel, and the other is the Prisoner at the Bar, and your Errand was to procure a Reception at her House for him.

Dunne. My Lord, I did so.

L. C. J. Very well. Now mark what I say to you, Friend: I would not by any means in the world endeavour to fright you into any thing, or any ways tempt you to tell an Untruth, but provoke you to tell the Truth, and nothing but the Truth, that is the Business we come about here. Know, Friend, there is no Religion that any man can pretend to, can give a countenance to Lying, or can dispense with telling the Truth: Thou hast a precious immortal Soul, and there is nothing in the World equal to it in value: There is no relation to thy Mistress, if she be so; no relation to thy Friend; nay, to thy Father or thy Child; nay, not all the temporal Relations in the world, can be equal to thy precious immortal Soul. Consider that the great God of Heaven and Earth, before whose Tribunal thou, and we, and all Persons are to stand at the last Day, will call thee to an account for thy rescinding his Truth, and take vengeance of thee for every Falshood thou tellest. I charge thee therefore, as thou wilt answer it to the great God, the Judge of all the Earth, that thou do not dare to waver one tittle from the Truth, upon any account or pretence whatsoever: For tho' it were to save thy Life, yet the value of thy precious and immortal Soul is much greater, than that thou shouldst forfeit it for the saving of any the most precious outward Blessing thou dost enjoy; for that God of Heaven may justly strike thee into eternal Flames, and make thee drop into the bottomless Lake of Fire and Brimstone, if thou offer to deviate the least from the Truth, and nothing but the Truth.

According to the Command of that Oath that thou hast taken, tell us who employ'd you, when you were employ'd, and where; who caus'd you to go on this Message, and what the Message was. For I tell thee God is not to be mock'd, and thou canst not deceive him, tho' thou may'st us. But I assure you, if I catch you prevaricating in any the least tittle (and perhaps I know more than you think I do; no, none of your Saints can save your Soul, nor shall they save your Body neither) I will be sure to punish every variation from the Truth that you are guilty of. Now come and tell us how you came to be employ'd upon such a Message, what your Errand was, and what was the Issue and Result of it.

Dunne. My Lord, there came a Man to my House, and desired me to go of a Message to my Lady *Lisle's*.

L. C. J. Prithee tell me when it was, and what Hour of the Day?

Dunne. What, when the Man came to my House?

L. C. J. Yes.

Dunne. That I will, my Lord.

L. C. J. Be sure you do, and do not speak one word, but what is true, and let the Truth come out o' God's Name.

Dunne. It was *Friday* Night.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot exactly tell that.

L. C. J. Was it after the Fight at *Weston*, or before?

Dunne. It was after the Battle, my Lord.

L. C. J. How many Days after was it?

Dunne. I cannot exactly tell.

L. C. J. Was it the *Friday* Seven-night after the Fight?

Dunne. No, it was not.

L. C. J. What was desired of thee at that time?

Dunne. He desired me to go of a Message to my Lady *Lisle's*.

L. C. J. Dost thou know what Man it was that came to thee, and desired thee to go on this Message?

Dunne. My Lord, I can tell what manner of Man he was.

L. C. J. Give me a Description of the Man.

Dunne. He was a short, black Man.

L. C. J. You say he was a short Man.

Dunne. Yes, he was so, my Lord.

L. C. J. Was he a swarthy, or a ruddy complexioned Man?

Dunne. He was not ruddy, but swarthy.

L. C. J. And what did he say to thee?

Dunne. He desired me to go to my Lady *Lisle's* for him, for one Mr. *Hicks*; and I went accordingly.

L. C. J. What were you to say when you came there?

Mr. *Pollexfen.* What Reward were you to have?

Dunne. That Man that came to me, promis'd me that I should be well rewarded for my pains.

L. C. J. Where do you live? (by the way.)

Dunne. In *Warminster* Parish.

L. C. J. How far is it from my Lady *Lisle's*?

Dunne. Six and twenty Miles, or thereabouts?

L. C. J. You did go, you say. When?

Dunne. Upon the *Saturday*.

L. C. J. Well, we are got thus far; you went to my Lady *Lisle's* upon the *Saturday*, and from one Mr. *Hicks*: What was your Errand?

Dunne. To know of my Lady *Lisle*, whether she would entertain Mr. *Hicks*.

L. C. J. Well, now go on.

Dunne. When I came to my Lady *Lisle's* House, I went to the Bailiff that belong'd to my Lady *Lisle*.

L. C. J. Ay, who was that Bailiff? Tell us his Name? I love to know Men's Names.

Dunne. His Name is *Carpenter*, I think.

L. C. J. Well, and what did you say to him?

Dunne. I ask'd him, whether my Lady would entertain one *Hicks*, or no: He told me he'd have nothing to do with it, but sent me to my Lady, and to my Lady I went; and when I came, I ask'd my Lady, whether she would entertain one Mr. *Hicks*, or no? She said, she did not know but she might.

L. C. J. Well, what then?

Dunne. My Lord, I'll tell you.

L. C. J. Ay, prithee take time to recollect thyself; but be sure thou speak nothing but the Truth. What said my Lady to thee?

Dunne. My Lady said, they might come to her House: And upon those Terms I went away home again, and return'd that Answer to the Messenger that came to me. I came home on the *Sunday* Night, and that Message I deliver'd unto him, and told him, that upon *Tuesday* Night they might come to my Lady's.

L. C. J. You told him, you say, they might come on *Tuesday*.

Dunne. Yes, my Lord, I did.

L. C. J. Therefore I would fain know from you, how you came to tell him, they might come upon *Tuesday*? For you said just now, my Lady's Answer was, that she did not know but she might entertain him. Had you any such Direction from *Carpenter*, or any one else, to tell him, that they might come on *Tuesday*?

Dunne. I had such Directions from my Lady.

L. C. J. Very well; then let us know what were the particular Directions she gave; tell us what further Directions you had from her?

Dunne. I will, my Lord, presently, when I have recollected my self.

L. C. J. Ay, prithee compose thy self, recollect thy self. [Then he paused for a good while.]

L. C. J. Come now, tell us, did she give you any Directions what time of the Day they might come thither; remember your self well, and tell us what she said to you?

Dunne. My Lord, I will, as near as I can, speak the Truth.

L. C. J. Ay, in God's Name let's have the Truth, whatsoever comes on it?

Dunne. I will, my Lord.

L. C. J. Come then, what time did she give Directions that they should come?

Dunne. On *Tuesday* in the Evening.

L. C. J. Upon your Oath, did she say *Tuesday* in the Evening?

Dunne. Yes, my Lord, she did.

L. C. J. what time in the Evening, early or late?

Dunne. She did not give any Directions at all about that, but only in the Evening.

L. C. J. What else did she say to you, tell us all the Discourse that passed between you?

Dunne. She said nothing else that I remember, my Lord.

L. C. J. Prithee, how did she say she would receive him, tell us what Words she used, for thou must

must needs imagine, we do suppose there must needs be some longer Discourse between you, than what you talk of

Dunne. All that she said was, she would entertain him.

L. C. J. Him! Who?

Dunne. Mr. *Hicks*.

L. C. J. Just now you talked of them, and, they: Did you mention no body to her but Mr. *Hicks*?

Dunne. My Lord, I was sent to see whether she would receive Mr. *Hicks*.

L. C. J. Prithee, Friend, mind what thou hast said, and recollect thy self, I'll repeat it to thee, because thou shalt see that I remember it all very well. It seems that a Man, a short black Man came to your House in *Warminster* Parish to get you to go for a Message to Mrs. *Lisle's*, to know whether she would entertain one *Hicks*, and that you went upon the *Saturday*, and first you met with *Carpenter*, and ask'd him that Question, whether his Lady would entertain one Mr. *Hicks*, and he told you he would have nothing to do with it; and thereupon you went to Mrs. *Lisle* and asked her the Question, and she told you that you should tell the Man that they should come the *Tuesday* following, and come in the Evening, and she would entertain him: Is not this what you have said?

Dunne. Yes, my Lord, it is.

L. C. J. Well then, now let us know what other Discourse you had with her?

Dunne. My Lord, I do not remember any thing more.

Mr. *Pollexfen.* Pray Mr. *Dunne*, did she ask you any Questions whether you knew Mr. *Hicks* or no?

Dunne. Nothing at all of that, that I remember.

Mr. *Coriton.* Did she believe that you knew Mr. *Hicks*?

Dunne. I cannot tell, my Lord.

Mr. *Coriton.* Do you believe that she knew him before?

Dunne. I cannot tell truly.

L. C. J. Why, dost thou think she would entertain any one that she had no Knowledge of merely upon thy Message? Mr. *Dunne*, Mr. *Dunne* have a care, it may be more is known of this matter than you think for.

Dunne. My Lord, I tell you the Truth.

L. C. J. Ay, be sure you do, do not let me take you prevaricating?

Dunne. My Lord, I speak nothing but the Truth.

L. C. J. Well, I only bid you have a care, Truth never wants a Subterfuge, it always loves to appear naked, it needs no Enamel, nor any Covering; but Lying and Sniveling, and Canting, and Hickling, always appear in Masquerade. Come, go on with your Evidence.

Dunne. My Lord, I say I went back again and returned my Answer to the same Man that brought the Message to me.

L. C. J. Pray let me ask you one Question; Were you got to your House before you found him, or was he waiting there for you?

Dunne. He came to my House after I came home.

L. C. J. It was the same Man, you say?

Dunne. Yes, it was.

L. C. J. Had he no Company with him neither time?

Dunne. No.

L. C. J. Well, and what Answer did you return him?

Dunne. I told him, my Lady said she would entertain Mr. *Hicks*; he asked when he might come up, I told him upon *Tuesday*, and upon *Tuesday* they came to my House.

L. C. J. What time did they come to your House?

Dunne. About seven of the Clock in the Morning.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot readily tell what Day of the Month it was?

L. C. J. Was it one or two that came to thy House?

Dunne. My Lord, there were three in all.

L. C. J. Who were those three, prithee?

Dunne. My Lord, there was the little black Man that brought the Message, and two other People.

L. C. J. Prithee describe what two other People these were?

Dunne. One was a full fat black Man, and the other was a thin black Man.

L. C. J. Who was that thin black Man?

Dunne. My Lord, I did not know him.

L. C. J. Did you not fancy which was *Hicks*?

Dunne. My Lord, I never knew any of their Names.

L. C. J. How long did they stay at your House?

Dunne. About three Hours.

L. C. J. When did you go away from thence?

Dunne. About eleven of the Clock.

L. C. J. Which way did you go then?

Dunne. We went through *Deveril*, and from *Deveril* to *Chilmark*, and from *Chilmark* to *Sutton*, and from *Sutton* to the Plain, and then one *Barter* met me; I knew the Way no further, and he was to shew me the Way from thence.

L. C. J. Prithee hold, before thou goest any further, I desire to be satisfied about a Question or two: Dost thou say thou didst not know the Way?

Dunne. No, my Lord, after I came to the Plain.

L. C. J. How didst thou find the way when thou wentest on thy Message first?

Dunne. My Lord, after I came to *Salisbury-Plain*, I met with one *Barter*, and he shewed me the way.

L. C. J. Where is that *Barter*?

Mr. *Pollexfen.* My Lord, we have him here; we shall examine him by and by, there he stands.

L. C. J. Sure that was not the little Man thou spokest of?

Dunne. No, my Lord.

L. C. J. Prithee let me understand thee then, if I can. Thou didst say at first there was only a little Man with a black Beard, that was concerned with thee about that Message; now thou talkest of some Guide that thou hadst, prithee who did guide thee, let us know?

Dunne. My Lord, I say I went so far as *Fovant*, and so to *Cbalk*, but when I came upon the Plain, I did not know my way to my Lady *Lisle's* House at *Moyle's Court*; I asked twenty People in the Street which was my way, but no body would tell me; at last I spoke to one *John Barter* to go with me to my Lady *Lisle's*, and he and I did agree to go together, and he shewed me the way and carried me to the House.

L. C. J. Thou shouldst have told us this before, Man, that we might have understood it. Where did you lie upon the *Saturday* Night?

Dunne.

Dunne. At *Fovant*.

L. C. J. I thought you had said, you had come to *Mrs. Lisse's* on *Saturday*?

Dunne. Yes, my Lord, I did so, and came back to *Fovant* that Night.

L. C. J. And where did you lie on *Sunday* night?

Dunne. I lay at my own House on *Sunday* night.

L. C. J. And *Barter* came along with you when you came on *Tuesday*?

Dunne. Yes, my Lord.

L. C. J. And did you go the same way upon the *Tuesday* that you went upon the *Saturday*?

Dunne. Do you mean, my Lord, the same way I came at first?

L. C. J. Ay.

Dunne. No, my Lord, we came to *Sutton*, not to *Fovant*.

L. C. J. Why did not you go the same way upon the *Tuesday* that you went upon the *Saturday*?

Dunne. Because I had appointed to meet him at such a Place.

L. C. J. Come, prithee answer me freely, and according to Truth: Who did desire thee, or order thee to go another way than that thou went'st at first? How came it to pass? Let us know the Truth?

Dunne. My Lord, I did count that to be the nearer way, and therefore I went that way.

L. C. J. That cannot be the Reason, for thou wouldst have gone the nearest way at first, I believe; come, tell us truly?

Dunne. My Lord, I know no other Reason.

L. C. J. Come, tell us what Towns and Villages you did go through then upon *Saturday*.

Dunne. My Lord, I went through several, *Chilmark* and *Fovant*.

L. C. J. And what Villages did you go through upon the *Tuesday*?

Dunne. I went through most of the same Towns.

L. C. J. What, and at Noon-day too?

Dunne. Yes.

L. C. J. And how chanc'd when you went that way, that you appointed *Barter* to meet you in another Place at *Fovant*?

Dunne. Because I did not know the way afterwards.

L. C. J. Then let me ask you another Question: Did you go the same way from *Fovant* to my Lady *Lisse's* as you went before?

Dunne. No, we did not.

L. C. J. How came that to pass?

Dunne. I would have went the same way, but they would not.

L. C. J. Which way did you go then?

Dunne. We went through *Chalke*, and so thro' *Rocksborne*, and from *Rocksborne* to *Fording-Bridge*, and so to *Mosley's Court*.

L. C. J. How far is this about now?

Dunne. Truly, my Lord, I cannot readily tell.

L. C. J. How many Miles is it from *Fovant* to my Lady *Lisse's*?

Dunne. My Lord, it is about fourteen or fifteen.

L. C. J. How many Miles was it the way that you went upon the *Tuesday*?

Dunne. It might be twenty, my Lord, for ought I know.

L. C. J. What was the Reason that *Barter* went that way?

Dunne. Truly, my Lord, I cannot tell.

L. C. J. Pray let me ask you another Question then; what Discourse had you with *Barter*? Or

what Bargain did you make with him for shewing you the way? For you would not ask him to go with you without promising him some Reward.

Dunne. My Lord I asked him to shew me the way to my Lady *Lisse's* House, and told him I was going for one *Hicks*; and so he took his Horse and went with me.

L. C. J. What Reward did you promise him?

Dunne. Half a Crown, my Lord, and half a Crown I gave him.

L. C. J. Well, that was the first time; and what did you promise him the second time?

Dunne. The second time one of the two Men gave him five Shillings.

L. C. J. What Man was it?

Dunne. It was the black Man.

L. C. J. What was his Name? It was not the little black Man that came first to desire you to go on the Message, was it?

Dunne. No, my Lord, it was not he that spoke to me first.

L. C. J. Did not that little Man that spoke to you first, promise you a Reward for your Pains?

Dunne. No, my Lord, that Man never promised me any thing.

L. C. J. Did he go along with you?

Dunne. No, my Lord, he did not.

L. C. J. Who were the two Men that went with you?

Dunne. *Hicks* and *Nelthorp*.

L. C. J. Which of them two was it that gave *Barter* five Shillings?

Dunne. It was *Nelthorp* that gave him five Shillings.

L. C. J. How do you know his Name was *Nelthorp*?

Dunne. At my Lady *Lisse's*, after he was taken I knew his Name to be *Nelthorp*.

L. C. J. What Name did he go by before?

Dunne. Were I to die presently, my Lord, I cannot tell it.

L. C. J. Well, you went so much about: What time did you get to my Lady *Lisse's* upon the *Tuesday*?

Dunne. About nine or ten of the Clock at Night, my Lord.

L. C. J. Let us consider a little; you say you went from your House about eleven a Clock: What time did you get to *Fovant*?

Dunne. About two or three of the Clock, my Lord.

L. C. J. Where did you stay by the way?

Dunne. No where, my Lord.

L. C. J. Did you ride on still?

Dunne. Yes, my Lord.

L. C. J. Was it before nine, or after nine that you came to my Lady *Lisse's*?

Dunne. I believe it was rather after nine, my Lord.

L. C. J. Who came first to my Lady *Lisse's*, prithee tell us frankly?

Dunne. My Lord, we came all three together to the Gate.

L. C. J. Who knocked at the Gate, you or *Barter*, or who else?

Dunne. *Barter*, my Lord, was discharg'd before we came near the House, about eight Miles from it.

L. C. J. Say'st thou so; How came you then to know the way without him?

Dunne. My Lord, I'll tell you; they lost their way, and they sent me down to *Marston*, and there

I went to a Man, my Lord, and told him one *Hicks* desired to speak with him.

L. C. J. Thou say'st well, now must I know that Man's Name.

Dunne. The Man's Name that I went to at *Marton*, my Lord?

L. C. J. Yes, and look to it, you tell me right, for it may be I know the Man already, and can tell at what end of the Town the Man lives too.

Dunne. My Lord, I cannot tell his Name presently.

L. C. J. Oh! pray now, do not say so, you must tell us, indeed you must think of his Name a little.

Dunne. My Lord, if I can mind it I will.

L. C. J. Prithee do.

Dunne. His Name, truly my Lord, I cannot rightly tell for the present.

L. C. J. Prithee recollect thy self; indeed thou canst tell us if thou wilt.

Dunne. My Lord, I can go to the House again if I were at liberty.

L. C. J. I believe it, and so could I; but really neither you nor I can be spared at present, therefore prithee do us the kindness now to tell us his Name?

Dunne. Truly, my Lord, I cannot mind his Name at present.

L. C. J. Alack-a-day, we must needs have it; come, refresh your Memory a little.

Dunne. My Lord, I think his Name was *Fane*.

L. C. J. Thou say'st right, his Name was *Fane* truly, thou seemst I know something of the matter: Well, what didst thou say to him?

Dunne. I told him I came from one *Mr. Hicks*.

L. C. J. And what didst thou desire of him?

Dunne. I told him that one *Mr. Hicks* desired to speak with him; and when he came out to *Mr. Hicks*, *Mr. Hicks* did desire him to shew him the way to *Mrs. Lisle's*.

L. C. J. Now tell us what kind of Man that was, that did desire this of *Mr. Fane*?

Dunne. My Lord, it was the full fat black Man.

L. C. J. Now we have got him out, now we know which was *Hicks*: Now go on.

Dunne. My Lord, this Man went and rid along with them as far as the new House that is built there, within a Mile of that House *Fane* went along with us; and afterwards, whether *Hicks* or *Nelborp*, or who knew the way, I cannot tell, but to my Lady *Lisle's* we went.

L. C. J. Who directed you the way when *Fane* left you?

Dunne. My Lord, I cannot tell, for my part I did not know the way.

L. C. J. Who went with you?

Dunne. None but *Hicks* and *Nelborp*.

L. C. J. How far from my Lady's House was that place where *Fane* left you?

Dunne. My Lord, I cannot directly tell.

L. C. J. Then *Hicks* knew the way, it seems, from thence?

Dunne. So he might, my Lord, for ought I know, for I did not.

L. C. J. Thou art strangely stiff; but now we are come thus far with you, tell me what Entertainment you had at my Lady *Lisle's*, and look to it that you be sure to tell me Truth, for I know it to a tittle, I can assure you that.

Dunne. They went in before me, my Lord.

L. C. J. Who went in before you?

Dunne. *Hicks* and *Nelborp*.

L. C. J. But the Door was shut when you came, was it not?

Dunne. My Lord, I cannot tell truly.

L. C. J. Then tell me what Entertainment you had there?

Dunne. For my own part, my Lord, I carry'd a bit of Cake and Cheefe from my own House, and that I eat.

L. C. J. What became of your Companions *Hicks* and *Nelborp*, I pray you?

Dunne. I never saw them again till after they were taken.

L. C. J. How is that, prithee recollect thy self?

Dunne. Sure, my Lord, I did not see them till then.

L. C. J. Who came to the Door to you?

Dunne. A young Girl, my Lord, I knew not who nor what she was.

L. C. J. Did they go directly into the House?

Dunne. It was dark, my Lord, I did not see what they did.

L. C. J. Was there never a Candle there?

Dunne. No, my Lord.

L. C. J. It was dark, very dark, was it not?

Dunne. Yes, my Lord, it was so.

L. C. J. Was my Lady stirring then?

Dunne. I did not see her.

L. C. J. And this is as much as you know of the Business?

Dunne. Yes, my Lord, this is all that I remember.

L. C. J. Well; and what hadst thou for all thy pains?

Dunne. Nothing but a Month's Imprisonment, my Lord.

L. C. J. Thou seemst to be a Man of a great deal of Kindness and Good-nature; for by this Story, there was a Man that thou never sawest before, (for I would fain have all People observe what Leather some Men's Consciences are made of) and because he only had a black Beard, and came to thy House, that black Beard of his should persuade thee to go 26 Miles, and give a Man half a Crown out of thy Pocket to shew thee thy way, and all to carry a Message from a Man thou never knewest in thy Life, to a Woman whom thou never sawest in thy Life neither; that thou shouldst lie out by the way two Nights, and upon the *Sunday* get home, and there meet with this same black-bearded little Gentleman, and appoint these People to come to thy House upon the *Tuesday*; and when they came, entertain them three or four Hours at thy own House, and go back again so many Miles with them, and have no Entertainment but a piece of Cake and Cheefe that thou broughtest thy self from home, and have no Reward, nor so much as know any of the Persons thou didst all this for, is very strange.

Dunne. My Lord, the Man that came to desire me to go on this Message, said that *Hicks* should reward me, and pay me for my pains.

L. C. J. But why wouldst thou take the word of a Man thou didst not know?

Dunne. I was forced to take his word at that time, my Lord.

L. C. J. There was no necessity for that neither; no body could force thee to do it. Alack-a-day! Thou seemst to be a Man of some consideration: I mightily wonder thou shouldst be so kind to People thou didst not know, without any prospect of Recompence whatsoever.

Dunne.

Dunne. All the reason that induced me to it was, they said they were Men in debt, and desired to be concealed for a while.

L. C. J. Dost thou believe that any one here believes thee: Prithee what Trade art thou?

Dunne. My Lord, I am a Baker by Trade.

L. C. J. And wilt thou bake thy Bread at such easy Rates? Upon my word then, thou art very kind: Prithee tell me, I believe thou dost use to bake on *Sundays*, dost thou not?

Dunne. No, my Lord, I do not.

L. C. J. Alack-a-day, thou art precise in that; but thou canst travel on *Sundays* to lead Rogues into Lurking-Holes: It seemeth thou hast a particular Kindness for a black Beard, that's all thy Reason for undertaking all this Trouble. Thou hast told me all the Truth, hast thou?

Dunne. I have, my Lord.

L. C. J. But I assure thee thy Bread is very light Weight, it will scarce pass the Ballance here.

Dunne. I tell the Truth, and nothing but the Truth.

L. C. J. No doubt of that; but prithee tell me, whose Horse didst thou ride when thou wentest first?

Dunne. The Man's Horse that came to me to desire me to go on the Message.

L. C. J. How came he to trust thee with his Horse?

Dunne. The Lord knows, my Lord.

L. C. J. Thou say'st right, the Lord only knows, for by the little I know of thee I would not trust thee with Two-pence: Whose Horse didst thou ride the second time?

Dunne. My own, my Lord.

L. C. J. And where didst thou put thy Horse when thou camest to my Lady *Liste's*?

Dunne. In the Stable, my Lord.

L. C. J. Where did they put their Horses?

Dunne. They left them without the Gate, I think, my Lord; I did not see them take them in.

L. C. J. No, thou said'st it was so dark thou could'st not see any thing: Pray were you with the two Men when they did alight?

Dunne. We did all three come together.

L. C. J. What did you give *Fane* for his pains in shewing you the way?

Dunne. He had nothing that I know of.

L. C. J. Well, you are the best-natur'd and kindest-hearted People that ever I knew: Whereabouts do you live?

Dunne. At *Warminster*, near my Lord *Weymouth's*.

Mr. Pollexfen. Pray Mr. *Dunne* will you answer me one Question: Was not there searching at that time up and down the Country for Rebels that were fled from the Battle?

Dunne. I did hear there was, some were taken.

Mr. Pollexfen. But did you hear there was searching at that time for other of the Rebels?

Dunne. I did not hear of any near me, but there were in other places.

L. C. J. Then it being such a suspicious time when that little Man with the black Beard came to thee, didst thou not ask what that *Hicks* was?

Dunne. No, my Lord, I did not.

L. C. J. And when Mr. *Hicks* and the other Man that is call'd by the Name of Mr. *Nelborp* came to thy House, didst not thou ask their Names?

Dunne. No, my Lord.

L. C. J. Nor didst not thou ask upon what Occasion they were to be conducted to my Lady *Liste's*?

Dunne. No, my Lord; *Hicks*, the fat Man, told me they were in debt.

L. C. J. Did not the Man that first came to you, and employ'd you to go on this Message; did not he know *Hicks*?

Dunne. I cannot tell, my Lord.

L. C. J. Did not he tell you, *Hicks* desired you to go, and that he was in debt, and therefore desired to be concealed?

Dunne. Yes, my Lord, he did.

L. C. J. How came you to be so impudent then, as to tell me such a Lye?

Dunne. I beg your pardon, my Lord.

L. C. J. You beg my pardon! That is not because you told me a Lye, but because I have found you in a Lye. Come Sirrah, tell me the Truth; What did *Hicks* and *Nelborp* with their Horses when they came to my Lady *Liste's*?

Dunne. My Lord, I cannot tell.

L. C. J. Why you impudent Rascal, did not you tell me just now that they left them at the Door?

Dunne. My Lord, I said I believ'd they might, but cannot directly tell what they did with them; I know not but one or other might have them away, but I did not see it.

Mr. Pollexfen. Prithee, Friend, tell the Truth; what did become of the Horses?

Dunne. I cannot tell truly, my Lord; if any body had them away, I did not see them.

L. C. J. Where didst thou lie that Night?

Dunne. In one of the Chambers.

L. C. J. Who shewed thee the way to thy Lodging?

Dunne. The Girl.

L. C. J. Who else didst thou see in the House?

Dunne. I saw no body at all.

L. C. J. Then who shewed thee the way to the Stable, and help'd thee with Horse-meat?

Dunne. No body help'd me to Horse-meat.

L. C. J. Why, thy Horse did not feed on thy Cake and Cheese, did he?

Dunne. There was Hay in the Rack, my Lord.

L. C. J. Was the Stable-Door lock'd or open?

Dunne. The Stable-door was latch'd, and I pluck'd up the Latch.

L. C. J. How came you to know the way to the Stable then?

Dunne. Because I had been there before, my Lord.

L. C. J. Thou had'st need to know it very well, for it seems thou wentest without a Candle or any thing in the World, and put in thy Horse. Did'st thou see that Man *Carpenter* the Bailiff that thou spokest of?

Dunne. Mr. *Carpenter* gave my Horse Hay.

L. C. J. Was there any Light in the Stable?

Dunne. Not when I put in my Horse first.

L. C. J. Who brought the Light thither?

Dunne. Goodman *Carpenter*.

L. C. J. Did not he give thy Horse Hay?

Dunne. Yes, he did.

L. C. J. And did he not give him Oats too?

Dunne. No, my Lord, he did not.

L. C. J. Did not he conduct you into the House?

Dunne. Who, my Lord?

L. C. J. That same Goodman *Carpenter*.

Dunne. No, my Lord.

L. C. J. Did you see any body else but that Girl you speak of?

Dunne. My Lord, I did see the Girl there.

L. C. J. But you Blockhead, I ask you whether you did see any body else?

Dunne. I do not know but I might see Goodman *Carpenter*:

L. C. J. Why, thou said'st he brought the Light, and gave thy Horſe Hay; but I ſee thou art ſet upon nothing but Prevarication: Sirrah, tell me plainly, did you ſee no body elſe?

Dunne. No, my Lord.

L. C. J. Not any body?

Dunne. No, my Lord, not any one.

L. C. J. Did you not drink in the Houſe?

Dunne. No, my Lord, not a Drop.

L. C. J. Did not you call for Drink?

Dunne. No, my Lord, I did not, I had nothing but my Cake and Cheefe that I brought thither my ſelf.

L. C. J. Who went up to the Chamber with you?

Dunne. The Girl, my Lord.

L. C. J. And no body elſe?

Dunne. No, my Lord.

L. C. J. Was the Bed made?

Dunne. Yes, my Lord, it was.

L. C. J. You eat nothing in the Houſe, you ſay?

Dunne. Nothing but my own Cake and Cheefe, my Lord.

L. C. J. But you did not drink in the Houſe at all?

Dunne. No, my Lord, I did not.

L. C. J. Did you drink at *Marton*, where you did call upon *Fane*?

Dunne. Yes, I did, but not afterwards.

L. C. J. Did you ſee any body there the next Morning before they were taken?

Dunne. No, my Lord; but after the Houſe was beſet, I ſaw my Lady and Mr. *Hicks*, and I think I ſaw Goodman *Carpenter*.

L. C. J. They and you were taken there together, were not you?

Dunne. Yes.

L. C. J. Did you ſee *Carpenter's* Wife, upon your Oath, that Night?

Dunne. My Lord, I did not.

L. C. J. Nor no Woman-kind beſides the Girl you ſpeak of?

Dunne. No, my Lord.

L. C. J. Nor no Man beſides *Carpenter*?

Dunne. No, my Lord.

L. C. J. You are ſure of this?

Dunne. I am ſo, my Lord.

L. C. J. You are ſure you did not drink there?

Dunne. I am, my Lord.

L. C. J. And you ſay he brought the Light into the Stable, and gave your Horſe Hay?

Dunne. He did, my Lord.

L. C. J. Now prithee tell me truly, where came *Carpenter* unto you? I muſt know the Truth of that; remember that I gave you fair Warning, do not tell me a Lye, for I will be ſure to treaſure up every Lye that thou telleſt me, and thou may'ſt be certain it will not be for thy Advantage: I would not terrify thee to make thee ſay any thing but the Truth; but aſſure thy ſelf I never met with a lying, ſneaking, canting Fellow, but I always treaſur'd up Vengeance for him: and therefore look to it, that thou doſt not prevaricate with me, for to be ſure thou wilt come to the worſt of it in the end?

Dunne. My Lord, I will tell the Truth as near as I can.

L. C. J. Then tell me where *Carpenter* met thee?

Dunne. In the Court, my Lord.

L. C. J. Before you came to the Gate, or after?

Dunne. It was after we came to the Gate, in the Court.

L. C. J. Then tell me, and I charge you tell me true, who was with you when *Carpenter* met you?

Dunne. *Hicks* and *Nelborp*.

L. C. J. Was there any body elſe beſides them two in the Court?

Dunne. There was no body but *Hicks* and *Nelborp*, and I and Mr. *Carpenter*.

L. C. J. You are ſure of that?

Dunne. Yes, my Lord.

L. C. J. Conſider of it, are you ſure there was no body elſe?

Dunne. Truly, my Lord, I did not mind that there was any body elſe.

L. C. J. Recollect your ſelf, and conſider well of it.

Dunne. Truly, my Lord, I do not know of any body elſe.

L. C. J. Now upon your Oath tell me truly, who it was that opened the Stable-door, was it *Carpenter* or you?

Dunne. It was *Carpenter*, my Lord.

L. C. J. Why, thou vile Wretch didſt not thou tell me juſt now that thou pluck'd up the Latch? Doſt thou take the God of Heaven not to be a God of Truth, and that he is not a Witneſs of all thou ſay'ſt? Doſt thou think becauſe thou prevaricateſt with the Court here, thou can'ſt do ſo with God above, who knows thy Thoughts, and it is infinite Mercy, that for thoſe Falſhoods of thine, he does not immediately ſtrike thee into Hell? Jeſus God! there is no ſort of Converſation nor human Society to be kept with ſuch People as theſe are, who have no other Religion but only in Pretence, and no way to uphold themſelves but by countenancing Lying and Villany: Did not you tell me that you opened the Latch your ſelf, and that you ſaw no body elſe but a Girl? How durſt you offer to tell ſuch horrid Lyes in the preſence of God and of a Court of Juſtice? Answer me one Queſtion more: Did he pull down the Hay or you?

Dunne. I did not pull down any Hay at all.

L. C. J. Was there any Hay pull'd down before the Candle was brought?

Dunne. No, there was not.

L. C. J. Who brought the Candle?

Dunne. Mr. *Carpenter* brought the Candle and Lanthorn.

L. C. J. It ſeems the Saints have a certain Charter for Lying; they may lye and cant, and deceive, and rebel, and think God Almighty takes no notice of it, nor will reckon with them for it: You ſee, Gentlemen, what a precious Fellow this is, a very pretty Tool to be employ'd upon ſuch an Errand, a Knave that no body would truſt for half a Crown between Man and Man, but he is the fitter to be employ'd about ſuch Works; what Pains is a Man at to get the Truth out of theſe Fellows, and it is with a great deal of Labour, that we can ſqueeze one Drop out of them? A *Turk* has more Title to an Eternity of Blis than theſe Pretenders to Chriſtianity, for he has more Morality and Honesty in him. Sirrah, I charge you in the preſence of God, tell me true, What other Perſons did you ſee that Night?

Dunne. My Lord, I did not ſee any than what I have told you already.

L. C. J. Then they went out and brought word that thou wert come, and ſo he came out to meet thee. Very well: I would have every body that has but the leaſt Tang of Saintſhip to obſerve the Carriage of this Fellow, and ſee how they can cant and ſnivel, and lye, and forſwear themſelves, and all for the

the Good Old Cause: They will stick at nothing, if they think they can but preserve a Brother or Sister Saint forsooth; they can do any thing in the world but speak Truth, and do their Duty to God and their Governours: I ask you again, Did not *Carpenter* meet you before you left *Hicks* and *Nelthorp*?

Dunne. No, he did not.

L. C. J. Then I ask you again once more, did not *Carpenter* ask you to drink?

Dunne. No, he did not.

L. C. J. Did not he light you with a Lanthorn and Candle into the House?

Dunne. I went into the House.

L. C. J. Dost thou believe we think any body thrust thee in: Did he light thee in, I ask thee?

Dunne. I went in along with Mr. *Carpenter*.

L. C. J. What Room did he carry you into?

Dunne. My Lord, he carried me into no Room, the young Woman shew'd me into a Room.

L. C. J. What Room was it?

Dunne. Into the Chamber.

L. C. J. Was not thou in the Hall or Kitchen?

Dunne. No, my Lord.

L. C. J. It is hard thou hadst not one Cup of Drink to thy Cake and Cheese.

Dunne. My Lord, I had never a Drop.

L. C. J. No, nor did no body ask you to eat or drink?

Dunne. No, my Lord.

L. C. J. Thou art the best-natur'd Fellow that ever I met with, but the worst rewarded. Come, I will ask thee another Question: When was the first time thou heard'st *Nelthorp's* Name?

Dunne. Not till he was taken.

L. C. J. What Name did the Fellow with the black Beard tell thee he had?

Dunne. My Lord, he never told me any Name?

L. C. J. Didst thou never ask him his Name?

Dunne. No, my Lord, that Man that was afterwards found to be *Nelthorp*, I did not know to be *Nelthorp* till he was taken, nor what his Name was, nor any Name he had.

L. C. J. No, prithee tell the Truth, did not *Nelthorp* go by the Name of *Crofts*?

Dunne. He did, my Lord.

L. C. J. Then prithee, when did he first go by that Name in thy Hearing?

Dunne. My Lord, I only heard *Hicks* say he went by the Name of *Crofts*.

L. C. J. When was that?

Dunne. When they were taken.

L. C. J. Did you not hear him call'd by that Name any time of the Journey?

Dunne. I cannot recollect, my Lord, that I ever did.

L. C. J. Thou canst recollect nothing of Truth: Is this as much as you can say?

Dunne. It is, my Lord.

Mr. *Jennings*. You say *Carpenter* met you very civilly, and took care of your Horse: Did he make no Provision for *Hicks* and *Nelthorp's* Horses? What became of them?

Dunne. I cannot tell, my Lord.

Mr. *Rumsey*. Did you see their Horses afterwards?

Dunne. No, my Lord, I did not.

Mr. *Rumsey*. When they alighted from them, were they ty'd fast to the Gate, or how?

Dunne. They were not ty'd at all, as I know of.

Mr. *Jennings*. Did you tell *Carpenter* that their Horses were there?

Dunne. I did not tell him any such thing.

L. C. J. Thou art a strange prevaricating, shuffling, sniveling, lying Rascal.

Mr. *Pollexfen*. We will set him by for the present, and call *Barter*, that is the other Fellow.

L. C. J. Will the Prisoner ask this Person any Questions?

Lisle. No.

L. C. J. Perhaps her Questions might endanger the coming out of all the Truth, and it may be she is well enough pleas'd to have him swear as he does; but it carries a very foul Face, upon my Word.

[Then *Barter* was sworn.

L. C. J. Is this *Barter*?

Mr. *Pollexfen*. Yes, my Lord, for his part we have his Examination before two Justices of Peace; but we hope he is an honest Fellow, and will tell the Truth.

L. C. J. That is all one whether you have his Examination or not; I expect he should tell me the Truth, and the whole Truth here, Friend, you know your Soul is at pawn for the Truth of what you testify to us; the other Fellow thou seest has been prevaricating with us all this while, and swearing off and on, and scarce told one Word of Truth, I know very well: Now I know as much of thee as I do of him, therefore look to thy self, and let the Truth, and nothing but the Truth come out?

Barter. May it please your Honour, my Lord, this Man *Dunne* came to my House upon the *Saturday*, and spoke to me to ride along with him to *Moyle's-Court*, where my Lady *Lisle* liv'd; and I having no other Business at that time, did go along with him: He had a Letter in his Pocket, and I saw him produce the Letter to my Lady's Bailiff, Mr. *Carpenter*, but he would not meddle with it, so I suppose he went in with it to my Lady; and while I was in the Kitchen, my Lady came thither, and asked me, saith she, What Countryman art thou? Said I, Madam, I am a *Wiltshire* Man. Saith she, Do'st thou make Bricks? No, said I, Madam, I cannot, I can help in Husbandry-work. Saith she, If thou could'st make Bricks, I will give thee ten Acres of Ground in such a Place. I told her no, I could not: And then she goes to this Man *Dunne*, and there she was laughing with him, and look'd upon me; and afterwards when we were going along, I asked him what she laughed at?

L. C. J. Ay, and now tell me what he said to thee about it?

Barter. He told me, my Lord, my Lady asked whether I knew any thing of the Concern, and that he answered her, no; this the Fellow told me was that she laugh'd at. After this, I could not eat, nor drink, nor sleep for trouble of mind, till I had discovered this to some Justice of the Peace, and I resolv'd at last to go to Colonel *Penruddock*, and consult him about it, so I went over and told him of it.

L. C. J. What did you tell Colonel *Penruddock*, let us hear?

Barter. Where I had been the *Saturday* before, and where I should meet them again upon *Salisbury-Plain* upon the *Tuesday*, for I did expect to meet them there according to appointment, and we did agree he should come and take them there; but afterwards missing them there, or for some other reason, I do not know what, his Mind altered, and he came to take them in the House: So when I met them, we rode on about ten Miles, and they would have had me to have led them a private way over the fording Bridge towards *Moyle's-Court*, but I told them, in case they intended to have me for their Guide, they must go the way that I could tell; but they would go that private way, and so lose their

way; then they sent back this *Dunne* to *Marton*, to one *Fane*, that was the fat Man that sent him: but I finding that I was of no more value then, rode away from them, and having a Relation that liv'd on that side of the Country, I went to let Colonel *Penruddock* know that they were at the Houfe. But before I went away from them, *Nelborp* gave me five Shillings, half a Crown, and two Shillings and a Six-pence.

L. C. J. Now thou sayst *Nelborp* did: Didst thou hear his Name named?

Barter. I never could find any of their Names till they were taken.

Mr. Pollexfen. Pray, *Barter*, what Discourse had you with *Dunne* the first time you were going to and from my Lady *Lisle's*, concerning the Men that he was to bring thither, and what Estates they had?

Barter. My Lord, he said they had half a Score of Thousands of Pounds a Year a-piece.

Mr. Pollexfen. Did he tell you they were to come to my Lady's?

Barter. Yes, he told me they were to come upon the *Tuesday*, and they were to come such a Way, and were to come to my Lady's in the Evening.

L. C. J. What wer't thou to have for thy pains?

Barter. I made no Bargain, my Lord.

L. C. J. You are all very free, kind-hearted People, I say that for you.

Mr. Pollexfen. What did *Dunne* say about his Gains?

Barter. He told me he had a very fine Booty for his part, and that he should never want Money again, and that I should be very well paid, and gave me half a Crown.

L. C. J. Then let my honest Man, *Mr. Dunne*, stand forward a little. Come, Friend, you have had some time to recollect your self; let us see whether we can have the Truth out of you now: You talked of carrying a Message from *Hicks* to my Lady *Lisle*; Did not you carry a Letter?

Dunne. No, my Lord, I did not.

L. C. J. Did not you shew a Letter to the Bailiff, *Carpenter*?

Dunne. No, my Lord, I did not.

L. C. J. What say you, *Barter*, to that?

Barter. My Lord, I did see him produce the Letter to the Bailiff.

L. C. J. Then I will ask you another Question: Did you not tell *Barter* that you should be at *Salisbury-Plain*, with two People, upon the *Tuesday*?

Dunne. No, my Lord, I said between *Compton* and *Fovant*.

L. C. J. Did not you tell him, that they were brave Fellows, and had God knows how many Thousand Pounds a year a-piece?

Dunne. No, my Lord, I did not.

L. C. J. Then one thing more: Did not you tell him, that you told my Lady, when she asked whether he was acquainted with the Concern, that he knew nothing of the Business?

Dunne. My Lord, I did tell him so.

L. C. J. Did you so? Then you and I must have a little further Discourse: Come now, and tell us, what Business was that? and tell it us so, that a Man may understand and believe that thou dost speak Truth.

Dunne. Does your Lordship ask what that Business was?

L. C. J. Yes, it is a plain Question; What was that Business that my Lady asked thee, whether the other Man knew; and then you answered her, that he did know nothing of it?

[Then he paused a while.

L. C. J. Remember, Friend, thou art upon thy Oath; and remember withal, that it is not thy Life, but thy Soul that is now in danger: therefore I require from thee a plain Answer to a very plain Question; What was that Business my Lady enquired after, whether the other Fellow knew, and thou told'st her, he did not?

[Dunne made no Answer, but stood musing a while.

L. C. J. He is now studying and musing how he shall prevaricate; but thou had'st better tell the Truth, Friend: remember what thou hast said already; thou hast said, That thou didst tell that Man, that the Lady asked you, whether he knew any thing of the Business, and thou told'st her, he did not. Now I would know what that Business was?

[Still he made no Answer, but seemed to muse.

L. C. J. Look thee, if thou canst not comprehend what I mean, I will repeat it to thee again; for thou shalt see what Countryman I am, by my telling my Story over twice: Therefore I ask thee once again. Thou said'st thy Lady asked thee, whether he knew of the Business; and thou told'st her, he did not. Now let us know what that Business was.

Dunne. I cannot mind it, my Lord, what it was.

L. C. J. But mind me prithe: Thou did'st tell that honest Man there, that my Lady *Lisle* asked thee, whether he knew any thing of the Business, and thou said'st, no. What was that Business?

Dunne. That Business that *Barter* did not know of?

L. C. J. Yes, that is the Business; be ingenuous, tell the Truth: Oh! how hard the Truth is to come out of a lying Presbyterian Knave. Prithe, Friend, consider the Oath that thou hast taken; and that thou art in the presence of a God that cannot endure a Lye, nor whose Holiness will not admit him to dispense with a Lye: Consider that that God is an infinite Being of Purity, Holiness and Truth; and it would be inconsistent with his Being to dispense with the least Untruth; and thou hast called him to witness, that thou would'st testify the Truth, the whole Truth, and nothing but the Truth. I charge thee, therefore, as thou wilt answer it to that God of Truth, and that thou may'st be called to do, for ought I know, the very next Minute, and there thou wilt not be able to palliate the Truth; what was that Business you and my Lady spoke of?

[Then he paused for half a quarter of an Hour, and at last said:

Dunne. I cannot give an Account of it, my Lord.

L. C. J. Oh blessed God! Was there ever such a Villain upon the Face of the Earth; to what Times are we reserved? Dost thou believe that there is a God?

Dunne. Yes, my Lord, I do.

L. C. J. Dost thou believe, that that God can endure a Lye?

Dunne. No, my Lord, I know he cannot.

L. C. J. And dost thou believe then, that he is a God of Truth?

Dunne. Yes, my Lord, I do.

L. C. J. Dost thou think, that that God of Truth may immediately sink thee into Hell-Fire if thou tellest a Lye?

Dunne. I do, my Lord.

L. C. J. Dost thou believe, that he does observe every thing that thou thinkest, sayest or doest; knows the Secrets of thy Heart, and knows whether thou tellest a Lye or not, tho' perhaps it may be hid from us, and knows whether thou dost prevaricate or not?

Dunne. I know, the Lord does know all things.

L. C. J. Dost thou believe, that he knows the Business that you and my Lady the Prisoner were talking of, as well as you do; that he hath an almighty Power over all his Creatures, an all-piercing Eye, that looks into the Hearts of every one of them, and from which nothing can be concealed? Dost thou believe it possible to conceal that very Discourse of yours from the knowledge of that infinite Being?

Dunne. My Lord, I do believe that there is a God above.

L. C. J. I ask thee then again; Dost thou believe, that that God above, who is a God of Truth himself, is omniscient, omnipresent, to whom all Truth is naked and open, that he knows every thing that is either thought, said or done by any of his Creatures, sees and knows the Hearts of all Men; Dost thou believe all this?

[He stood silent for a good while.]

L. C. J. Friend, deceive not thy self; the great God does observe and know the secret workings of thy Thoughts now, and how Truth struggles to get out, but Baseness and Villany keep it in: All the private Imaginations of thy Heart are not only known to him, but registred by him, and thy Conscience will bear witness to thy Accusation when thou art called to answer for them, and answer for them thou must; for the Scripture, that is the Word of God, tells us, *That every vain Thought we must account for.* Dost thou then believe, that any Discourse between you, tho' never so private, is private from the Almighty, All-knowing God?

Dunne. My Lord, I know it is not, nor can be.

L. C. J. I therefore once more adjure thee, as thou wilt answer it to that God, that is the Searcher of the Hearts and Trier of the Reins, to whom all Hearts are open, and from whom no Secrets are hid, that thou make me a plain Answer to my Question; and as thou hast called God to bear Witness to the Truth of the Evidence thou givest here in this Court, so I charge thee, in his Name, to declare the Truth, and nothing but the Truth. Now tell us what was the Business you spoke of?

[But he made no Answer.]

William Montague Esq; *L. C. Baron.* Friend, mind what my Lord says to you, and consider, how easy a thing it is for a Man to speak Truth, and give a plain Answer to a plain Question. You cannot but understand what my Lord asks of you; you said even now, that you did tell the other Witnesses, *Barter*, that my Lady ask'd you, whether he knew any thing of the Business; and you told her, he did not. Now my Lord would have you tell us, what that Business was?

[He seemed to turn his Head on one side, but return'd no Answer.]

L. C. J. He is going to ask that Man there, whether he shall tell the Truth.

Dunne. No, my Lord, I ask no Man any such Question.

L. C. J. Prithee tell us the Truth then now: Thou art to know, that thou standest in the Presence of the God of Truth, and hast called him to witness, that thou would'st tell the Truth.

Dunne. My Lord, I do tell the Truth, as far as I can remember.

L. C. J. Then what was that you told my Lady *Lisle*, *Barter* did not know?

Dunne. What *Barter* did not know, my Lord?

L. C. J. Ay, is not that a plain Question? Of all the Witnesses that ever I met with, I never saw thy fellow.

[He stood a good while, and made no Answer.]

L. C. J. I hope, Gentlemen of the Jury, you take notice of the strange and horrible Carriage of this Fellow; and withal, you cannot but observe the Spirit of that sort of People, what a villanous and devilish one it is: Good God! that ever the thing called Religion (a Word that People have so much abused) should ever wind up Persons to such a height of Impiety, that it should make them lose the Belief that there is a God of Truth in Heaven; that sees and knows, observes and registers, and will punish and take vengeance of Falshood and Perjury. It may well make the rest of Mankind, that have any sort of Faith in a Deity and a future Life, to abhor and detest both the Men and their Religion, if such abominable Principles may be called so. A *Turk* is a Saint to such a Fellow as this, nay a *Pagan* would be ashamed to be thought to have no more Truth in him. O blessed *Jesus!* What an Age do we live in, and what a Generation of Vipers do we live among? Sirs, is this that you call the *Protestant Religion*? Shall so glorious a Name be applied to so much Villany and Hypocrisy? Is this the Persuasion you hope to live, and die, and find Salvation in? Will any of you all, Gentlemen, be contented to die with a Lye in your Mouth? Do not you all expect, according to the Orthodox Doctrine of the true Church of *England*, that eternal Damnation will be the Portion of Lyars? And thou wicked Wretch, how durst thou appear to give Testimony before even an earthly Tribunal with so much Impudence and Falshood, when every Lye will cost thee so dear, except a sincere and hearty Repentance, and the infinite Mercy of the great God interpose? I charge you once more, as you will answer it at the Bar of the great Judge of all the World, that you tell me what that Business was, you and the Prisoner talked about: do but consider what a Condition thou bringest thy self into by all this Shuffling and Prevarication, even as to any thing of Mercy in this Life; for indeed it is not fit thou should'st have the least Hopes of Mercy on this side Eternity, and truly there is no Man can imagine less than infinite Mercy can pardon so flagitious a Sin, one that so impudently tells and stands in a Lye.

[Still he would make no Answer.]

L. C. J. *Jesus God!* Was there ever such a Fellow in the World as thou art? Prithee let me ask thee once again, Dost thou believe that there is a God, that this God is spotless Truth and Purity it self? Dost thou believe thou hast a precious and immortal Soul, that is to live in everlasting Bliss or eternal Misery after this Life accordingly as thou carriest it here; if thou dost believe it, ought not the Concerns of that precious and immortal Soul of thine to be much dearer to thee than ten thousand Worlds? Does not the blessed

bleſſed Word of Truth tell thee, *What will it profit a Man to gain the whole World, and loſe his own Soul? or what ſhall a Man give in exchange for his Soul?* Is not this the Voice of Scripture itſelf? And wilt thou hazard ſo dear and precious a thing for a Lye, and an unprofitable Lye too? Thou Wretch! all the Mountains and Hills in the World heaped upon one another, will not cover thee from the Vengeance of the great God for this Tranſgreſſion of falſe Witneſs-bearing: What hopes can there be for ſo profligate a Villain as thou art, that ſo impudently ſtands in open defiance of the Omnipreſence, Omnificence and Juſtice of God, by perſiſting in ſo palpable a Lye? I therefore require it of you, in his Name, to tell me the Truth.

Dunne. I cannot tell what to ſay, my Lord.

L. C. J. Good God! Was there ever ſuch an impudent Rascal? Well, I will try once more, and tell thee what I mean; you ſaid you told that honeſt Man (for truly he ſeems ſo to be) that my Lady aſked you whether he knew of the Buſineſs, and you told her, he did not: Prithee be ſo free as to tell us what that Buſineſs was.

[Dunne pauſed, but would make no Answer.]

L. C. J. Prithee what didſt thou mean, or thy Lady mean, by that Buſineſs?

[He pauſed again, but would make no Answer.]

L. C. J. Why, prithee doſt thou think thou doſt her a Kindneſs by this way of proceeding? Sure thou can'ſt not think ſo; for ſuch a fort of Carriage were enough to convict her, if there were nothing elſe.

Dunne. Truly, my Lord, I do not think to do her any Kindneſs at all.

L. C. J. Then prithee let me perſuade thee to have ſome kindneſs for thyſelf; look to thy own Soul that is in great peril of everlaſting Ruin and Deſtruction by theſe means; doſt thou call this Religion? It is a prodigious piece of Religion: Come, pray tell me what Buſineſs it was you talked of: You ſhould not have aſked me a Queſtion ſo often, but I would have given you a plain Answer, though I were not under the Obligation of an Oath, as you are.

Dunne. My Lord, pray aſk the Queſtion over again once more, and I will tell you.

L. C. J. I will ſo, and I will aſk it you with all the Calmneſs, and Seriouſneſs, and Candour that I can; if I know my own Heart, it is not in my Nature to deſire the Hurt of any body, much leſs to delight in their eternal Perdition; no, it is out of tender compaſſion to you that I uſe all theſe Words: I would have thee to have ſome regard to thy precious and immortal Soul, which is more valuable than the whole World; reflect upon that Scripture again which I mention'd before, which muſt be true, becauſe it is the Words of him that is Truth itſelf: *What ſhall it profit a Man to gain the whole World, and loſe his own Soul? or what ſhall a Man give in exchange for his Soul?* If that Soul of thine be taken away, what is the Body fit for, but like a putrid Carcaſe, to be thruſt into, and covered with the Duſt with which it was made: Therefore I aſk you, with a great Deſire that thou may'ſt free thyſelf from ſo great a Load of Falſhood and Perjury, tell me what the Buſineſs was you told the Priſoner, the other Man *Barker* did not know?

Dunne. My Lord, I told her, he knew nothing of our coming there.

L. C. J. Nay, nay, that can never be it, for he came along with thee.

Dunne. He did not know any thing of my coming there till I met him on the way.

L. C. J. Prithee mind my Queſtion; ſure enough thou hadſt told him whither thou wert going, or elſe he could not have been thy Guide; ſo that he muſt needs know of thy coming there: but what was the Buſineſs that thou told'ſt her, he did not know.

Dunne. She aſked me, whether I did not know that *Hicks* was a Nonconformiſt.

L. C. J. Did my Lady *Lifle* aſk you that Queſtion?

Dunne. Yes, my Lord, and I told her I did not.

L. C. J. But that is not my Queſtion: What was that Buſineſs that he did not know?

Dunne. It was the ſame thing; whether Mr. *Hicks* was a Nonconformiſt.

L. C. J. That cannot be all; there muſt be ſomething more in it.

Dunne. Yes, my Lord, it is all; I know nothing more.

L. C. J. What did ſhe ſay to you when you told her, he did not know it?

Dunne. She did not ſay any thing, my Lord.

L. C. J. Why doſt thou think, that after all this pains that I have been at to get an Answer to my Queſtion, that thou can'ſt banter me with ſuch ſham Stuff as this? Hold the Candle to his Face, that we may ſee his brazen Face.

Dunne. My Lord, I tell you the truth.

L. C. J. Did ſhe aſk thee whether that Man knew any thing of a Queſtion ſhe had aſked thee, and that was only of being a Nonconformiſt.

Dunne. Yes, my Lord, that was all.

L. C. J. That is all Nonſenſe; doſt thou imagine that any Man hereabouts is ſo weak as to believe thee?

Dunne. My Lord, I am ſo baulked, I do not know what I ſay myſelf; tell me what you would have me to ſay, for I am clutter'd out of my Senſes.

L. C. J. Why, prithee Man, there's no body baulks thee but thy own ſelf; thou art aſked Queſtions that are as plain as any thing in the World can be: it is only thy own depraved naughty Heart that baulks both thy Honesty and Underſtanding, if thou haſt any; it is thy ſtudying how to prevaricate, that puzzles and confounds thy Intellect: but I ſee all the Pains in the World, and all Compaſſion and Charity is loſt upon thee, and therefore I will ſay no more to thee.

Mr. Pollexfen. My Lord, becauſe he pretends to Ignorance what *Hicks* was, I deſire to aſk *Barter* one Queſtion: Pray, what did he tell you concerning his Carriage towards theſe People?

Barter. My Lord, he told me that he had concealed them in his Houſe ten Days before.

Dunne. That I never did in my Life.

Barter. I know not whether you did or no, but you told me ſo; and I made answer to him again, my Lord, I wonder how he were able to keep them without being diſcovered, there being ſuch ſearch; and he answered, He did keep them in a Chamber all day, and then they walked out at night; for the Searches of the Houſes were uſually at night.

Dunne. My Lord, I can bring teſtimony to the contrary.

L. C. J. But really I believe it will be no ſtrange thing for me to ſay, I do believe him rather than thee; I would I had half as much reaſon to believe thee, as I have to believe him: I would fain have

thee speak truth, if I could. What say you to the Question I asked you?

Dunne. I cannot tell what to say, my Lord.

L. C. J. Say the Truth, Man.

Dunne. I do, as I hope for mercy, my Lord.

L. C. J. Do'st thou hope for mercy? Thou hast very little reason for it, I assure thee. Well, I will try thee with another Question: Didst thou tell that Man, that it was the best Job thou ever hadst in thy life?

Dunne. No, my Lord, I did not.

L. C. J. Nor nothing to that purpose?

Dunne. No, my Lord.

L. C. J. What say you, *Barter*, did not he tell you so?

Barter. Yes, my Lord, he did; and that he should never lack Money again as long as he liv'd.

L. C. J. Then I ask you one Question more, *Barter*; did you tell this to Col. *Penruddock*?

Barter. Yes, I did, my Lord.

L. C. J. Then that will fortify his Testimony; therefore swear him, because I would make these concealed Wretches (for in my conscience I know there are some such in the bottom of this Business) know, that the Truth will out one way or other. And as for this Fellow, I expect it from all you Gentlemen of the King's Counsel, and others that are concerned, that you take notice and remember what has passed here, and that an Information of Perjury be preferred against this Fellow.

[Then Col. *Penruddock* was sworn.]

L. C. J. Col. *Penruddock*, upon the Oath you have taken, did that Man, *Barter*, come to you; and what did he say to you?

Col. *Penruddock.* My Lord, that Man, *Barter*, came to my House in the Morning, upon *Monday*, and told me, he had been with one *Dunne*, upon a Journey to Mrs. *Lisle's* House, to get Entertainment for some People; and that they had appointed to meet him the *Tuesday* following, between nine and eleven, upon *Salisbury-Plain*, and there, if I pleased, I might take them. I ordered him to go according to the Appointment, and withal, I sent a Servant of my own to watch when they came by; but it happen'd, I suppose, by their taking another way, that he missed of them: but *Barter* left word, that in case he did not find them there, we must conclude, that he was gone with them to my Lady *Lisle's* House; and he told me withal, says he, I believe they are Rebels, because he that desired me to be their Guide, said the same to me. So early the next Morning I took some Soldiers with me, and beset my Lady *Lisle's* House; it was a pretty while before I could get any body in the House to hear: at length that Man that they say was the Bailiff, *Carpenter*, came out; and I said to him, Friend, you had best be free and ingenuous, and discover who are in your Lady's House, for I am sure there were some Strangers came thither last Night; let me know who they are, and shew me what part of the House they are in. He did confess to me there were Strangers in the House, and pointed to such part of the House; but pray, says he, do not tell my Mistress of it. Accordingly we went in, and immediately we took Mr. *Hicks* and this same *Dunne* in the Malt-house.

L. C. J. Was *Dunne* taken in the Malt-house?

Col. *Penruddock.* Yes, he had covered himself with some sort of Stuff there.

L. C. J. Well, what did you do then?

Col. *Penruddock.* My Lady afterwards coming to us, I told her, Madam, you have done very ill in

harbouring Rebels, and giving Entertainment to the King's Enemies. Saith she, I know nothing of them; I am a Stranger to it. Pray, said I, Madam, be so free and ingenuous with me, and so kind to yourself, as if there be any other Person that is concealed in any part of your House, (for I am sure there is some body else) as to deliver him up, and you shall come to no further trouble. She denied it, and said, I know nothing of them: But we went on, and searched, and at last discovered the other Man *Nelthorp*, hid in a Hole by the Chimney.

L. C. J. *Dunne*, how came you to hide yourself in the Malt-house?

Dunne. When I heard the stir and bustle, I went thro' the Chamber where I lay, and came into that Room where I was taken.

L. C. J. When thou heard'st a stir and a bustle, why wert thou afraid of any thing?

Dunne. My Lord, I was frightened at the noise.

L. C. J. Prithee, what need'st thou be afraid, for thou did'st not know *Hicks*, nor *Nelthorp*; and my Lady only asked thee, whether *Hicks* were a Non-conformist Parson: Thou art a very innocent Soul, and surely needest no occasion to be afraid. I doubt there was something of that Business in the Case that we were talking of before, if we could but get out of thee what it was.

Dunne. My Lord, I heard a great noise in the House, and I did not know what it meant; and so I went and hid myself.

L. C. J. Alack-a-day! That is very strange, that thou should'st hide thyself for a little noise, when thou knewest nothing of the Business, nor wert acquainted with any thing of the matter at all. But Col. *Penruddock*, I would ask you one Question more; did that honest Man tell you, that *Dunne* had told him, that it was the best Job that ever he had in his life, and that he should want no Money?

Col. *Penruddock.* I cannot tell that truly, my Lord; I do not remember that: but he said, he apprehended them to be Rebels, and that *Dunne* told him as much.

L. C. J. What do you say to that, *Dunne*? It seems you told *Barter*, that you apprehended them to be Rebels?

Dunne. I apprehend them for Rebels, my Lord!

L. C. J. No, no, you did not apprehend them for Rebels, but you hid them for Rebels. But did you say to *Barter*, that you took them to be Rebels?

Dunne. I take them to be Rebels!

L. C. J. You Blockhead, I ask you, did you tell him so?

Dunne. I tell *Barter* so!

L. C. J. Ay, is not that a plain Question?

Dunne. I am quite cluttered out of my senses; I do not know what I say.

[A Candle being still held nearer his Nose.]

L. C. J. But to tell the Truth, would rob thee of none of thy Senses, if ever thou had'st any; but it should seem that neither thou, nor thy Mistress the Prisoner had any, for she knew nothing of it neither, though she had sent for them thither.

Mr. *Pollexfen.* Pray, Col. *Penruddock*, did you tell her you came to search for Rebels?

Col. *Penruddock.* Yes, Sir, I told her as soon as I saw her; but we had a good while beset the House before any body answered us; at length, there were some Ladies, or Gentlewomen, I imagined them to be her Daughters, that upon our noise looked out at the Window; and I told them there were Rebels in the House, and I required them in the King's

Name to be deliver'd to me; but I saw not my Lady till after I had brought out *Hicks* and *Dunne*.

L. C. J. What said she to you?

Col. Penruddock. She said, she knew nothing of their being in the House; but I told her there was some body else besides, and she would do well to deliver him without trouble: but she denying of it, we searched further, and found *Nelborp*, as I told you.

L. C. J. But she denied it at first, it seems?

Lisle. My Lord, I hope I shall not be condemn'd without being heard.

L. C. J. No, God forbid, *Mrs. Lisle*; that was a sort of practice in your Husband's time; you know very well what I mean: But God be thanked, it is not so now; the King's Courts of Law never condemn without hearing. *Col. Penruddock*, have you any more to say?

Col. Penruddock. No, my Lord; but here is one *Mr. Dowding*, that was with me when I searched the House.

L. C. J. Swear him. *[Which was done.]*

Mr. Pollexfen. *Mr. Dowding*, pray did you go with *Col. Penruddock* to *Mrs. Lisle's* House?

Mr. Dowding. Yes, my Lord: We came to the House, and beset the House round, some to the back Gate, and some to the fore Gate; we called almost half an hour before we got in; and had found two, and we came to my Lady; she said, she knew nothing of any body being in the House—

Lisle. My Lord, this Fellow that now speaks against me, broke open my Trunk, and stole away a great part of my best Linen; and sure, my Lord, those Persons that rob me, are not fit to be Evidences against me, because it behoves them that I be convicted, to prevent their being indicted for Felony.

L. C. J. Look you, Friend, you say you went with *Col. Penruddock* to search the House, did you find any body there?

Dowding. Yes, my Lord, I found this same *Dunne* in a little hole in the Malt-house.

L. C. J. Was he covered, or not?

Dowding. He had taken some stuff or other to cover him.

L. C. J. Did you find *Hicks* there?

Dowding. Yes, my Lord, we did find one that said his Name was *Hicks*.

L. C. J. Is that the same *Hicks* that is in *Salisbury* Goal?

Dowding. Yes, my Lord, it is; I saw him yesterday at the *George* in *Salisbury*, when he had that Discourse with those other Gentlemen.

Mr. Pollexfen. Swear *Carpenter* and his Wife.

[Which was done.]

Dowding. My Lord, *Hicks* acknowledged before me, that he was at *Keinsham*, in the Duke of *Monmouth's* Army.

Mr. Pollexfen. Come, *Mrs. Carpenter*, tell my Lord and the Jury, did you know the Time when these Men came to your Lady's House?

L. C. J. Is this the Bailiff's Wife?

Mr. Pollexfen. Yes, my Lord, it is.

L. C. J. Well then, what say you to the Question: Do you know the Time when they came?

Mrs. Carpenter. Yes, my Lord, they came at night.

L. C. J. Did you see them there?

Mrs. Carpenter. Yes.

L. C. J. Were they lodged there?

Mrs. Carpenter. Yes; but I never made the Bed.

L. C. J. Who did?

Mrs. Carpenter. My Lord, I cannot tell.

L. C. J. Had they any Supper, or Victuals there?

Mrs. Carpenter. Yes, they had.

L. C. J. Who dress'd it?

Mrs. Carpenter. I did.

L. C. J. By whose Order did you dress it?

Mrs. Carpenter. By my Lady's Order.

L. C. J. Prithee where did they eat their Meat?

Mrs. Carpenter. In the Chamber, my Lord, where they lay.

L. C. J. Who was with them?

Mrs. Carpenter. My Lord, I cannot tell, for I did not stay in the Room.

L. C. J. Didst thou see them when they came into the Room?

Mrs. Carpenter. My Lord, I dress'd the Meat, and carried it within the Door, and my Husband set it upon the Table.

L. C. J. Prithee tell me who was with them: Was thy Lady there?

Mrs. Carpenter. My Lady was in presence there then.

L. C. J. How long did they stay below stairs before they went up?

Mrs. Carpenter. Truly, my Lord, I cannot tell.

L. C. J. Did your Lady use to sup below stairs or above?

Mrs. Carpenter. She used to sup below, my Lord.

Mr. Pollexfen. My Lord, if your Lordship please, this Woman and her Husband are both unwilling Witnesses; but we will examine the Husband, and see what we can get out of him. Hark you, *Carpenter*, did you meet with this Fellow, *Dunne*, at his first coming to your Lady's House?

Mr. Carpenter. Yes, my Lord, I did see him there on the *Saturday*.

L. C. J. Well then, let me ask you a Question; and be sure you tell me the Truth, for it may be I know it already; did he offer you a Letter to be deliver'd to your Lady?

Mr. Carpenter. No, my Lord.

L. C. J. What do you say, *Barter*?

Barter. I saw him produce it to *Mr. Carpenter*, but he refused to meddle with it.

Mr. Carpenter. My Lord, he asked me, if my Lady would give Entertainment to one *Hicks*, and another Person, but he did not know who that Person was.

L. C. J. Did he speak of another Person?

Mr. Carpenter. Yes, he did.

L. C. J. Who was that other Person?

Mr. Carpenter. I did ask his Name, but he said, he did not know him.

L. C. J. Well then, when they came there on the *Tuesday*-night, how did you receive them?

Mr. Carpenter. I did not receive them.

L. C. J. Did not you light the Candle, and bring it in a Lanthorn, to light him into the Stable?

Mr. Carpenter. My Lord, that was afterwards.

L. C. J. Did not you bring the Men into the House?

Mr. Carpenter. No, my Lord, indeed I did not.

L. C. J. Did not you see them all night?

Mr. Carpenter. Yes, my Lord.

L. C. J. Then where did you see them first?

Mr. Carpenter. In the Room where they sup'd and lay.

L. C. J. Did not you meet them in the Court-yard?

Mr. Carpenter. No, my Lord.

L. C. J. Who gave you Directions to light *Dunne* into the Stable?

Mr. Carpenter. They told me his Horse was out in the Yard.

L. C. J. Who told you so?

Mr. Carpenter. The Men did.

L. C. J. Where did they sup?

Mr. Carpenter. In the Room above stairs.

L. C. J. Who sup'd along with them?

Mr. Carpenter. I cannot say any body sup'd with them.

L. C. J. Was not my Lady there?

Mr. Carpenter. She was in the Room, but I did not see her eat any thing.

L. C. J. What time of the night did they come?

Mr. Carpenter. About Ten of the Clock.

L. C. J. And where did they lie?

Mr. Carpenter. In the Room where they supped.

L. C. J. Who lay there?

Mr. Carpenter. *Hicks* and *Nelthorp* lay there.

L. C. J. Was *Nelthorp* named there?

Mr. Carpenter. No, I never heard of his Name till after he was taken.

L. C. J. What kind of a Man was he?

Mr. Carpenter. A tall, thin, black Man.

L. C. J. Well, what can you say more?

Mr. Carpenter. My Lord, this Person has sworn, that a Letter was offered me, but I refused it; but I assure your Lordship I never saw any Letter.

Barter. I am sure he met you, and, as I remember, there was a Letter produced.

L. C. J. Thou should'st not be angry with him, for he spoke very kindly of thee, that thou refused'st to meddle in it, and thereupon *Dunne* went into thy Lady, and deliver'd his Message to her.

Mr. Carpenter. That, my Lord, I acknowledge.

L. C. J. Then, prithee let me ask thee another Question: Did you carry any Beer up into the Room?

Mr. Carpenter. My Lady gave order for the Provision.

L. C. J. Did you make *Dunne* drink?

Mr. Carpenter. No, I did not.

L. C. J. Did you offer him any Drink?

Mr. Carpenter. My Lord, I did not see him drink at all.

L. C. J. What say you, good Woman; Did not your Lady sup there?

Mr. Carpenter. My Lord, my Wife was little there at all?

Mr. Rumsfy. Now, my Lord, *Dunne* says he will tell all, whether it make for him or against him.

L. C. J. Let him but tell the Truth, and I am satisfied.

Dunne. Sure, my Lord, I never entertained these Men a night in my House in my Life; but this *Hicks* sent that Man to me, to go to my Lady *Lisle's*, to know whether she would please to entertain him: And when I came, my Lady asked me, whether he had been in the Army or no? I told her, I could not tell, I did not know that he was. She then ask'd me, if he had no body else with him? I told her, I believed there was: This is the very Truth of it, my Lord. I asked her, might the Men be entertain'd? She said they might. So when we came to my Lady *Lisle's*, on the *Tuesday* night, somebody took the two Horses, I cannot tell who, if I were to die; the two went in; and after I had set up my Horse, I went in along with *Carpenter* up into the Chamber to my Lady, and to this *Hicks* and *Nelthorp*; and when I came there, I heard my Lady bid them welcome to her House; and *Mr. Carpen-*

ter, or the Maid, I cannot tell which, brought in the Supper, and set it on the Table.

L. C. J. And did'st thou eat or drink with 'em in the Room, or not?

Dunne. My Lord, I will tell every thing that I know; I confess I did both eat and drink there in the Room.

L. C. J. I pity thee with all my Soul, and pray to God Almighty for thee to forgive thee, and to the blessed Jesus to mediate for thee; and I pray for thee with as much earnestness, as I would for my own Soul; and I beg of thee once more, as thou regardest thy own eternal Welfare, to tell all the Truth.

Dunne. My Lord, I did never know these Men were in the Army when I carried the Message to my Lady *Lisle's*, nor never did entertain them in my House in my life-time, so much as one Night.

L. C. J. Prithee, I do not ask thee what thou did'st not, but what thou did'st?

Dunne. My Lord, I will tell all I know.

L. C. J. What Discourse had you that Night at the Table in the Room?

Dunne. I cannot tell what Discourse truly, my Lord, there was.

L. C. J. Was there nothing of coming from beyond Seas, who came from thence, and how they came? Come, I would have it rather the Effect of thy own Ingenuity, than lead thee by any Questions that I can propound; come, tell us what was the Discourse.

Dunne. I do not remember all the Discourse.

L. C. J. Prithee, let me ask thee one Question, and answer me it fairly; Did'st not thou hear *Nelthorp's* Name named in the Room?

Dunne. My Lord, I cannot tell whether he were called *Nelthorp*, but it was either *Crofts* or *Nelthorp*, I am sure one of them.

L. C. J. Prithee be ingenuous, and let's have the Truth on't?

Dunne. My Lord, I am ingenuous, and will be so.

L. C. J. I will assure you, *Nelthorp* told me all the Story before I came out of Town?

Dunne. I think, my Lord, he was called *Nelthorp* in the Room, and there was some Discourse about him.

L. C. J. Ay, there was unquestionably, and I know thou wert by, and that made me the more concern'd to press upon thee the Danger of forswearing thy self.

Dunne. My Lady ask'd *Hicks* who that Gentleman was, and he said it was *Nelthorp*, as I remember.

L. C. J. Very well, and upon that Discourse with *Nelthorp*, which I had in Town, did I give particular Direction, that the Outlawry of *Nelthorp* should be brought down hither, for he told me particularly of all the Passages and Discourses of his being beyond Sea, and coming from beyond Sea: I would not mention any such thing as any piece of Evidence to influence this case, but I could not but tremble to think, after what I knew, that any one should dare so much to prevaricate with God and Man, as to tell such horrid Lyes in the Face of a Court.

Dunne. What does your Lordship ask me?

L. C. J. Come, I will ask thee a plain Question; Was there no Discourse there about the Battle, and of their being in the Army?

Dunne. There was some such Discourse, my Lord.

L. C. J. Ay, prithee now tell us what that Discourse was?

Dunne. My Lord, I will tell you when I have recollected it, if you will give me time till to-morrow Morning.

L. C. J. Nay, but we cannot stay so long, our Business must be dispatched now; but I would have all People consider what a Reason there is, that they should be pressed to join with me in hearty Prayers to Almighty God, that this Sin of Lying and Perjury may never be laid at thy door. What say'st thou? Prithee tell us what the Discourse was?

Dunne. My Lord, they did talk of Fighting, but I cannot exactly tell what the Discourse was?

L. C. J. And thou said'st thou did'st eat and drink with them in the same Room?

Dunne. I did so, my Lord, I confess it.

L. C. J. And it was not a little Girl that lighted thee to Bed, or conducted thee in?

Dunne. It was not a little Girl.

L. C. J. Who was it then?

Dunne. It was Mr. *Carpenter*, my Lord.

L. C. J. And why did'st thou tell so many Lyes then? Jesu God! that we should live to see any such Creatures among Mankind, nay, and among us too, to the Shame and Reproach be it spoken of our Nation and Religion: Is this that that is called the Protestant Religion, a thing so much boasted of, and pretended to? We have heard a great deal of Clamour against Popery and Dispensations, what Dispensations pray does the Protestant Religion give for such Practices as these? I pity thee with all my Soul, and pray for thee, but it cannot but make all Mankind to tremble and be filled with Horror, that such a wretched Creature should live upon the Earth: Prithee be free, and tell us what Discourse there was?

Dunne. My Lord, they did talk of Fighting, but I cannot remember what it was.

L. C. J. Did you lie with them?

Dunne. No, my Lord, I did not.

L. C. J. Well, I see thou wilt answer nothing ingenuously, therefore I will trouble my self no more with thee: Go on with your Evidence, Gentlemen.

Mr. *Jennings.* My Lord, we have done, we have no more Witnesses.

L. C. J. Then you that are for the Prisoner at the Bar, now is your time to make your Defence; you hear what is charged upon you, and you see what a kind of Shuffling here has been to stifle the Truth, and I am sorry to find the Occasion to speak it, that under the Figure and Form of Religion such Practices should be carried on. What have you to say for your self?

Lisle. My Lord, that which I have to say to it, is this: I knew of no body's coming to my House but Mr. *Hicks*, and for him I was inform'd that he did abscond, by reason of Warrants that were out against him for preaching in private Meetings, but I never heard that he was in the Army, nor that *Nelthorpe* was to come with him; and for that Reason it was, that I sent to him to come by night: but for the other Man *Nelthorpe*, I never knew he was *Nelthorpe*, I could die upon it, nor did not know what Name he had, till after he came into my House; but as for Mr. *Hicks*, I did not in the least suspect him to have been in the Army, being a Presbyterian Minister, that used to preach, and not to fight.

L. C. J. But I will tell you, there is not one of those lying, sniveling, canting, Presbyterian Rascals, but one way or other had a hand in the late

horrid Conspiracy and Rebellion; upon my Conscience I believe it, and would have been as deep in the actual Rebellion, had it had any little Success, as that other Fellow *Hicks*; their Principles carry them to it: Presbytery has all manner of Villainy in it, nothing but Presbytery could lead that Fellow *Dunne* to tell so many Lyes as he has here told; for shew me a Presbyterian, and I will engage to shew a lying Knave.

Lisle. My Lord, I abhorred both the Principles and Practices of the late Rebellion.

L. C. J. I am sure you had great reason for it.

Lisle. Besides, my Lord, I should have been the most ungrateful Person living, should I have been disloyal, or acted any thing against the present King, considering how much I was obliged to him for my Estate.

L. C. J. Oh then! Ungrateful, ungrateful adds to the Load which is between Man and Man, and is the basest Crime that any one can be guilty of.

Lisle. My Lord, had I been try'd in London, I could have had my Lady *Abergavenny*, and several other Persons of Quality, that could have testified how much I was against this Rebellion, and with what Detestation I spoke against it, during the time of it; for I was all that time at London, and staid there till after the Duke of *Monmouth* was beheaded; and if I had certainly known the time of my Trial in the Country, I could have had the Testimony of those Persons of Honour for me. But, my Lord, I am told, and so I thought it would have been, that I should not have been try'd as a Traitor for harbouring him, till he was Convict for a Traitor. My Lord, I would take my Death of it, that I never knew of *Nelthorpe's* coming, nor any thing of his being *Nelthorpe*; I never ask'd his Name, and if he had told it me, I had then remember'd the Proclamation. I do assure you, my Lord, for my own part, I did abhor those that were in that horrid Plot and Conspiracy against the King's Life; I know my Duty to my King better, and have always exercised it, I defy any body in the world that ever knew the contrary, to come and give Testimony.

L. C. J. Have you any more to say?

Lisle. As to what they say of my denying *Nelthorpe* to be in my House, I was in great Consternation and Fear of the Soldiers, who were very rude and violent, and could not be restrained by their Officers from Robbery, and plundering my House. And I beseech your Lordship to make that Construction of it; and I humbly beg of your Lordship not to harbour an ill Opinion of me, because of those false Reports that go about of me, relating to my Carriage towards the old King, that I was any ways consenting to the Death of King *Charles I.* for, my Lord, that is as false as God is true; my Lord, I was not out of my Chamber all the day, in which that King was beheaded, and I believe I shed more Tears for him, than any Woman then living did; and this the late Countess of *Monmouth*, and my Lady *Marlborough*, and my Lord Chancellor *Hyde*, if they were alive, and twenty Persons of the most eminent Quality, could bear witness for me. And I do repeat it, my Lord, as I hope to attain Salvation, I never did know *Nelthorpe*, nor never did see him before in my Life, nor did I know of any body's coming, but Mr. *Hicks*, and him I did know to be a Nonconformist Minister; and there being, as is well known, Warrants out to apprehend all Nonconformist Ministers, I was willing to give him shelter from these Warrants. I

was come down but that Week into the Country, when this Man came to me from Mr. *Hicks*, to know if he might be receiv'd at my Houfe; and I told him, if Mr. *Hicks* pleas'd, he might come upon *Tuesday* in the Evening, and should be welcome; but withal I told him, I must go away the *Monday* following from that place, but while I staid I would entertain him. And I beseech your Lordship to believe, I had no intention to harbour him but as a Nonconformist, and that I knew was no Treason: It cannot be imagined, that I would venture the hazard of my own Life, and the Ruin both of myself and Children, to conceal one that I never knew in my Life, as I did not know Mr. *Nelthorpe*, but had heard of him in the Proclamation. And for that white-headed Man that speaks of my denying them, as I said before, he was one of them that rifed and plunder'd my Houfe, and tore open my Trunk; and if I should not be convicted, he and the rest of them may be call'd to account for what they did, for they ought not to have meddled with my Goods: Besides, my Lord, I have a Witness that can testify what Mr. *Nelthorpe* said, when he was examined before——

L. C. J. Look you, Mrs. *Lisle*, that will signify little; but if you have any Witnesses, call them, we will hear what they say: Who is that Man you speak of?

Lisle. *George Creed* his Name is; there he is.

L. C. J. Well, what do you know?

Creed. I heard *Nelthorpe* say, that my Lady *Lisle* did not know of his coming, nor did not know his Name; nor had he ever told his Name, till he named himself to Col. *Penruddock* when he was taken.

L. C. J. Well, this is nothing; she is not indicted for harbouring *Nelthorpe*, but *Hicks*: Have you any more Witnesses?

Lisle. No, my Lord.

L. C. J. Have you any more to say for yourself?

Lisle. My Lord, I came but five days before this into the Country——

L. C. J. Nay, I cannot tell when you came into the Country, nor I do not care; it seems you came time enough to harbour Rebels.

Lisle. I staid in *London* till all the Rebellion was past and over; and I never uttered a good Word for the Rebels, nor ever harbour'd so much as a good Wish for them in my Mind: I know the King is my Sovereign, and I know my Duty to him, and if I would have ventured my Life for any thing, it should have been to serve him, I know it is his due, and I owed all I had in the World to him: But tho' I could not fight for him my self, my Son did; he was actually in Arms on the King's side in this Business; I instructed him always in Loyalty, and sent him thither; it was I that bred him up to fight for the King.

L. C. J. Well, have you done?

Lisle. Yes, my Lord.

L. C. J. Have you a mind to say any thing more?

Lisle. No, my Lord.

L. C. J. Then command Silence.

[Which was done by Proclamation.]

Lisle. My Lord, may I speak one word more? My Lord, I beseech you afford me your Patience and your Advice; *Keinsbam*, where Mr. *Hicks* is said to be in Arms, does not lie in this County.

L. C. J. That is nothing: But the Treason you committed was in this County.

Lisle. But I assure your Lordship I never knew he was in the Army; and for any Talk or Discourse in private about his or *Nelthorpe's* being there, I never heard any: indeed one of them asked me, whether the Duke of *Monmouth* was beheaded; and I told them, yes, for so he was before I came out of Town: And that is all the Discourse that I can remember, wherein he is concerned.

L. C. J. Well, have you any more to say now?

Lisle. No, my Lord.

L. C. J. Then Gentlemen of the Jury: * This is a Case of very great Example, and withal, of very great Weight and Moment; wherein the Interest of the Publick, and the Life of a Person of Quality and Fortune are put into your hands. And the great Business which has detained both us and you so long, has been an endeavour (if it were possible) to find out the Truth; which indeed is the Business of all Enquiries of this nature: We sit not here, nor are you there upon any other Errand; nor is any thing desired by the Court, or required of you, but that the Truth may be made manifest. 'Tis that you are bound to, by the Oaths you have taken in this Service; and in that Inquiry you are to be guided by the Evidence that has here been given forth unto you; for your Oath is, *That you shall well and truly try, and true deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, according to your Evidence, as you shall answer it to God.* So that, Gentlemen, this Oath of yours being your Direction what is your Duty, and you being all Persons of Quality and Reputation in your Country, Men of great Understanding and known Integrity, it is to be hoped, that not any thing can move you, either to Compassion of the Prisoner on the one hand, or her Allegations and Protestations of Innocence; nor on the other hand, to be influenced by any thing that comes from the Court, or is insinuated by the learned Counsel at the Bar: but that you will entirely consider what Evidence has been given to you, and being guided by that Evidence alone, you that are Judges of the Fact, will let us know the Truth of that Fact by a sincere and upright Verdict.

And inasmuch, Gentlemen, as the Evidence has been long in giving (tho' the substantial part of it, perhaps, be in a narrow compass) I will repeat it to you, as near as I can, with all Faithfulness and Integrity, as I shall answer it to the great Judge of Heaven and Earth, before whom you, and we, and all must stand to be judged; without any Aggravation or Alteration on the one side, and without any Omission on the other: And I shall do it, purely to help your Memories who are to determine the Fact; and I do pray and adjure, that you would do equally, according to the Trust reposed in you, and according to the Oath that you have taken. And I would repeat it once more, that you are not to be led by any Insinuations of the Prisoner, nor by any Allegations from the Learned Counsel, whose Business it is to open the Fact; but that Fact so opened is no further to guide you in your Enquiry, than as it is proved.

Gentlemen, before I come to the particular Evidence of this Fact, I must crave leave to say something of a Matter in general that is very well known. It was very well observed by that Learned

* *The Lady Lisle, who was then past Seventy, was so little moved, that she slept during great part of this Charge.*

Gentleman that opened the Cause at the beginning, that we are all of us here unspeakably oblig'd to bless the great God of Heaven, the Father of Mercies, and praised for ever be his Holy Name, for his infinite Goodness in preserving and protecting us from the imminent Ruin which the late horrid and detestable Rebellion would (had it succeeded) have inevitably brought upon us; had not he of his own infinite Mercy and gracious Goodness protected and delivered us from our Enemies, they had undoubtedly swallowed us up quick: But as the Attempts of our Enemies were very malicious, so the Preservation and Deliverance of our good God was very great and signal.

And we have reason to bless that great God for many Deliverances he has been pleas'd to give us; we are by no means to forget his Mercy towards our late Sovereign of blessed Memory, and with him towards us, when he brought him out of Exile and Bondage, and us out of that State of Confusion and Misery, which our Country had for many Years groan'd under: When all Religion as well as Sovereignty, and all Obedience, Duty and Difference to Superiors were quite lost, God of his infinite Mercy, and of his own most gracious bountiful Disposition brought our blessed Sovereign (now in Heaven) and his gracious Majesty that now reigns, and all the Royal Family after a long and tedious Rebellion, into a quiet and peaceable Possession of their undoubted Rights and Inheritances, and with him restor'd to us our Religion, the best of Religions, the true Protestant Reformed Religion, the Religion established by Law, which now is, and I hope will ever remain established among us, as now profess'd and practis'd in the Church of *England*: and when we reflect on that Deliverance, we are to this Circumstance to heighten both our Admiration and our Gratitude, that it was brought about without the least drop of Blood shed, by a miraculous Providence, and by the Strength of an Almighty Arm.

Besides, Gentlemen, we cannot be sufficiently thankful to our God, for the Mercies we enjoy'd under that blessed King; for we are to consider we liv'd in all the Affluence of Peace and Plenty, we safely and uninterruptedly enjoy'd our Religion, the greatest Blessing on this side Immortality, our Lives, Liberties and Properties inviolably were secured; every Man safe under the Shadow of his own Vine, and eat the Fruit of his own Labour; and while our Neighbours suffered the Calamities of War, we were surrounded with all the Blessings of Peace, and slept securely under the Government of a gracious and merciful King: Every one of us had even what our own Hearts could desire, and if we wanted any thing, it could be only thankful and dutiful Hearts to our God and our Prince, during whose Life we continued in a happy State and Condition.

But, it having pleas'd God, the King of Kings, the great Ruler both of Heaven and Earth, to take that blessed Prince to himself, what Thanks ought we to pay him for his gracious Goodness, in leaving so great and so glorious a Successor as his Royal Brother, our present Sovereign, whom I pray Almighty God may long live and happily reign among us! This gracious Prince, as soon as ever he came to the Possession of his undoubted Right and Inheritance, upon his Brother's Death, in the Imperial Crown of this Realm, to entitle himself to the good Opinion of his People, and to engage them to the Expression of that Duty which

the Christian Religion, and I am sure particularly the Religion of the true Church of *England* does oblige all its Followers to; what does he? Even before he was ask'd, in the very first Minutes of his Reign, he begins with Bounty to his Subjects, and declares his Resolution to preserve them safe in their dearest and most precious Enjoyments, in their Religion; and not only in that, but in the Laws, Liberties, Rights and Properties, with the most inviolable Security to their Lives, and all that is dear unto them: And this gracious Declaration came from his Royal Mouth without any Solicitation or any Inducement, save only the generous and gracious Inclination of his own Royal Heart; and to give it the greater Edge, to the Honour of the Church of *England's* Religion be it spoken, he was pleas'd to tell what Opinion he had of our Religion and its true Professors, that they were the true Friends and faithful Supporters of the Government; an Opinion which I hope every honest Church-of-*England*-Man will endeavour to cherish by a suitable Practice of what is certainly the Doctrine of that Religion, Loyalty and Obedience.

But alas! without Horror and Confusion, we cannot but remember that instead of making good Returns of Respect and Duty to so gracious a Sovereign for his great Bounty, Faction and Sedition, Hypocrisy and Malice had besotted and bewitched a great Part of his Subjects, and corrupted, blinded, and bigotted them to such an height of Impiety, that a Rebellion must begin his Reign, and all the poisonous Arts of Disobedience are made use of to instigate the King's Subjects, with all the Rancour and Vengeance in the world to rise against him.

Blessed God! What is the way that this Devil of Sedition comes to bewitch People to such a height, when Almighty God had so lately delivered us from the Misery and Confusion of a Civil War? It is that way surely, we find it but too plain, which he had always found very successful, the Presence of Saintship, Conscience, and that glorious Name, Religion. What Religion can it be? The Christian Religion had this Form of its great Ruler; *Render to Cæsar the things that are Cæsar's, and to God the things that are God's*. But these Men act as though that were not Scripture, when yet pronounced by our blessed Lord himself, and both joined in one Sentence as indispensable Duties; and they will hardly be brought to believe that Rebellion is the Sum of Witchcraft, though the Scriptures have directly given it that Character. Good God! that we should live to such an Age; when Men can call God to assist and protect them in a Rebellion: for not to reflect upon what was done in former times, it is late enough for us to remember, but not without Horror, that Men have been ty'd by all the Bonds and Contracts Hell could invent in a Combination and Confederacy to murder both the late King and his present Majesty, and all this while this must be sanctified with the Name of Religion. So that a Man that is a Murderer by the Law of God, and an Offender against the first Precept that God Almighty enjoined, not to shed innocent Blood, shall yet be a Saint for an Assassination upon the account of Religion, and this shall be accounted a pious Cause to obtain Heaven.

Who did these Miscreants, that were justly by Law condemn'd for that barbarous Conspiracy, when they came to die, invoke? The great God, to testify for them, that they died for the sake of Religion. When they come to suffer for Treason, they can bless God Almighty for the Honour he

does them in dying in his Cause, and call themselves Martyrs for it.

Nay, is it not yet more strange and horrid, that some Men who call themselves Ministers of the Gospel, shall come to be Bellwethers of Rebellion, and cry out, they are fighting the Lord's Battle, when they are attempting to kill the Lord's Anointed?

Jesus God! that ever we should have such a Generation of Vipers among us, that can plunge themselves into the most horrid Impieties, and yet think to escape Confusion here, and purchase a Crown of Glory hereafter!

When we consider, Gentlemen, the Ring-leader of this late Rebellion, the Center of all our Trouble, the Arch-Rebel and Traitor, *Monmouth* I mean, should arrive to such a Height of Impudence and Villany, as to bless God that he could with Satisfaction reflect upon a two Year's Life very regularly spent; but how? In manifest Adultery and Uncleaness, nor can it be spoke or thought of without inexpressible Horror.

Alack! Gentlemen, when we find Religion made use of as a Subterfuge and Cloke for such impious Practices, it gives too much Occasion for our Enemies to think us Atheists: the very *Turks* will hate us, and *Pagans* detest us, as the most irreligious profane People in the World; when we, who profess Love and Duty to Jesus Christ as our Holy and Blessed Redeemer, do these things and even boast of them, whom they that deny him blush at the very thoughts of, and never so much as name, much less act without Horror and Confusion.

Gentlemen, I do not speak this for the sake of speaking, but I would fain deliver my own Soul and yours from having any hand in such horrible Impieties, and that, by testifying our Abhorrence of them, by publicly declaring our selves to be Enemies to those Hypocrites the Nonconformist Parsons; I mean, that pretend indeed pure Religion to be their great Aim and End, and through a Scrupulosity of Conscience, cannot conform to that Decency and Duty which is required of them in the Church; but yet, without remorse, can kill, or be the occasion of the Death of ten thousand People, as in the Consequence of this late Rebellion perhaps it may prove. For do but consider how many Families by this means are utterly ruined, how many innocent Babes starved, or exposed to the utmost Penury and Want; how many Widows left in a distressed desolate Condition, destitute of all manner of Provision and Maintenance; and all this by the Instigation of these Villains that have preached and pray'd them into it, gilding the Bait that has drawn them into it, by the specious Pretence of Religion and Conscience?

Consider, Gentlemen, this is that which has brought this poor unfortunate Gentlewoman, the Prisoner at the Bar, into this deplorable Condition: What could prevail upon her to run such a hazard as this, but only her Affection and deluded Zeal for that Wretch, that had nothing but the name of Religion, for his Soul is blacker in the Eyes of God, and the Thoughts of all honest Men, than ever his Coat was? You see by the Proofs what an impudent unsanctified Villain he was; for when these Gentlemen that have given Evidence, were in the Custody, and under the Power of the Rebels, he must tempt and provoke them to leave off and forsake their Duty to their natural Lord and lawful Sovereign the King, whom God had set over them, and submit to an Usurper, a King of their own making; and such a King too, that I dare boldly

affirm, the meanest Subject within the Kingdom that is legitimate, has a better Title to the Crown, than he had; and this all under the pretence of Religion, and the Protestant Religion too: and that same Prince of theirs must have the Title of a Protestant Prince; and an excellent Protestant he lived and died, living in the open Violation of the Law of God, and in manifest Rebellion against his lawful Sovereign: and he died without any Remorse for either, boasting of his own Wickedness beyond the bounds of common Modesty and Humanity.

Gentlemen, Let us all join in hearty Prayers to our God, the God of infinite Mercy, that as he has yet once more delivered our Sovereign, and us with him, out of the Jaws of these Lions and ravenous Wolves; so he would still please to preserve him and us from the hands of all our Enemies: and I pray God it may have that good effect upon all of us, as to make us more careful and conscientious in our Duty to him, and his Vicegerent the King. To him alone must all the Glory be ascribed; it was not our Hand, or Arms of the King that could have saved or protected us, had not the special Interposition of the Divine Power and Goodness wrought this Deliverance for us.

But now, Gentlemen, to come to the particular Case here before you; and the Fact, upon the Evidence, stands thus: It is very notorious this Fellow *Hicks* was actually in this Rebellion; you have it sworn by three several Persons that saw him, and they particularized to you such Tokens of their Knowledge and Remembrance, that sure, if any thing can, must make him blush at the Repetition of them; for they tell you, when they were in Prison he would have corrupted them from their Duty; and yesterday they saw him in Prison, and upon discourse of some Circumstances, he could not deny but he was there.

This Person, *Mrs. Lisle* the Prisoner at the Bar, she is accused for receiving and harbouring this Person: And, Gentlemen, I must tell you for Law, of which we are the Judges, and not you, That if any Person be in actual Rebellion against the King, and another Person (who really and actually was not in Rebellion) does receive, harbour, comfort, and conceal him that was such, a Receiver is as much a Traitor, as he who indeed bore Arms: We are bound, by our Oaths and Consciences, to deliver and declare to you what is Law; and you are bound, by your Oaths and Consciences, to deliver and declare to us, by your Verdict, the Truth of the Fact.

Gentlemen, that he was there in Rebellion, is undeniably and unquestionably proved: That there are sufficient Testimonies to satisfy you, that this Woman did receive and harbour him, is that which is left to your Consideration; and for that, the Proofs lie thus: And truly I am sorry to have occasion for repeating the Circumstances of the Proof; I mean, the great Art that has been used to conceal it: how difficult a thing it was to come at it; what time has been spent, in endeavouring to find out Truth in a Fellow, that in defiance of all Admonition, Threats and Persuasion, would prevaricate and shuffle to conceal that Truth; nay, lye and forswear himself to contradict it. But out of true christian Charity, as I told him, so I tell you, I do heartily pray (and all good Christians I hope will join with me in it) to the God of infinite Mercy that he would have mercy upon his Soul, upon which he hath contracted so great a Guilt by the Impudence of his Behaviour, and pertinacious Obstinacy

stinacy in those Falshoods which he hath made use of in this Case.

Gentlemen, I would willingly forget all his Prevarications, but I must take notice of them in short, to come to the Truth. First, he says, he came upon an Errand from a Man he knows not whom; to my Lady *Lisle's* House; and thither he is brought by one *Barter*; and when he comes there, he tells her, he comes in the Name of one *Hicks*, who desired to be entertained there. Then she asks the Question, whether *Hicks* had been in the Army; and he told her he did not know; and he swears now he did not: But at last it came out, that it was to entertain *Hicks* and another Person; but it should seem that other Person was not named; and *Barter* tells you, that *Hicks* and another Person (who afterwards proved to be *Nelthorpe*) are promised to be entertained, and ordered to come in the Evening. But not to go backward and forward, as he has done in his Evidence, denying what he afterwards acknowledged, that he saw any body besides a little Girl; that he pulled down the Hay out of the Rack for his Horse; that he eat any thing but Cake and Cheese that he brought with him from home; that he was ever made to drink, or to eat or drink in the House, or ever meddled or made with any body in the House: At last we are told that *Carpenter* met with him, and came out with a Lanthorn and Candle, took care of his Horse, carried him into the Room where *Hicks* and *Nelthorpe* were, and the Prisoner at the Bar Mrs. *Lisle*; there they all supped together; there they fell into Discourse; there *Nelthorpe's* Name was named, and they talked of being in the Army, and of the Fight: and so it is all come out, and makes a full and positive Evidence.

But then, suppose there was no more than the other Evidence, and that the Fellow remain in an hard-hearted Obstinacy, then you are to consider the Circumstances even from his first Evidence, that this was after the Rebellion was all over; for it seems during the Rebellion she was in *London*, and it was notoriously known the King's Forces were in pursuit of the Rebels, and this without any positive Proof would be in itself a sufficient Testimony to convince any considerate Person, that she was to conceal those she ought not to conceal; because she directed the particular time wherein they should come, and that was at Night; and no prudent Person would receive Strangers in the Night, and give such Directions in such a Season, without some extraordinary ground for it. When they came there, she provided a Supper for them; and you see what care is taken, that the Woman only is permitted to bring that Supper to the Door, and the Husband must set it on the Table; no body is permitted to attend there but he. Works of Darknes always desire to be in the dark: Works of Rebellion and such like are never done in the light.

But then comes that honest Fellow *Barter* (I call him so, because he appears so to be, and he ought to be remembered with a great Remark for his Honesty) he tells you, he conducted him to the House, and what Discourse pass'd there in his hearing: The prisoner asked him, what Countryman he was, and whether he was a Brick-maker, and promised him so many Acres of Land in *Carolina*. The Fellow, upon Observation and Consideration, found himself under a great Load, could not sleep nor eat quietly, as Men that have honest Minds are uneasy under such things; Falshood, and Treason, and Hypocrisy are a heavy Load; and, blessed be

God, things were by this means discovered: for he goes and tells Col. *Penruddock*; and withal, *Dunne* swears to *Barter*, it was the bravest Job that ever he had in his Life; whereas in the beginning of his Story, he would have told you a strange Story of a black Beard, and I do not know what, and that he got not one Groat by it; that he gave the Man Half a Crown out of his own Pocket, and was so industrious, as when he knew the Way no farther, then he would hire one himself to shew him the Way, and all for nothing, but only for the kindness he had for a black Beard.

Besides, Gentlemen, I am sorry to remember something that dropped even from the Gentlewoman herself, she pretends to Religion and Loyalty very much, how greatly she wept at the Death of King *Charles* the Martyr, and owns her great Obligations to the late King and his Royal Brother; that she had not had a Being, nor any thing to maintain it for twenty Years last past but from their Bounty, and yet no sooner is one in the Grave, but she forgets all Gratitude, and entertains those that were Rebels against his royal Successor. I will not say what hand her Husband had in the Death of that blessed Martyr, she has enough to answer for of her own Guilt; and I must confess it ought not one way or other to make any Ingredient into this Case what she was in former Times: And I told a Relation of hers, Mr. *Tipping* by Name, that came to me last Night to desire that the might not lie under some Imputations that were gone abroad of her, that she rejoic'd at the Death of King *Charles* I. nor that any false Report of that nature might influence the Court or Jury against her, that it should not: Be the thing true or false, it is to be of no weight one way or other in the Trial of this Case, nor is she to be accountable for it.

But I must remember you of one Particular, that is plain upon this Evidence, and is of very great moment in this Case; That after all these private Messages and Directions given to come by Night, and the kind Reception they met with when they came, and after all this Care to lodge them and feed them, when Colonel *Penruddock*, after the Discovery made by *Barter*, came to search her House, then she had no body in it truly, which is an Aggravation of the Offence testify'd by Colonel *Penruddock* himself, whose Father likewise was a Martyr, and died for his Fidelity to the Crown; and who was the Judge of that Father, we all very well know. God Almighty is a just God, and it may be worth considering (especially by her) how God has been pleased to make use of him as the Instrument in this Business; and she would likewise do well to consider the Finger of God in working upon the Heart of that Man *Barter*, who was employ'd in all this Affair, and that all the Truth has been told by *Nelthorpe*, that blackest of Villains *Nelthorpe*, that would have murdered the late King and his royal Brother; that he that was one of those barbarous, malicious Assassins in that black Conspiracy, and outlaw'd, should be harbour'd by one that pretends a Love for the Royal Family, and entertained and discoursed with at Night about being in the Army; yet that he and that other Villain *Hicks*, who pretends to Religion and to be a Preacher of the Gospel, but is found in Rebellion and in the Company of Traitors, should be deny'd the next Morning.

I hope they themselves are all by this time satisfy'd Truth will come out, and I hope you will not be deceived by any specious Pretences. Our Fore-

Fore-fathers have been deluded, but the Deception, I hope, is now at an end; and I must needs say, if all these Witnesses that have freely discovered their Knowledge, joined to that Truth which is at length drawn from that *Dunne*, be worthy of any Credit, it is as plain a Proof as can be given, and as evident as the Sun at Noon-day.

Gentlemen, upon your Consciences be it: The Preservation of the Government, the Life of the King, the Safety and Honour of our Religion, and the Discharge of our Consciences as loyal Men, good Christians, and faithful Subjects, are at stake; neither her Age nor her Sex are to move you, who have nothing else to consider but the Evidence of the Fact you are to try. I charge you therefore, as you will answer it at the Bar of the last Judgment, where you and we must all appear, deliver your Verdict according to Conscience and Truth. With that great God, the impartial Judge, there is no such thing as Respect of Persons, and in our Discharge of our Duty in Courts of Justice, he has enjoined us his Creatures, that we must have no such thing as a Friend in the Administration of Justice, all our Friendship must be to Truth, and our Care to preserve that inviolate.

Lisle. My Lord, if your Lordship please—

L. C. J. Mistress, you have had your Turn, you cannot now be heard any more after the Jury is charged.

Lisle. My Lord, I did not know *Nelthorp*, I declare it, before he was taken.

L. C. J. You are not indicted for *Nelthorp*, but we are not to enter into Dialogues now, the Jury must consider of it.

Jury-man. Pray, my Lord, some of us desire to know of your Lordship, in point of Law, whether it be the same thing, and equally Treason, in receiving him before he was convicted of Treason, as if it had been after.

L. C. J. It is all the same, that certainly can be no Doubt; for, if in case this *Hicks* had been wounded in the Rebels Army, and had come to her House and there been entertained, but had died there of his Wounds, and so could never have been convicted, she had been nevertheless a Traitor.

Then the Jury withdrew, and staying out a while, the Lord Jefferies expressed a great deal of Impatience, and said, he wonder'd that in so plain a Case they would go from the Bar, and would have sent for them with an Intimation, that if they did not come quickly, he would adjourn, and let them lie by it all Night; but after about half an hour's stay the Jury returned, and the Foreman address'd himself to the Court thus:

Foreman. My Lord, we have one thing to beg of your Lordship some Directions in, before we can give our Verdict in this Case: We have some Doubt upon us, whether there be sufficient Proof that the knew *Hicks* to have been in the Army.

L. C. J. There is as full Proof as Proof can be; but you are Judges of the Proof, for my part I thought there was no Difficulty in it.

Foreman. My Lord, we are in some doubt of it.

L. C. J. I cannot help your Doubts: Was there not proved a Discourse of the Battle and of the Army at Supper-time?

Foreman. But, my Lord, we are not satisfy'd that she had Notice that *Hicks* was in the Army.

L. C. J. I cannot tell what would satisfy you; Did she not enquire of *Dunne*, whether *Hicks* had been in the Army? And when he told her he did not know, she did not say she would refuse him if he had been there, but order'd him to come by Night, by which it is evident she suspected it; and when he and *Nelthorp* came, discours'd with them about the Battle and the Army: Come, come, Gentlemen, it is a plain Proof.

Foreman. My Lord, we do not remember that it was proved that she did ask any such Question when they were there.

L. C. J. Sure you do not remember any thing that has pass'd? Did not *Dunne* tell you there was such Discourse, and she was by, and *Nelthorp's* Name was nam'd? But if there were no such Proof, the Circumstances and Management of the Thing is as full a Proof as can be, I wonder what it is you doubt of.

Lisle. My Lord, I hope—

L. C. J. You must not speak now.

Then the Jury laid their Heads together for near a quarter of an Hour, and at length agreed; and being call'd over, deliver'd in this Verdict by the Foreman.

Cl. of Arraignments. *Alice Lisle*, Hold up thy Hand. Gentlemen of the Jury, look upon the Prisoner: How say ye! Is she guilty of the Treason whereof she stands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands, or Tenements had she?

Foreman. None that we know of.

Cl. of Ar. Look to her Jaylor, she is found guilty of High Treason; and prepare your self to die.

Then the Verdict was Recorded.

L. C. J. Gentlemen, I did not think I should have had any Occasion to speak after your Verdict, but finding some Hesitancy and Doubt among you, I cannot but say, I wonder it should come about; for I think in my Conscience, the Evidence was as full and plain as could be, and if I had been among you, and she had been my own Mother, I should have found her Guilty.

Then the Court adjourn'd till the next Morning.

Die Veneris 28 Augusti, 1685.

THIS Day *Alice Lisle* was brought to the Bar, and being asked what she had to say for her self, why Judgment of Death should not pass upon her being convicted of High-Treason; but offering nothing, she was, with the rest of the Prisoners that were to receive the Sentence of Death, condemn'd by the Lord *Jefferies*, who pass'd Sentence thus:

L. C. J. *Alice Lisle*, and you the several Prisoners now at the Bar, you have been severally Indicted, Arraigned, and now stand severally Convicted of Crimes that by the Laws of the Land are to be punished with Death; you stand Convicted by your Equals, by a Jury of your Country, against whom you might have had, and were allow'd to make (and one of you did make) what Challenges

enges you could: but upon full Evidence, by that Jury of your own Country-men, you have been found guilty of those Crimes for which you are to die; and there remains now no more with the Court but to perform their Duty, which is to pronounce that Sentence, that dismal Sentence of Death, which the Law has provided for such Offenders.

And sure I am, it cannot but be thought uneasy, and far from pleasant, not only to me, but to every body else that sees such a lamentable Object, such a Number of Persons that might have acquired to themselves an honest Livelihood by Diligence in their lawful Callings, being dutiful to God, and obedient to their Sovereign and the Laws of the Land, who yet in defiance of all these have brought themselves to a shameful untimely End by their own wicked Courses.

Particularly, I cannot but lament the deplorable Condition of you, Mrs. *Lisle*, a Gentlewoman of Quality and of Fortune, so far stricken in Years, therefore ought to have had more Discretion: One, who all your Life-time have been a great Pretender to, and Professor of Religion, and of that Religion which bears a very good Name, the Protestant Religion; but that Name has been perverted to very ill Purposes by some People, who have had nothing but the Name to protect themselves under.

There is no Religion whatsoever (except that hypocritical Profession of theirs which deserves not the Name of Religion, I mean the canting, whining, Presbyterian, Phanatical Profession) that gives the least countenance to Rebellion or Faction; and I cannot but lament to find you involved in that Herd.

And I cannot but deplore it withal, as a most sad and dismal thing, that in this little Case so many Perjuries should be added to the Crime of Treason, such, as for my part I cannot but tremble to remember; Perjuries in defiance of all the Instruction and Admonition that true christian Charity could express, and in defiance of the Omniscience and Justice of the All-seeing God of Truth: You ought to reflect upon whose account those Perjuries were committed, and to lay them seriously to heart, for e'er long, in a few Hours (deceive not your self) you are to give an Account at a greater Bar for all your Thoughts, Words and Actions.

You would likewise do well to bethink yourself with all Seriousness and Remorse, of your own false Asseverations and Protestations, that you upon your Salvation should pretend Ignorance in the Business, when since that Time, even since the last Night, there has been but too much discover'd how far you were concern'd; no, 'tis not unknown who were sent for upon the *Monday* Night, in order to have that rebellious, seditious Fellow to preach to them, what Directions were given to come through the Orchard the back and private Way, what Orders were given for Provision, and how the Horses were appointed to be disposed of. I only speak this, that you should bethink your self in this short time that you have left here upon Earth, to get these Sins of yours duly repented of, and truly pardoned; and not only so, but consider you have it now in your power to make some Recompence to the publick Justice of the Nation, by discovering the Truth in this Matter, and all Religion enjoins you to do what you can: For without the infinite Mercy

of the great God you are in a deplorable Condition, and without true Contrition and Repentance, of which all the Recompence you can make, both for publick and private Injuries, is a part, you can never hope for the Mercy of that God to be extended to you.

Sirs; It is not in my Province to advise you in your Preparation for that Eternity you are all suddenly to enter into: but out of pure Charity, and hearty Compassion to you, and the miserable Condition you have brought yourselves into, and out of a tender Regard to your precious immortal Souls, I cannot but assure you of my own, and recommend you to the earnest and fervent Prayers of all good Christians, to the God of infinite Mercy, that he would be merciful unto you all.

And the great God of his gracious Goodness grant, that all we that are here may learn such Lessons, as are proper from such Examples: From that Woman the sad and dismal Effects of Disloyalty and Treason; and from all the rest, the deplorable Mischiefs that attend Licentiousness and Debauchery: For by the Course of Nature, most of these might have lived a much longer Time, and that with Comfort to themselves and their Relations; but now, to the anguish of their own Hearts, and the unspeakable Grief of all their Friends, they have shortened their own Days, and brought a dismal Sentence upon themselves.

And I recommend them not only to my self and others, but chiefly and especially to the Pious, Orthodox and Learned Ministry, to give the best Assistance they can, during the short remainder of their Time; for their Abode here upon Earth is but short, and God grant they may meet with a blessed Immortality.

There remains no more for me to do, I say, but to pronounce the Sentence of the Law, which is this; and the Court does award,

That you, Mrs. Lisle, be conveyed from hence to the Place from whence you came, and from thence you are to be drawn on a Hurdle to the Place of Execution, where your Body is to be burnt alive till you be dead. And the Lord have Mercy upon your Soul.

The rest of the Prisoners had the usual Judgment as in Cases of Felony.

L. C. J. Look you, Mrs. *Lisle*, when I left his Majesty, he was pleased to remit the Time of all Executions to me; that wherever I found any Obstinacy or Impenitence, I might order the Executions with what speed I should think best: Therefore, Mr. Sheriff, take notice, you are to prepare for the Execution of this Gentlewoman this Afternoon. But withal, I give you, the Prisoner, this Intimation: We that are the Judges, shall stay in Town an Hour or two; you shall have Pen, Ink and Paper brought you, and if in the mean time you employ that Pen, Ink and Paper, and this Hour or two well, (you understand what I mean) it may be you may hear further from us, in a deferring the Execution.

Then the Prisoner was taken away.

But afterwards, upon the Intercession of some Divines of the Church of Winchester, she was reprieved till Wednesday the Second of September.

On Sunday the Thirtieth of August, the following Letter was sent to the Right Honourable the Earl of Clarendon, Lord Privy-Seal, at Windsor; [which the Earl did then read to the King] who answered, That he would do nothing in it, having left all to the Lord Chief Justice*.

My Lord,

Understanding that Mrs. Lisle is condemned, and that many false things are reported of her, that may hinder the King from shewing her Mercy; particularly, that she was an Enemy to the King's Friends in the time of the late Wars: As to that, we can assure your Lordship, that she was a Favourer of them in their greatest Extremities; and particularly of us, and of some others that are since dead: And for these late Years we have often been in her Company, and never heard her say any thing but what became a loyal Subject. This we desire your Lordship would be pleased to represent to the King, and to intercede for her Reprieve; which will be a great Obligation to your Lordship's humble Servants,

M. St. John.
E. Abergavenny.

On Monday the Thirty-First of August the following Petition was presented to the King.

To the King's most Excellent Majesty,

The Humble Petition of Alicia Lisle;

Humbly Sheweth,

THAT your Petitioner lieth under a Sentence of Death for harbouring one *John Hicks*; and is sentenced to be burnt on *Wednesday* next.

That she is the Daughter of Sir *White Beconsaw*, descended of an antient and honourable Family, and related to several of the best Families of the Nobility of this Kingdom.

Wherefore your Petitioner humbly begs your Majesty, that Execution may be altered from Burning to Beheading, and may be respited for four Days:

And your Petitioner shall pray, &c.

To which his Majesty answered: That he would not relieve her one Day; but for altering the Sentence, he would do it, if there were any Precedents for it.

Thereupon the following Precedents, for the altering of the Sentence, were offered to the King.

That Execution may vary from the Judgment, see the Register, *Fol.* 165. in Felony, *Earl. 3 E. 3.* where the Judgment always is *Suspensatur per colum*; yet the Party may be beheaded, which is no part of the Sentence. So was the Duke of *Somerset* in the Time of *Edw. VI.* for Felony: So was the Lord *Audley*, *7 Car. I.* for Felony (*Rape.*)

Queen *Katherine Howard* for Treason, *Hen. VIII.* and *Jane Gray*, *primo Mariae*. The Countess of *Salisbury*, being attainted for Treason, *Anno 1541.*

* The Earl of *Feverham* having been offered a thousand Pounds to obtain her Pardon, solicited the King to grant it; but the King told him, he had promised the Chief Justice that he would not pardon her.

was beheaded *32 Hen. VIII.* See *3 Co. Inst. p. 211, 212.*

Whereupon his Majesty was pleased to sign the following Warrant.

JAMES R.

Whereas we are informed that *Alicia Lisle* has received Sentence of Death for High Treason at the Sessions of *Oyer and Terminer*, and *Goal-Delivery*, held at our City of *Winchester*, for harbouring of *John Hicks* a Rebel, and that the Sentence is to be executed upon her the second of *September* next, by burning her alive: And whereas the said *Alicia Lisle* has humbly petitioned Us to alter the Manner of the said Execution, by causing her Head to be sever'd from her Body: We being graciously pleased to condescend to her Request, have thought fit hereby to signify Our Will and Pleasure accordingly. And our further Will and Pleasure is, that you deliver the Head and Body to her Relations to be privately and decently interred: And for so doing, this shall be your Warrant.

Given at our Court at *Windsor*, the Thirty-First Day of *August*, 1685. in the first Year of our Reign.

SUNDERLAND.

To our Trusty and Well-beloved the High-Sheriff of our County of *Hants*, and to all others whom it may concern.

Which Warrant being delivered to the Sheriff, she was, on *Wednesday* the second of *September*, in the Afternoon, brought to Execution; which was perform'd upon a Scaffold erected in the Market-place of the City of *Winchester*, where she behaved herself with a great deal of Christian Resolution. She then deliver'd a Paper to the Sheriff, a Copy of which follows; and after some little time was executed, having her Head sever'd from her Body.

A Copy of the Paper delivered to the Sheriff.

Gentlemen, Friends, and Neighbours,

IT may be expected that I should say something at my Death, my Birth and Education being near this Place. My Parents instructed me in the Fear of God, and I now die of the Reformed Religion, always being instructed in that Belief, That if Popery should return into this Nation, it would be a great Judgment. I die in the Expectation of Pardon of my Sins, and Acceptation with the Father, by the imputed Righteousness of Jesus Christ, he being the End of the Law for Righteousness to every one that believes. I thank God, through Jesus Christ, I depart under the Blood of Sprinkling, which speaketh better things than the Blood of *Abel*, God having made this Chastisement an Ordinance to my Soul.

I did as little expect to come to this Place on this Occasion as any Person in this Nation; therefore let all learn not to be high-minded, but fear the Lord: The Lord is a Sovereign, and will take what way he sees best to glorify himself by his poor Creatures; therefore do humbly desire to submit to his Will, praying him, that in patience I may possess my Soul.

My Crime was entertaining a Nonconformist Minister, who is since sworn to have been in the

late Duke of *Monmouth's* Army. I am told, if I had not denied them, it would not have affected me. I have no Excuse but Surprize and Fear; which I believe my Jury must make use of to excuse their Verdict to the World.

I have been told, the Court ought to be Counsel for the Prisoner, instead of which, there was Evidence given from thence; which, though it were but Hear-say, might possibly affect my Jury. My Defence was such as might be expected from a weak Woman; but such as it was, I did not hear it repeated again to the Jury. But I forgive all Persons that have done me wrong, and I desire that God will do so likewise.

I forgive Col. Penruddock, though he told me he could have taken those Men before they came to my House.

As to what may be objected, that I gave it under my Hand that I had discoursed with *Nelthorpe*, that could be no Evidence to the Court, or Jury, it being after my Conviction and Sentence.

I acknowledge his Majesty's Favour in altering my Sentence; and I pray God to preserve him; that he may long reign in peace, and the true Religion flourish under him.

Two things I have omitted to say, which is, that I forgive him that desired to be taken from the Grand Jury to the Petty Jury, that he might be the more nearly concerned in my Death.

Also I return humble Thanks to Almighty God, and the Reverend Clergy that assisted me in my Imprisonment.

Sept. 2. 1685.

ALICE LISLE.

Her Attainder was afterwards reversed 1st of William and Mary.

Primo Gulielmi & Mariae, Anno 1689.

An ACT for annulling and making void the Attainder of *Alicia Lisle*, Widow.

Whereas *Alicia Lisle*, Widow, in the Month of August, in the first Year of the Reign of the late King James the Second,

at a Sessions of Oyer and Terminer, and Goal-Delivery, holden for the County of Southampton, at the City of Winchester in the said County, by an irregular and undue Prosecution, was indicted for entertaining, concealing and comforting John Hicks, Clerk, a false Traitor, knowing him to be such; Though the said John Hicks was not, at the Trial of the said *Alicia Lisle*, Attainted or Convicted of any such Crime: And, by a Verdict injuriously extorted and procured by the Menaces and Violences, and other illegal Practices of George Lord Jesferies, Baron of Wem, then Lord Chief Justice of the King's Bench, and Chief Commissioner of Oyer and Terminer and Goal-Delivery, within the said County, was convicted, attainted, and executed for High-Treason: Nay it therefore please your most Excellent Majesties, at the humble Petition of Triphena Lloyd and Bridget Usher, Daughters of the said *Alicia Lisle*, That it be declared and enacted by the Authority of this present Parliament: And be it Enacted by the King and Queen's most excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That the said Conviction, Judgment and Attainder of the said *Alicia Lisle* be, and are hereby repealed, reversed, made and declared null and void to all Intents, Constructions and Purposes whatsoever, as if no such Conviction, Judgment or Attainder had ever been had or made; and that no Corruption of Blood, or other Penalty or Forfeiture of Honours, Dignities, Lands, Goods or Chattels, be by the said Conviction or Attainder incurred: any Law, Usage or Custom to the contrary notwithstanding.

Ex^o

Job. Brown, Cleric^o
Parliamentor^o.

CXXXIV. *The Trials of John Fernley, William Ring, Elizabeth Gaunt **, and *Henry Cornish † Esq;* at the Old Bailey, for High Treason, October 19, 1685. 1 Jac. II.



Monday, Octob. 19th, 1685, at the Sessions-House in the Old-Bailey, London, the Court being met, and Proclamation made for Attendance, the Proceedings were as follow.
Clerk. Set *John Fernley* to the Bar. [Which was done.]

Cryer. O-Yes, All manner of Persons are commanded to keep Silence, upon pain of Imprisonment.

Clerk. *John Fernley*, hold up thy Hand. [Which he did.]

Thou standest indicted by the Name of *John Fernley*.

Middlesex. **T**HE Jurors for our Sovereign Lord the King upon their Oaths do present, That *John Fernley*, of the Parish of *St. Mary Matfellow*, otherwife *White-Chapel*, in the County of *Middlesex*, Barber, as a false Rebel and Traitor against the most illustrious and most excellent Prince King *James* the Second, by the Grace of God of *England, Scotland, France and Ireland*, King, and his natural Lord, not having the Fear of God in his Heart, nor his due Obedience any wise regarding, but being mov'd and seduced by the Instigation of the Devil, and his faithful Duty and natural Obedience which a true and loyal Subject ought to have towards his said Lord the King, and by Law ought to observe, utterly withdrawing; and intending with all his Endeavours the Peace and Tranquillity of this Kingdom of *England* to disturb, and War and Rebellion against our said Lord the King to incite and move, and the Government of our said Lord the King in this Kingdom of *England* to subvert, and our said Lord the King from his Title, Honour, and regal and imperial Crown of this his Kingdom of *England* to depose and deprive, and our said Lord the King to Death and utter Destruction to bring; the 20th Day of *August* in the Year of the Reign of our Sovereign Lord *James* the Second, by the Grace of God of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. the first, and divers other Days as well before as after, at the Parish of *St. Mary Matfellow*, otherwife called *White-Chapel*, in the County of *Middlesex*, falsely, maliciously, devilishly, and traitorously, with divers Rebels and Traitors to the Jurors aforesaid unknown, did conspire, imagine and intend, our said Sovereign Lord the King, now his supreme and natural Lord, not only of his royal State, Title, Power, and Government of this his Kingdom of *England* to deprive and depose, but also the same Lord the King to kill and murder, and the ancient Government of this Kingdom of *England* to change, alter, and totally subvert, and a miserable Slaughter amongst the Subjects of our Lord the King throughout all this his Kingdom of *England* to cause and procure; and an Insurrection and Rebellion against our Lord the King to procure, promote, and assist: And the same his most wicked, most inhuman, and most devilish Treasons and Conspiracies, Purposes and traitorous Imaginations to fulfil and to effect, he the said *John Fernley*, as a false Traitor, then and there, viz. on the said 20th Day of *August*, in the Year of the Reign of our said Lord the King, the first as aforesaid, at the Parish aforesaid, in the County aforesaid, well knowing one *James Burton* to be a false Traitor, and as a false Traitor traitorously to have conspired and imagined the Death and utter Destruction of our said Lord the King, and War and Rebellion against our said Lord the King within this Kingdom of *England* traitorously (with divers other Rebels to the Jury unknown) to have levied and stirr'd up; he the said *John Fernley* afterwards, viz. on the said 20th Day of *August*, in the Year of the Reign of our said Lord the King, now the first aforesaid, at the Parish aforesaid, in the County aforesaid, the said *James Burton* in the Mansion-House of him the said *John Fernley*, situate in the Parish and County aforesaid, knowingly, secretly, wickedly, devilishly, and traitorously, did harbour, conceal, comfort, sustain, and keep; and then and there, for the Comforting, Sustainment, and Maintenance of the said *James Burton*, the said *John Fernley* Meat

and Drink to the said *James Burton*, maliciously and traitorously did give and deliver, and did cause to be given and delivered, against the Duty of his Allegiance, against the Peace of our said Lord the King, his Crown and Dignity, and also against the Form of the Statute in the like Case made and provided, &c.

Clerk. How sayest thou, *John Fernley*, art thou guilty of the High Treason whereof thou standest indicted, or not guilty?

Fernley. Not guilty.

Clerk. Culprit, how wilt thou be tried?

Fernley. By God and my Country.

Clerk. God send thee a good Deliverance.

Set *William Ring* to the Bar. [Which was done.]

William Ring, hold up thy Hand. [Which he did.] Thou standest indicted by the Name of *William Ring*, of the Parish of *St. Clement's Dances*, in the County of *Middlesex*, Taylor.

Middlesex. **T**HE Jurors for our Sovereign Lord the King do present upon their Oaths, That *William Ring*, late of the Parish of *St. Clement's Dances* in the County of *Middlesex*, Taylor, as a false Traitor against the most illustrious and excellent Prince *James* the Second, by the Grace of God of *England, Scotland, France and Ireland* King, and his natural Lord, not having the Fear of God in his Heart, nor the Duty of his Allegiance any ways weighing, but being mov'd and seduced by the Instigation of the Devil, and the true, due, and natural Obedience which true and faithful Subjects of our said Lord the King towards our said Lord the King should and of right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb, and War and Rebellion against our said Lord the King within this his Kingdom of *England* to incite and stir up, and the Government of our said Lord the King in this his Kingdom of *England* to subvert, and our said Lord the King from his Title, Honour, and regal Name of his Imperial Crown of this his Kingdom of *England* to depose and deprive, and our said Lord the King to Death and final Destruction to bring and put; the 20th Day of *July*, in the first Year of the Reign of our Sovereign Lord *James* the Second, by the Grace of God of *England, Scotland, France and Ireland* King, Defender of the Faith, and divers other days and times, as well before as after, at the Parish of *St. Clement's Dances* in the County of *Middlesex*, falsely and maliciously, devilishly and traitorously, with divers other Rebels and Traitors to the Jurors unknown, did conspire, imagine, and intend, our said Lord the King, our supreme and natural Lord, not only from his State, Title, Power, and Government of his Kingdom of *England* to deprive and depose, but also our said Lord the King to kill and put to death, and the ancient Government of this Kingdom of *England* to change and alter, and wholly to subvert; and a miserable Slaughter amongst the Subjects of our said Lord the King throughout this whole Kingdom of *England* to cause and procure; and Insurrection and Rebellion against our said Lord the King to procure, move, and assist: And his said most wicked and devilish Treasons and traitorous Conspiracies, Compassings, Imaginations and Purposes aforesaid to fulfil, effect, and perfect, he the said *William Ring*, as a false Traitor, then and there, to wit, the said 20th day of *July*, in the said first Year of the Reign of our said Lord the King that now is, aforesaid, at the Parish and County aforesaid, well knowing *Joseph Kelloway*

and *Henry Lawrence* to be false Traitors, and as false Traitors traitorously to have conspired and imagined the Death and final Destruction of our said Lord the King, and War and Rebellion against our said Lord the King within this his Kingdom of *England*, traitorously, with divers other Traitors to the Jurors unknown, to have levied, and raised, and stirred up. And he the said *William Ring* afterwards (to wit) the said 20th Day of *July*, in the first Year of the Reign of our said Sovereign Lord the King aforesaid, at the Parish aforesaid, the said *Joseph Kelloway* and *Henry Lawrence*, in the Dwelling-House of him the said *William Ring* situated in the Parish and County aforesaid, knowingly, secretly, wickedly, devilishly, and traitorously, did harbour, conceal, comfort, sustain, and maintain; and then and there, for the comforting, sustaining, and maintaining of the said *Joseph Kelloway* and *Henry Lawrence*, he the said *William Ring* Meat and Drink to the said *Joseph Kelloway* and *Henry Lawrence* maliciously and traitorously did give and deliver, and did cause to be given and delivered, against the Duty of his Allegiance, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in this Case made and provided, &c.

How sayest thou *William Ring*, art thou guilty of the High-Treason whereof thou standest indicted, or not guilty?

Ring. Not guilty.

Clerk. Culprit, how wilt thou be tried?

Ring. By God and my Country.

Clerk. God send thee a good Deliverance.

Set *Henry Cornish* to the Bar.

Henry Cornish, hold up thy Hand.

Mr. Cornish. My Lord, I have been confined without any notice given me until *Saturday* about Noon of my Trial. My Lord, I do hope, seeing I appear before your Lordships and this honourable Bench, who have known something of my Conversation, that you will be pleased to consider me, and grant me what is customary, and commonly done, to Persons in my Circumstances.

Mr. Jones. *Mr. Cornish*, if you please you shall have your time of speaking hereafter, but now you are only to plead without any more ado.

Mr. Cornish. My Lord, I beseech you hear me a little; I have been so confined——

Lord Mayor. *Mr. Cornish*, you must observe the Rules of the Court.

Mr. Cornish. My Lord, I hope I shall be allowed what is customary in such Cases.

Lord Mayor. What is it you would have?

Mr. Cornish. My Lord, I do desire, if your Lordship will please to consider me——

Mr. Jones. Wou'd you not be arraigned, *Mr. Cornish*? After you are arraigned and have pleaded, you may speak.

Mr. Cornish. Let me tell your Lordship what my Case is: Is it reasonable not to have above half a day's time for Preparation for my Trial, and no Counsel allowed me?

Mr. Recorder. Nor ought, without Leave of the Court, or by his Majesty's special Appointment.

Mr. Cornish. I have not had a Friend to come to me, but in the presence of Major *Richardson*.

Mr. Recorder. None have in your Circumstances.

Mr. Cornish. My Lord, ought not I to have a Copy of the Pannel? it is a thing never denied.

Recorder. It hath been denied very often*.

Mr. Cornish. My Lord, it is a matter wherein my Life is concern'd; and therefore I hope your Lordship will hear me.

Mr. Jones. After you are arraign'd you may speak, and put off your Trial if you can.

Mr. Cornish. My Lord I cannot go from this before I possess your Lordship with a right Understanding of it; it is beyond Precedent: no such Precedent, that any Man should be kept with that Strictness I have been.

Recorder. *Mr. Cornish*, I wonder you will say so: I tell you there is no Man accused of your Crime but is so kept.

Mr. Cornish. If your Lordship pleases to allow me a little time, I do not question but I can very well satisfy your Lordship, and this honourable Court, that I am a very innocent Person.

Mr. Recorder. You will have your proper time for that, but now you must plead, that you may hear the Particulars of your Charge, and have an Opportunity to make out your Innocence; for we must keep the same Method with you we do with all other Persons in your Circumstances; and therefore you must plead as other Persons do.

Mr. Jones. Will you, or will you not, Sir, without any more ado? The Law gives you Advantage, you may challenge any body; there are fourscore returned, honest Men, and you may challenge who you please.

Mr. Cornish. Alas! my Lord, what can I do?

Counsel. He disputes out of time; he is to be arraign'd.

Recorder. Come, *Mr. Cornish*, you must plead.

Mr. Cornish. I did understand last Night his Majesty was graciously pleased to refer these matters, as to my Trial, to my Lords the Judges; and, my Lord, I do hope that the Judges, when they hear this matter, that I shall have some time allow'd.

Recorder. Pray, *Mr. Cornish*, take the Rule of the Court, your Business is now to plead; when you have pleaded, what you have to offer for the putting off your Trial may be heard then.

Clerk. *Henry Cornish*, hold up thy Hand.

Mr. Cornish. My Lord, I would do nothing that should be a dishonour to your Lordship and the Court.

Sir James Smith. You know the way of the Court, *Mr. Cornish*; you must plead.

Mr. Jones. If you will not plead, I will move the Court to record your standing mute.

Mr. Cornish. I have known that this Court hath heard what the Prisoner hath to say at the Bar; and I have more to say, perhaps, than any Man that ever stood at this Bar.

Recorder. *Mr. Cornish*, when you have pleaded, you have time to speak for your self.

Clerk. *Henry Cornish*, hold up thy Hand.

Thou standest indicted by the Name of *Henry Cornish*.

THAT *Henry Cornish*, late of the Parish of *St. Michael Bassishaw*, *London*, Merchant, as a false Traitor against the most illustrious Prince *Charles* the Second, late King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, then his natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but moved and seduced by the Instigation of the Devil, and the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our late Sovereign Lord the King towards our late Sovereign Lord the King should and of right ought

Sir Thomas Jenner.

* It was indeed denied to *Stephen Colledge*, but it was allow'd *Lord Russell*.

ought to bear, altogether withdrawing; and minding, and with all his Strength intending, the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb, and War and Rebellion against our late Sovereign Lord the King, within this Kingdom of *England* to stir up, move, and procure; and the Government of our said late Sovereign Lord the King of this Kingdom of *England* to subvert, change, and alter, and our said late Sovereign Lord the King from the Title, Honour, and kingly Name of the Crown Imperial of this Kingdom of *England* to depose and deprive; and our said late Sovereign Lord the King to Death, and final Destruction to bring and put: the 30th Day of *May*, in the 35th Year of the Reign of our said Sovereign Lord the King, and divers other Days and Times, as well before as after, at the Parish of *St. Michael Bassishaw, London*, falsely, maliciously, devilishly, and traitorously, with divers false Traitors to the Jurors unknown, did conspire, compass, imagine, and intend, our said late Sovereign Lord the King, his supreme and natural Lord, not only of his kingly State, Title, Power and Government of this Kingdom of *England* to deprive and throw down; but also the said late King to kill and put to death, and the ancient Government of this his Kingdom of *England* to change, alter, and altogether subvert, and a miserable Slaughter amongst the Subjects of our late Lord the King thorough this Kingdom of *England* to cause and procure, and Insurrection and Rebellion against our said late Lord the King to procure, promote, and assist: And the same most wicked and devilish Treasons and traitorous Compassings, Imaginations, and Purposes aforesaid to fulfil, perfect, and bring to effect, he the said *Henry Cornish*, as a false Traitor, then and there, to wit, the said 30th Day of *May*, in the Year aforesaid, at the Parish and Ward aforesaid, falsely, maliciously, and traitorously, knowing *James* the late Duke of *Monmouth*, *William Russel* Esq; and *Thomas Armstrong* Knight, and divers other Rebels and Traitors, then lately before in the Parish and Ward aforesaid within the said City of *London*, falsely, unlawfully, devilishly, and traitorously, to have conspired the Death and final Destruction of our said late Sovereign Lord the King; he the said *Henry Cornish*, as a false Traitor, then and there, to wit, the said 30th Day of *May* in the Year aforesaid, within the Parish and Ward in the said City of *London*, falsely, unlawfully, wickedly and traitorously, did promise to the said divers false Traitors and Rebels, then and there present, That he the said *Henry Cornish* would be aiding and assisting in the Treasons aforesaid, to be done, perfected, and brought to effect, against the Duty of his Allegiance, against the Peace, and against the Form of the Statute, &c.

Clerk. How sayest thou, *Henry Cornish*, art thou guilty of this High-Treason whereof thou standest indicted, or not guilty?

Mr. Cornish. This is an heinous Charge.

Counsell. Answer; you know you must answer.

Mr. Cornish. I am perfectly innocent.

Council. Are you guilty or not guilty? You must take the Words.

Mr. Cornish. Not guilty.

Clerk. Culpit, how wilt thou be try'd?

Mr. Cornish. By the Great God of Heaven, and my Country.

Clerk. God send thee a good Deliverance.

L. C. J. Jones. I don't know in what State things are here in the Court; I can't tell whether there be a Jury return'd or not.

Clerk. He is arraign'd.

L. C. J. Jones. Why don't you go on with the Jury?

Mr. Cornish. My Lord, I humbly pray your Lordship: I have some ground for it.

L. C. J. Jones. You shall be heard in good time; Sir.

Mr. Cornish. My poor Children last Night prefer'd a Petition to his Majesty, and he was pleas'd to refer it most graciously to my Lords the Judges; and I now make my Application to your Lordships.

L. C. J. Jones. Have you any Answer to the Petition, from the King?

Mr. Cornish. It was refer'd to your Lordships the Judges, to consider my Case.

L. C. J. Jones. We may hear more of your Business anon, when Mr. Attorney and Mr. Solicitor do come: we will stay here till they come, to know whether there be any Order from the King to them concerning you.

Mr. Cornish. My Lord, I hope it will not be offensive if I should acquaint your Lordships what Usage I have met with since I have been under Confinement. I have been under very close Confinement, I had no notice of my Trial till about twelve a-clock on *Saturday*; no Friend came to me till eight a-clock at Night; and I had no time for Preparation for my Trial. My Lord, these are hard things; but tho' I am denied Counsel, I trust in God I shall not need Counsel, for I hope, if your Lordship pleases to allow me time, to clear my self of all matters; and I hope with such satisfaction to your Lordships, that you will acquiesce in whatsoever I shall lay before your Lordships. I do not come to make an Harangue and Talk; my Case was such, that I had neither Pen, Ink, nor Paper.

Mr. Just. Withins. *Mr. Cornish*, Mr. Attorney and Mr. Solicitor will come, we must hear them.

L. C. J. Jones. You shall be heard in your proper time: it is a strange thing you won't be satisfied; you shall be heard, I tell you, in your proper time.

Mr. North. We have arraigned one *Feruley*, if you please to try him, who (with *Ring*) was brought to the Bar.

Clerk. You the Prisoners at the Bar, those Persons you shall hear call'd, and appear, are to pass between our Sovereign Lord the King and you, upon your several Lives and Deaths: if you will challenge them, or any of them, your time is to challenge them when they come to the Book to be sworn, before they be sworn.

Cryer. O-Yes! All manner of Persons are commanded to keep silence upon pain of Imprisonment.

The Middlesex Jury.

<i>Nebemiah Arnold,</i>	<i>William Thompson,</i>
<i>Francis Stevens,</i>	<i>William Read,</i>
<i>Richard Fisher,</i>	<i>Samuel Peacock,</i>
<i>John Howlet,</i>	<i>Richard Fitz-gerrard,</i>
<i>John Vigneres,</i>	<i>Richard Bromfield,</i>
<i>Samuel Birch,</i>	<i>John Haynes.</i>

Cryer. O-Yes! If any one can inform my Lords the King's Justices, the King's Serjeant, or the King's Attorney, before this Inqueit be taken between our Sovereign Lord the King and *John Feruley* and *William Ring*, the Prisoners at the Bar, let them come forth, and they shall be heard; for now the Prisoners stand at the Bar upon their Deliverance:

rance: and all Persons that are bound by Recognizance to give Evidence against either of the Prisoners at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance, and all Jury-men of *Middlesex* that have appear'd and are not sworn, let them depart.

Clerk. Set *William Ring* to the Bar, and set by the other.

William Ring, hold up thy Hand. You that are sworn, look upon the Prisoner, and hearken to his Charge; he stands indicted by the Name of *William Ring*, &c. (*prout ante.*) Your Charge is, to enquire whether he be guilty of the Treason whereof he stands indicted, or not guilty, &c.

Mr. Phipps. You, the Gentlemen that are sworn, the Prisoner at the Bar is indicted for that knowing one *Joseph Kelloway*, and one *Henry Lawrence*, to be false Traitors, and to have levied War against the King; on the 20th of *July* did harbour, conceal, and relieve those Traitors, against the Duty, &c. Upon this he hath pleaded, not guilty, &c.

Mr. At. Gen. Gentlemen of the Jury, the course of our Evidence will be thus:

Sir Robert Sawyer. *Kelloway* and *Lawrence* were in the late Rebellion in the West, in the late Duke of *Monmouth's* Army; and after that Battle when they were overthrown, they came up to *London*, and the Prisoner at the Bar receiv'd and comforted them, and not only provided a Lodging, and Meat and Drink for them, but afterwards provides another Lodging for them: and this he knew, for they were very merry, telling the whole Story of the Fight; and notwithstanding this he entertains them. We will first shew you the Record of the Conviction of *Kelloway* and *Lawrence*, and then call Witnesses to prove the other things upon the Prisoner. (The Record produced) *Mr. Harcourt* sworn.

L. C. J. Jones. Is that a true Copy of the Record? *Mr. Harcourt* answered yes: whereupon the Clerk reads;

Joseph Kelloway stands indicted by the Name of *Joseph Kelloway* of *Taunton*, in the County of *Somerset*, Yeoman; and *Henry Lawrence* of the same Parish and County, Yeoman; with a great many others.

L. C. J. Jones. See what they have done.

Clerk. They are indicted of Treason for levying War against the King, and they have confessed the Indictment upon their Arraignment; and the Judgment upon the Indictment, is, *That the said Kelloway, and the rest of them there, should be led to the Prison from whence they came, and from thence to be drawn to the place of Execution, and upon the Gallows there to be hang'd, every one of them in the said Indictment, and living to be cut down, and their Entrails to be taken out of their Bodies, their Heads to be taken off from their Bodies, and their Bodies divided into four Quarters.*

Mr. At. Gen. This shews they were Traitors. Now we will shew you, that in the mean time between their Treason and Conviction, this Prisoner did receive them. Call *Mr. Barrington*.

Mr. Jones. *Mr. Barrington*, what do you know concerning *Mr. Ring*?

Mr. Barrington. If it please you, my Lord, on the 11th of *July* last I was abroad about my Master's Business, and in the mean time when I was absent, as I was inform'd, there came *Mr. Ring*, who lives in *Wyck-street* at the Sign of the Bible; and when I return'd, I was told, that *Mr. Ring* was at

our House to speak with me, and that there was one *Mr. Lawrence* there at *Mr. Ring's* at the Bible in *Wyck-street*; and when I came there, there was *Mr. Lawrence* at *Mr. Ring's* House; and when I came to the House on the right hand, there was his Wife, as I take it: I asked for *Mr. Lawrence*, and she was a little at a stand. Said I, I understand *Mr. Ring* was in such a place to inform me *Mr. Lawrence* desired to speak with me. Upon that he shew'd me where he was: I went up to him, and he was lying upon the Bed very weary and tired; and when I had been there a while, there came in one *Kelloway*, and they said they came both out of the West Country, and came on *Friday* night, and I saw them on *Saturday*. If it please your Lordship, I called there after, and knocked at *Mr. Ring's* Door, and there came a Woman and made answer, That they were gone from thence both of them, and that they were to go on Ship-board to see some Friends; and I called there on *Wednesday* the 15th day at night, to see *Mr. Lawrence* at *Mr. Ring's* House, and *Mr. Lawrence* told me he was going from thence to the *Pewter-Platter* in *St. John's*; and when *Mr. Common Serjeant* came to examine me about these Men, I made a true Confession, that they were at *Mr. Ring's*, and removed to the *Pewter-Platter*: and when we came to search at the *Pewter-Platter*, at first they did not know any such Men, till we described them. Then they confessed there were such Men there on *Tuesday* and *Wednesday* night, but not the night before, which was *Thursday* night. From thence we went without *Temple-Bar* to *Mr. Ring's*, where they were at first; and *Mr. Crisp* and I went together to enquire for these Men, and there was a Woman, which I think is *Mr. Ring's* Wife, I can't tell. I enquired for these Men, and she made answer, That they were not there at present, and said she could not tell at present, but that they lay there the last night, which was *Thursday* night; that was *Ring's* Wife, I take it, should say they were there the Night before, so after that she had owned they lay there on the *Thursday* night, she asked me what this Gentleman was; so I told her, a Friend of mine. So afterwards we were at the *Castle-Tavern* without *Temple-Bar* by *St. Clemen's* Church, and *Mr. Common Serjeant* was pleased to send for *Mr. Ring* to examine him about these Men, what Lodgers he had in his House on *Friday* night, *Saturday* night, *Sunday* night, and *Monday* night. *Mr. Ring* knew nothing of any Men that came out of the Country; so upon that, he denying it, *Mr. Common Serjeant* order'd his House to be search'd, and in searching, they found a Paper upon the Chamber-Window, that was brought to the *Castle-Tavern*, where *Mr. Ring* was, and the Paper was produced, and *Mr. Ring* would confess nothing till such time as they found that Paper.

L. C. J. Jones. See, is that the Paper you speak of?

Mr. Barrington. That is all I have to say, if it please your Lordship.

L. C. J. Jones. Did you see them in the Company of *Ring*?

Mr. Barrington. I did not see him when I was at the House.

Mr. Sol. Gen. You say *Mr. Ring* would confess nothing till such time as the Paper was found; what did he say after the Paper was found?

Mr. Jones. *Ring* was by, what did he say upon producing that Paper?

L. C. J. Jones. Was the Paper shew'd to him?

Mr. *Barrington*. I think not; he would have seen it.

Mr. *Just. Withins*. You say he would confes nothing till that Paper was produced.

Mr. *Barrington*. Truly, I can say no more of it.

Mr. *Jones*. When the Paper was produced at the *Castle-Tavern*, what did he say then?

Mr. *Just. Withins*. What did *Ring* say at the *Castle-Tavern*?

Mr. *Barrington*. I can't remember, but that he denied every thing.

Clerk. Call Mr. *Barrow*. [Who was sworn.

Mr. *Barrow*. Sir, I heard *Ring* confes to my Lord Mayor in *July* last, that he lodg'd *Lawrence* and *Kelloway*, and that *Lawrence* and *Kelloway* did tell him, that they had been both in the late *Western* Rebellion in *Monmouth's* Army; and that after that, he had lodg'd them two or three Nights, this I heard him confes.

Counsel. Pray speak it again.

Mr. *Barrow*. That *Lawrence* and *Kelloway* had told Mr. *Ring*, they had been in the late *Western* Rebellion in *Monmouth's* Army, and that he had lodg'd them two or three Nights in his own House.

Mr. *Common Serjeant*. What did you hear him say concerning Mr. *Herle*?

Mr. *Barrow*. There was some talk concerning Mr. *Herle* or *Hurle*.

L. C. J. *Jones*. Did he say he lodg'd them, after they had told him that?

Mr. *Barrow*. After that. That is all I can say.

Clerk. Call Mr. *Crisp*. [Who was sworn.

Counsel. Give my Lord and the Jury an Account of what you know concerning Mr. *Ring*.

Mr. *Crisp*. I went to search Mr. *Ring's* House, my Lord, and in the Window there was that Letter under Mr. *Lawrence's* own Hand, sealed up and directed to *Newberry* for a Horse which he had stole from his Master, and left at *Newberry*, which Letter I brought to the Tavern; and when we came to the Tavern, we examin'd him, and he denied every thing; but at last we shew'd him the Letter, and he own'd he had such a Cousin, and another that he did not know, but that he did not lodge there then. And when he came to the Sessions-House, *Lawrence* and *Kelloway* were produced before him, and were examined what account they had given to him, when they came to his House; they told him after the Duke of *Monmouth* was beaten, they ran away to *London*, and *Kelloway* being his Cousin, brought *Lawrence* with him; they told him the Duke was beaten, and lay there *Friday* Night, *Saturday* Night, *Sunday* Night, and *Monday* Night.

Mr. *Jones*. He own'd he knew Mr. *Kelloway*?

Mr. *Crisp*. Yes.

L. C. J. And that *Kelloway* had been in the Duke's Army, and that he was beaten.

Mr. *Crisp*. Yes.

L. C. J. What did *Ring* say upon it?

Mr. *Crisp*. *Ring* said nothing there to it; he confes'd he lodg'd them two or three Nights.

Counsel. Swear Mr. *Hardisty*. [Which was done.

Mr. At. Gen. Mr. *Hardisty*, pray will you give my Lord and the Jury an account of his Examination?

Mr. *Hardisty*. I was directed to attend my Lord Mayor at the Examination of Mr. *Ring*, the Prisoner at the Bar, above here in the Room, and did accordingly; and upon Examination, my Lord, he did make this Confession. This is the Examination, and it is as he gave it in himself, and signed by himself.

L. C. J. *Jones*. And read to him?

Mr. *Hardisty*. Yes, half a dozen times, I believe.

Mr. *Common Serjeant*. My Lord, upon the appearing of *Lawrence* and *Kelloway* before him then, he confes'd all.

The Examination of William Ring, of the Parish of St. Clement Danes in the County of Middlesex, Taylor, taken before the Right Honourable Sir James Smith, Kt. Lord Mayor of the City of London, this 18th Day of July, 1685. who being examined, saith as followeth.

THAT *Joseph Kelloway*, and one *Henry Lawrence*, the said *Kelloway's* Acquaintance, came to this Examinant's House on *Friday* or *Saturday* last; that this Examinant did ask of *Kelloway* (being this Examinant's Kinsman) what did drive them to Town? That they told this Examinant, that they went to *Monmouth*, that he was routed, and that brought them to Town, or to that purpose: that they were in *Monmouth's* Army. That the Night they came, he this Examinant told them, he was unwilling to lodge them; that he this Examinant did lodge them after this Discourse, *Saturday*, *Sunday*, and *Monday* Nights, and they dined twice with this Examinant; that they were at his House on *Friday* Morning; but where they lay on *Wednesday* and *Thursday*, saith he knows not. Saith, that *Lawrence* sent this Examinant to a Glover in *St. Bartholomew's Close*, who was a Journeyman in the House, as this Examinant supposeth, and told the Master of the House, that there was a Kinsman of his Journey-man's would speak with his Journeyman. Saith, *Kelloway* and his Acquaintance told this Examinant, that they left their Horses at *Newberry*. That a Note being produced, directed to this Examinant, to deliver several Goods therein mentioned, and being examined upon the said Note, this Examinant saith, that he this Examinant was sent for to the *Castle-Tavern* near *Shoe-lane* in *Fleet-street*, and one *Bond* brought this Examinant the Note above-mentioned, and now produced to him; believes the Note to be the hand-writing of *James Hooper*. That this Examinant was there to enquire of one *Hearne*, but expected to meet *James Hooper*, who formerly told this Examinant that he went by the Name of *Hearne*. That being in Discourse with *James Hooper* about the time of the late Duke of *Monmouth's* Landing, *James Hooper* told this Examinant, that his the said *Hooper's* Brother was with the Duke of *Monmouth*, and that he the said *James Hooper* would go to him the said Duke, or to that purpose. Further, this Examinant saith, that about a Fortnight ago he carried, according to a Note from *Hooper* to that purpose, to a Joiner's House in *Ivy-lane*, *London*, a Cravat and a Pair of Cuffs, and then enquired for *Hooper* of a Woman of the said House; and saith, that then he this Examinant did speak with *James Hooper* who lay private there, because, as this Examinant believes, the said *Hooper* was concerned in the Rebellion. Saith, he hath not seen him the said *Hooper* this Fortnight, nor heard from him otherwise than by the Note now produced. Will. Ring.

Taken before me Sir James Smith, Lord-Mayor.

Mr. At. Gen. Call Mr. *Richardson*, to prove that these were the same Men that were carried down. [Who was sworn.] Mr. *Richardson*, pray give an account, whether these were the Men you carried down into the West.

Mr. *Richardson*. My Lord, those two Persons; that is, *Joseph Kelloway* and *Henry Lawrence*, that were committed for being in the late Rebellion, I carried them both down into the *West*, where they were both convicted; one is executed; and the other has a Reprieve.

Mr. Just. *Withins*. *Henry Lawrence* was Captain *Hunt's* Man.

Mr. *Richardson*. The same, he ran away with his Horse and Arms.

L. C. J. Jones. Can you tell these were the same Men that were present at his Examination?

Mr. *Richardson*. The very same Men; they were committed at the same time; he was examined before them, for they were all committed at the same time together.

L. C. J. Jones. What do you say, Sir; you the Prisoner at the Bar, what do you say for your self?

Mr. *Ring*. I did not understand what they were.

L. C. J. You knew the Prisoners, one of them was your Kinsman?

Mr. *Ring*. I did know him, but the other I did not know; I did not know what Design they had been upon.

L. C. J. Jones. Your own Examination says, you did.

Mr. *Ring*. Then my Examination is wrong.

L. C. J. Jones. Hear, hear again: You did receive them, and then they told you that they were in *Monmouth's* Army, and that *Monmouth* was beaten; and afterwards you continued to harbour them in your House three Nights.

Mr. Just. *Withins*. And dined twice with them.

Mr. *Ring*. My Lord, I never heard of it.

L. C. Baron. That Gentleman heard you say, they had told you they had been in *Monmouth's* Army, and you lodged them after.

Mr. *Crisp*. Yes, my Lord; and when we were there, the Woman would not own them.

L. C. J. Jones. Why did you hide them in your House, and not confess it?

Mr. *Ring*. At first I did deny it.

Counsel. Yes, and did deny it, till *Lawrence* and the other Man were brought before you.

Mr. *Ring*. My Lord, what I did was ignorantly done.

L. C. J. Jones. Did you hear your Examination now read?

Mr. *Ring*. I heard most of it, I believe.

L. C. J. Jones. Pray let it be read again.

Counsel. It was read over and over four or five times.

Mr. *Hardisty*. He was upon it, I believe, an hour together: it was taken first in parts, and as he recollected himself it was compared, and afterwards my Lord-Mayor desired him to consider with himself: and then the Examination was written fair over, and he signed it, and it was read several times, six or seven times.

Mr. *Ring*. My Lord, I do acknowledge I did lodge them, but I did not understand what Design they had been upon.

L. C. J. Jones. But you see here you have acknowledged they said they were in the Army, and you did lodge them afterwards; they were of *Monmouth's* Party, they had told you so. Read that part again.

Mr. *Hardisty*. *Joseph Kelloway*, and one *Lawrence* the said *Kelloway's* Acquaintance, came to this Examinant's House on *Friday* or *Saturday* last; that this Examinant did ask *Kelloway*, being this Examinant's Kinsman, what did drive them to Town?

That they told this Examinant, that they went to *Monmouth*, that he was routed, and that that brought them to Town.

Mr. *Ring*. I never said that Word.

Mr. Just. *Withins*. It is under your Hand.

Mr. *Ring*. If it be under my hand, I never said it.

Mr. *Sol. Gen.* Was that part read to him?

Mr. *Hardisty*. Yes.

L. C. J. Jones. Read on.

Mr. *Hardisty*. That they were in *Monmouth's* Army; that the Night they came, this Examinant told them, he was unwilling to lodge them, and that this Examinant did lodge them after this Discovery, *Saturday*, *Sunday*, and *Monday* night, and they dined twice at this Examinant's House.

L. C. J. Jones. What do you say now to this? Can there be any thing more plain?

Mr. *Ring*. I do acknowledge, my Lord, I did lodge them, but I was not sensible what the Issue of this Business would be.

L. C. J. Jones. You did not know, that to harbour known Traitors was High-Treason.

Mr. *Ring*. My Lord, I don't know whether they came from *Monmouth* or no.

L. C. J. Jones. It is no great matter whether you do or no; they told you so.

Mr. *Ring*. I never heard such a Word from them.

L. C. J. Jones. How came it to be put in your Examination?

Mr. *Ring*. I don't know, my Lord, when it was taken I was in amaze. I think the Parish knew well enough, that I never kept any such Company, nor had any such Design.

Mr. Just. *Withins*. He confesses it over-night, causes it to be writ down next day, and sets his Hand to it too: Nothing can be more plain.

L. C. J. That is a great Argument you were not in such surprize, that you had not the use of your Understanding; for you confessed the same thing over Night, and you had time to consider of it all Night, and you came the next Morning, and then confessed as now it is written, and put your Hand to it.

Mr. *Ring*. I was ordered to put my Hand to it.

L. C. J. Jones. That is, if you acknowledged it to be true.

Mr. *Ring*. I did not know what was put down.

Mr. Just. *Levinz*. The matter is so plain, that nothing can be more. When they came to you, they inform'd you where they had been, and afterwards you were unwilling to lodge them; you knew therefore they had been in the Rebels Army, and so the matter is plain: and for ought I can hear, this is not the first time you have harbour'd such Men.

L. C. J. Jones. There is another thing touching one *Hurle*; but you are not charged with it in the Indictment, and so we don't trouble the Jury with any Evidence concerning that. Have you any more to say?

Mr. *Ring*. I do acknowledge, my Lord, that I lodg'd them; but I did not understand any thing else.

L. C. J. Jones. Why! did not you confess it?

Mr. *Ring*. I did not confess it.

Mr. Just. *Withins*. And you shifted Lodging for them after they were known to you.

Mr. *Ring*. I did not.

L. C. J. Jones. Gentlemen of the Jury, the Prisoner stands indicted of High-Treason for receiving *Joseph Kelloway* and *Henry Lawrence*, who were Traitors, and known to him to be Traitors, and

and harbouring them in his House, and giving them Entertainment and Comfort: This, Gentlemen, is clearly High-Treason by Law; and tho' this Man himself were not in actual Rebellion, yet if he do receive any that he knows to have been so, he is equally guilty; he is a principal Traitor by the Judgment of the Law, and however he would now pretend his Ignorance, that he did not know that they were in the Army, or, if he did know they were in the Army, that he had incur'd so great a Danger as the Forfeiture of his Life, which now he stands as well as he can to defend; yet it does appear plainly to you, not only by his own Confession taken upon his Examination, but likewise by the Testimony of the Witnesses, who were present at the time when he did confess that these Men had discoursed with him, and acknowledged that they were in *Monmouth's Army*, and that he was routed, and that yet he did entertain and receive them. The first Witnesses indeed does not say the very thing, but it is very much inducing to the Evidence that is given more expressly by the other Witnesses: for he says that he was at his House, and he enquir'd for them there, tho' he did not see him at all, but his People; and they not only did confess that they had lodged there, but that there was a Lodging provided for them elsewhere: But however, if that were quite laid aside, and not taken at all into Consideration, yet what is testified by the other Witnesses, and upon his own Examination, makes it as clear and plain as can be, that he did receive these Persons into his House, and comfort them, and entertain them, knowing them to have been guilty of High-Treason, that is, to have been in the Army of *Monmouth*, of that Party, and that they came to *London*, and went away from the *West* because he was beaten; and there is an Expression in the Examination to that purpose: so that I take the Indictment to be very fully and clearly prov'd upon him; and it is not his Ignorance of the Law that will excuse him, that is, his Ignorance of the Danger that he hath incur'd by entertaining these People; altho' you cannot but take notice, that he was in some dread and fear that it was an Offence to do so: for at first he says by his Examination, that he did refuse to entertain them, which shews that he had some Consideration of the Danger that he might incur by receiving them: and yet after this plain Discourse of theirs, that they were in the Army, he entertains them. That they were the same Men that were in the Army, appears plainly; for though at first he did deny it, and did stand in it, before he was confronted by the Men, they being present; yet afterwards he did confess, that they were the Men that were entertain'd by him; and that they were the same Men, doth appear by the Testimony of Captain *Richardson*, who saw them, and afterwards caused them to be brought down to the *West*, where one of them was executed for Treason. So I must leave it to you, Gentlemen. I think it is a very plain Case.

Mr. Ring. Here is abundance of these things that I know nothing of.

Counsel. Set *John Fernley* to the Bar. [Which was done.]

Clerk. *John Fernley*, hold up thy Hand. You that are sworn, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of *John Fernley*, &c. (prout ante.)

Mr. Phipps. This is an Indictment of High-Treason against *John Fernley*, the Prisoner at the Bar: It sets forth, that the said *John Fernley* know-

ing one *James Burton* to be a Traitor, and to have conspir'd against the Life of the King, did traitorously conceal the said *Burton* two Days and two Nights, and gave him Meat and Drink against the Duty, &c.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, this Prisoner stands indicted of Treason for receiving and harbouring one *James Burton* who was guilty of Treason, he knowing him to have been guilty of Treason. And the course of our Evidence will be this: We will prove that this *James Burton* stood outlawed for Treason before he committed a new Treason, when he went into the *West*, and was there with *Monmouth* in the late Rebellion; and tho', Gentlemen, the very Outlawry against the said *Burton* is enough to satisfy any Man, that this Man could not be ignorant that he was a Traitor, for no Man can imagine, when a Man stands out a Process till he become out-lawed for High-Treason, that any should be ignorant that he is guilty of Treason, and that it would be very dangerous to receive a Man after that, without any more Evidence: But this *Burton*, after he was out-lawed and fled, came again, and was in Arms with *Monmouth* in the Rebellion; and after their Defeat he came up to Town: And *Fernley* knowing he had been then in the *West* with *Monmouth*, he received him, and harboured him; and this we will prove by Witnesses. First, we will shew the Record of the Outlawry.

Clerk.—An Indictment prefer'd against *James Burton* and divers others for High-Treason, for which the said *Burton* and divers others stand outlawed, by the Return of *Samuel Dashwood Esq;* and *Sir Peter Daniel, Sheriffs*. This is the Record it self, my Lord.

Counsel. Swear Mr. Ward. [Which was done.]

Mr. Just. Withins. Look upon it, Mr. Ward; is that the Record?

Mr. Ward. Yes, it is, my Lord.

Mr. Just. Withins. Pray see when the Outlawry was.

Mr. Hardisty. Upon Monday next after the Feast of St. Martin, Bishop, the said *Richard Rumbold*, *Richard Goodenough*, *Francis Goodenough*: [Here are the Names of a great many Men.]

Mr. Just. Withins. Is *James Burton* among them?

Mr. Hardisty. On Monday next after the Feast of St. Michael, the said *Richard Rumbold*, *James Burton*, *Richard Nelthorp*, are out-lawed, and every one of them is out-lawed—It is November was Twelve-Month.

Call *James Burton*. [Who was sworn.]

Mr. North. *James Burton*, stand up there: Do you give my Lord and the Jury an account concerning your being in the *West*, and your being entertain'd here at Mr. *Fernley's* House, with all the Circumstances.

Mr. Burton. I came out of the *West* into *London* on Wednesday Night from *Monmouth's Army*.

L. C. J. Jones. What Wednesday Night?

Mr. Burton. Truly, I have forgot the Day of the Month, but it was about three Weeks after the Rout, and I came home to my Wife and staid two Nights, and she was not satisfied I should be there, and went to endeavour to get a Lodging for me for two or three Nights, and she went to get leave at Mr. *Fernley's* for me to be there two or three Nights; and I went thither on Friday Night, and on Sabbath-day in the Evening I was taken there.

Mr. Sol. Gen. Speak aloud, say that again.

T

Mr.

Mr. *Burton*. On *Wednesday* Night I came out of the Country, after I had been in the Army; I came home to my Wife, and staid till *Friday* Night, and on *Friday* Night she got me a Lodging at Mr. *Fernley's*; there I went about ten a-clock at Night, and staid there till *Sunday* Night, and I was taken.

Mr. Just. *Witbins*. Did you see Mr. *Fernley*?

Mr. *Burton*. I saw him at Dinner on *Sunday*, and not before.

L. C. J. *Jones*. What Acquaintance had you before? He does not keep a publick House, does he?

Mr. *Burton*. I had been gone two Years, or very nigh.

L. C. J. *Jones*. What was the Occasion of your going?

Mr. *Burton*. My Wife was acquainted there.

L. C. J. *Jones*. What was the Occasion of your going away, and your Absence for two Years?

Mr. *Burton*. The Occasion of my going then, was, I was in the Proclamation for being with *Rumbold* at the *Mitre Tavern* within *Aldgate*.

Mr. Just. *Levinz*. *Fernley* knew you before, did not he?

Mr. *Burton*. He knew me by sight.

Mr. Just. *Levinz*. Had you any Acquaintance with him?

Mr. *Burton*. I lived pretty near to him for a while.

Mr. Just. *Levinz*. How near?

Mr. *Burton*. I lived within two or three Doors of him.

Mr. Just. *Levinz*. Did he know you?

Mr. *Burton*. Yes, yes, he did know me.

Mr. Just. *Levinz*. You came to lodge at his House on *Friday* Night?

Mr. *Burton*. Yes, an't please you.

Mr. Just. *Levinz*. Had you no Discourse till *Sunday* you dined together?

Mr. *Burton*. No, not till *Sunday* at Dinner.

Mr. Just. *Witbins*. Tell your Discourse at Dinner.

Mr. *Burton*. My Lord, I have forgot what altogether the Discourse was; I had some Discourse of the Army; he knew I was in the Army.

L. C. J. *Jones*. I would have you speak the Sense, so far as you remember of the Discourse at that time with him.

Mr. *Burton*. The Sense, as far as I remember, was, that the Army was routed.

L. C. J. *Jones*. And that you were there.

Mr. *Burton*. He knew I was there.

L. C. J. *Jones*. How came he to know you were there?

Mr. *Burton*. I believe I told him so my self.

Mr. Just. — Upon your Oath, did he know you fled upon the account of the Proclamation before?

Mr. *Burton*. It is like he might know it by others, but not by me.

L. C. J. *Jones*. When were you taken? What Day?

Mr. *Burton*. I was taken on *Sunday* in the Evening; I had been four Days in *London*; two Days at home, and two Days at his House.

L. C. J. *Jones*. Did you not see him before *Sunday* at Dinner?

Mr. *Burton*. My Lord, he was in the Shop all *Saturday*; he is a Barber.

Mr. Just. *Witbins*. You lay privately at his House all *Saturday*?

Mr. *Burton*. Yes, my Lord, privately.

Counsel. Call *Mary Burton*.

[Who was sworn]

Mr. *North*. How came this Man to lodge at Mr. *Fernley's* House, can you give an account? and why it was?

Mrs. *Burton*. Because I thought he was not safe at home; and having Acquaintance with Mrs. *Fernley*, lodging pretty near, and she being a young Woman, and having Children, I had Acquaintance going to and fro; and we having a close House and no Yard, I had the Privilege of going to dry Linnen there, so that we had Acquaintance and a little Familiarity, and being acquainted, I thought I might have Entertainment there; that is all I can say.

L. C. J. *Jones*. Were you at Dinner upon *Sunday*?

Mrs. *Burton*. Yes, I was at Dinner.

L. C. J. *Jones*. What Discourse had they at Dinner?

Mrs. *Burton*. Indeed I can't say they had any Discourse, I was very ill and laid me down upon the Bed, and fell asleep.

L. C. J. *Jones*. You are upon your Oath.

Mrs. *Burton*. I know I am, Sir.

L. C. J. *Jones*. What Discourse was at Dinner?

Mrs. *Burton*. Whilst I was eating, I did not mind.

Mr. Just. *Levinz*. You liv'd close by, why did you ask for a Lodging there?

Mrs. *Burton*. We do not live close by now, I live with my Daughter, I have no House now.

Mr. Just. *Levinz*. She knew he was your Husband, why should you lodge your Husband at another House, than where you lodged your self?

Mrs. *Burton*. What was it you said, my Lord?

Mr. Just. *Levinz*. Sure you would give the Woman some account, why you lodged your Husband at another House than where you lodged your self.

Mrs. *Burton*. She was not altogether a Stranger, and upon the account of the Proclamation there were none of them Strangers.

L. C. J. *Jones*. For whom did you ask a Lodging?

Mrs. *Burton*. For my Husband.

Mr. *North*. Did you speak with Mr. *Fernley* himself?

Mrs. *Burton*. I did not speak with Mr. *Fernley* himself.

Mr. *North*. On *Sunday* you saw him at Dinner?

Mrs. *Burton*. Yes, I saw him at Dinner.

Mr. Just. *Levinz*. Had you any Discourse with them about the Proclamation?

Mr. *At. Gen.* About your Husband's going away upon that Proclamation?

Mrs. *Burton*. An't please you, my Lord, my Distress was so great, that I was hardly in my Senses to discourse with any body; but, I thank God, I am now in my Senses between whites.

Mr. *At. Gen.* Had you any Discourse with your Neighbours about that Proclamation your Husband went away upon?

Mrs. *Burton*. I had not indeed.

Then Mr. *Reynolds* was sworn.

Mr. *North*. Mr. *Reynolds*, what do you know concerning Mr. *Burton's* being lodged at Mr. *Fernley's* House?

Mr. *Reynolds*. Towards the beginning of *August* last, hearing that there were several that were in the *West* lurk'd about *Wapping*, I took the Lieutenant of

of the *Tower's* Warrant, and we had some Intimation, that a suspected Person lay at Mr. *Fernley's* Houfe; I went on *Sunday* about eight a-clock at Night, and took Mr. *Burton* in Mr. *Fernley's* Houfe.

Mr. *Just. Withins*. You took him there, did you?

Mr. *Reynolds*. I took him there, my Lord?

Mr. *At. Gen.* Did you speak with *Fernley* before you took *Burton*?

Mr. *Reynolds*. I took *Burton*; and Mr. *Fernley* being Master of the Houfe, I wifhed the Conftable to fecure him for harbouring him.

Mr. *At. Gen.* What did *Fernley* fay?

Mr. *Reynolds*. Says I, Mr. *Fernley*, how come you to harbour Mr. *Burton* that is in the King's Proclamation; he is a Traitor you know. Says he, I did not know it was Mr. *Burton*, but my Wife defired me to lie out of the Chamber where I lay before, that a Friend of hers might lie there for two or three Days.

Mr. *At. Gen.* Where did you find him?

Mr. *Reynolds*. He was in a Room up one pair of Stairs, up the Chimney; and while we were there, he fell down the Chimney, with all the Soot about him: Mr. *Fernley* was then one pair of Stairs higher; I defired the Conftable to go up to fee for him.

Mr. *At. Gen.* Had you no Difcourfe with him about the Bufinefs of being in the Army? With *Fernley*, I mean.

Mr. *Reynolds*. No, my Lord.

L. C. J. Did you hear no Difcourfe between *Burton* and him?

Mr. *Reynolds*. No, my Lord.

Mr. *Just. Withins*. He was very friendly, to lie out of his own Chamber for him.

Mr. *Reynolds*. They were put in two feperate Chambers, by the King's Direction, till they were fent to *Newgate*.

Mr. *At. Gen.* Did he tell you on *Sunday* Night that he did not know it was *Burton*?

Mr. *Reynolds*. To the beft of my Remembrance, he did fo, when I brought him to the *Tower*.

Mr. *At. Gen.* And yet he dined with him on *Sunday*.

Mr. *Reynolds*. I looked upon it as an Excufe.

Mr. *North*. What Day was *Burton* taken?

Mr. *Reynolds*. It was *Sunday*.

Mr. *North*. What time on *Sunday*.

Mr. *Reynolds*. *Sunday* about eight a-clock at Night. He had been in Bed, my Lord, I believe; and before we could get open the Door, I believe he got out of Bed, and went to get up the Chimney.

Mr. *Sol. Gen.* Gentlemen, you obferve in the courfe of the Evidence, that the firft Evidence we produce is *James Burton*; now *James Burton* stood outlawed for Treafon, and as he ftands outlawed he is not a competent Witnefs: but now to take off that Objection which the Prifoner ought to make, but we make it for him, we fhew you here a Pardon whereby that Outlawry is difcharg'd, fo that he ftands now a very legal Witnefs.

Mr. *Just. Withins*. You understand, Gentlemen, what Mr. *Sollicitor* mentions.

[The Pardon produced and read.]

L. C. J. *Jones*. What fay you?

Mr. *Fernley*. My Lord, I am charg'd for entertaining *Burton*. My Lord, I knew nothing of him when he came into my Houfe till Sabbath-day at Dinner. I asked my Wife what time *Burton* came in; fo she told me he came on *Friday* Night. *Saturday* was a bufy Day with me, my Lord; on *Sunday* Morning I got up and went to Church: when I came from Church, I went up to Dinner; and when I

came in and faw him, I asked him, what in the name of God brought him there? It hath pleas'd God, fays he, to preferve me hitherto; and my Wife interceded fo far, as to procure me a Night's Lodging, which I hope may be no detriment to you. I with it may not, fays I; and at Dinner I asked him, how he made his Escape, and he told me how he did efcape. Says I, what do you mean to do? Says he, fome Friends will procure me a Passage beyond Sea. Upon this I confidered with my felf, and difcours'd with him about the *Weft*, and his Escape out of it; and about half an hour after we had dined, one knocked at the Door.

Mr. *Just. Levinz*. What Day was this?

Mr. *Fernley*. Sabbath-day at Noon, fome body knocked at the Door, and they told me there was one would fpeak with me, and I came down, and there was one *Gaunt* in the Shop; fays he, is Mr. *Burton* within? May I fpeak with him? Yes, fays I: up I went, and *Gaunt* with me; and when we came into the Room they embraced one another, and were very glad to fee one another, and *Burton* gave Mr. *Gaunt* thanks for a Guinea he had fent him. Says *Gaunt*, Mr. *Burton*, I am glad to fee you; I hope in a little time I fhall have a Passage for you beyond Sea: fays he, if you had been here a while fooner you might have gone; there are fome Gentlemen went away a while ago. Says I to Mr. *Gaunt*, who were they? He told me it was Major ——— and his Son, and another: fays I to Mr. *Gaunt*, do you hear of *Ferguson*? No, fays he, I hear nothing of him as yet, but in a little time I may hear from him; and *Burton* asked, when he thought he might be going? In a day or two's time, fays he. Says *Burton*, I have no Money nor no Clothes; fays he, take no care for that, fo he named fome Gentlemen that were to go: he told him of Colonel *Darvers* and Major *Wildman*. Upon this Difcourfe, within my felf I did confider what way I might do his Majesty a piece of Service: I thought it better to forbear, and not to feize him prefently, till I had acquainted fome Magiftrate; and I did think in the Morning to have gone to a Juftice of Peace, and have had him apprehended: *Burton*, my Lord, I knew was feure, for he could not efcape my hands. I had no Defign of concealing him; I have feveral eminent Gentlemen to teftify for my Loyalty. I thank God, I never had an ill Thought againft his Majesty in my Life, only this Misfortune hath befallen me upon the account of my Wife. I am as innocent as a Child unborn, as to any thing againft the King.

L. C. J. *Jones*. But he plainly told you, he came from the Army.

Mr. *Fernley*. He did acquaint me, my Lord, he did fo; as foon as I faw him, I was ftartled; I did look upon it as a thing fent from God Almighty; for I knew, my Lord, that there was 100 l. for him, I knew there was a Proclamation out againft him; but as for the Outlawry, I knew nothing of that: a Proclamation I knew there was againft him, and being a poor Man, there was no Obligation upon me to conceal him, and ruin my felf and Family.

L. C. J. *Jones*. What was the reafon, you were fo kind as to part with your own Lodging to entertain him?

Mr. *Fernley*. My Lord, I had quitted my Chamber before he came to the Houfe.

Mr. *Just. Withins*. It is proved you did it upon his account.

Mr. *Fernley*. My Lord, no body will offer to fay that.

L. C. J. Jones. That you quitted your Lodging, and that he came into the same Lodging, is clearly proved.

Mr. Fernley. My Lord, my Chamber was fitted above a Week before he came, not knowing of him, for I had no Thoughts of him.

L. C. J. Jones. Pray, what Servants have you?

Mr. Fernley. Only a Boy, my Lord.

L. C. J. Jones. Could not you have sent out your Boy when he had discoursed thus treasonably with you, but keep him in your House seven or eight Hours after you had entertain'd him at Dinner?

Counsel. Are you a Constable?

Mr. Fernley. I am a Constable my self, and upon the account of my Office I was the more secure. I was certain he could not escape my Hands, and I thought to do his Majesty more Service.

L. C. J. Jones. How could you do his Majesty more Service?

Mr. Fernley. *Gaunt* told him, he would come again to him.

L. C. J. Jones. When did he come to you?

Mr. Fernley. About half an hour after Dinner.

L. C. J. Jones. But you should have seized him immediately after Dinner. How came this Man to take so much Freedom before you that were an Officer, as to talk High-Treason?

Mr. Fernley. My Lord, I thank God if I were to die this Minute, I never harbour'd a Thought against the King.

*L. C. * Baron.* If you had had a loyal Heart, you should have kept *Gaunt*, if you had any Thoughts to have done it.

Mr. Fernley. My Lord, I will tell you why I let *Gaunt* go, because he promised to come again the next Day.

L. C. J. Jones. Would you, being a Constable, let a Man go upon his Word, that had confessed himself guilty of Treason?

Mr. Fernley. My Lord, if I did any thing, it was ignorantly. My Lord, as for *Gaunt*, when I knew there was a Proclamation out against *Danvers* and *Wildman*, I hearing *Gaunt* discoursing about their Design, I thought (promising to come the next Day) to know how they were to go.

Mr. Just. Levinz. For God's sake, would you trust all this to your own Breast! If you had had an honest Intention, you would have gone to some Officers, and acquainted them with it; some of the King's Justices of the Peace, or some of the Privy-Council, that such Persons would be at your House the next day.

L. C. Baron. By your own Discourse, after you had heard all this Discourse, and after *Burton* had told you this, you could let him go quietly to his own Chamber: If you had such a Design as you say, you should have first seized *Burton*.

Mr. Fernley. Another Chamber; no, he dined in his Chamber, my Lord.

Mr. Just. Witbins. You went into another Chamber from him. Have you any Witnesses?

Mr. Just. Levinz. They had a Confidence in you, otherwise *Burton* and *Gaunt* would not have talk'd so freely before you.

L. C. J. Jones. There was a great Confidence in lodging him in your House, being a Constable; no body would search a Constable's House. Have you any Witnesses to call?

Mr. Fernley. *Mr. William Rusb*, Captain *Haddock*.

[*Who were call'd.*]

L. C. J. Jones. Did *Burton's* Wife dine with you and him?

Mr. Fernley. Yes, my Lord.

L. C. J. Jones. Where did you dine?

Mr. Fernley. In the Chamber, my Lord.

L. C. J. Jones. And was this Discourse concerning *Monmouth's* being beaten in the *West*, at the time of Dinner?

Mr. Fernley. The Discourse of it! Yes, my Lord; what Discourse was, was at Dinner?

Mr. Just.—Was *Burton's* Wife at Dinner, or was she upon the Bed?

Mr. Fernley. She din'd at the Table, my Lord. My Lord, she went to sleep when *Gaunt* came in.

Mr. Just. Levinz. Where did she go to sleep, in the same Room?

Mr. Fernley. Yes, my Lord.

L. C. J. Jones. Where do you use to dine at other times?

Mr. Fernley. In the Kitchen, my Lord. My Lord, when I came from Church, the Dinner was sent up thither.

L. C. J. Jones. Woman, you are upon your Oath, remember that you are oblig'd by your Oath to confess the Truth, let it concern whom it will: The Discourse between your Husband and this Man, you could not but be privy to; there was only you three at Dinner, your Husband, you, and *Fernley* the Prisoner at the Bar: All this Discourse was at Dinner-time, how is it possible that you should not hear it?

Mr. Just. Levinz. *Fernley* himself owns he did discourse with your Husband at Dinner, that he came from the Rebels in the *West*.

Mrs. Burton. An't please you, my Lord, I did not hear. As I said before, I must say again, I did not hear.

Mr. Just. Witbins. Nothing about *Monmouth*?

Mrs. Burton. No, not one Word, if I were to die as I stand here.

Mr. Just.— You were at Dinner?

Mrs. Burton. Yes, my Lord.

Mr. Just.—And this Discourse was at Dinner-time.

Mrs. Burton. I did not hear it.

Mr. Just. Witbins. What would you ask him, Sir?

Mr. Fernley. What account he can give of my Life and Conversation, how I have behaved my self, and carried my self,

L. C. J. Jones. What are you, Sir? What is your Quality?

Mr. Rusb. I am a Distiller, Sir.

Mr. Just. Levinz. Where do you dwell?

Mr. Rusb. I did dwell two Years ago in *Wapping*, but not now: I live now at *Waltham-Stow*.

Officer. He is a very great *Wbig*.

Mr. Just. Witbins. If he be a *Wbig*, he can't be a little one.

L. C. J. Jones. How long have you liv'd at *Waltham-Stow*?

Mr. Rusb. Two Years and upwards, Sir.

L. C. J. Jones. That is long before any thing that this Man is charged withal.

Mr. Rusb. I formerly knew the Man, he was a Barber, and us'd to trim me: I always looked upon him to be a good sober Man.

Mr. Just. Witbins. A *Wapping-Man*, a sober *Wapping-Man*!

Mr. Rusb. I hope there is a great many there.

L. C. J. Jones. That is all you can say for him.

Mr. Rusb. I have nothing to say to his Fact: He demeaned himself always well among his Neighbours; I know nothing of the Fact for which he is here.

Mr. At. Gen. Did you know *Burton*?

Mr. *Rusb.* Yes, Sir.

Mr. At. Gen. What was *Burton*? was he reputed an honest Man?

Mr. *Rusb.* I never knew him otherwise; I never was in his Company; I know he dwelt close by where I liv'd.

L. C. J. *Jones.* And you took him to be a very honest Man?

Mr. *Rusb.* Before this: He has not been so lately, it seems. He is a Person I never had any Company or Conversation with in my Life.

Cryer. Captain *Haddock.*

Officer. He won't come in, my Lord.

L. C. J. *Jones.* Well, well, let him stay there.

Cryer. Mr. *Dove.*

Officer. He won't come in, I can't make him come in.

L. C. J. *Jones.* Here are none that give any Testimony for you, at least will. — What are you?

Mr. *Whittal.* I dwell in *Wapping*, Sir.

Mr. Just. *Levinz.* What trade are you?

Mr. *Whittal.* A Plumber.

Mr. Just. *Levinz.* Who knows you?

Mr. *Whittal.* I am well known there, Sir.

Mr. Just. *Levinz.* Do you go to Church?

Mr. *Whittal.* Here's Mr. *Tanner* knows me, the Clerk of the Peace.

Mr. *Tanner.* Yes, Sir, I know him.

Mr. Just. *Levinz.* Do you go to Church?

Mr. *Whittal.* Always went to Church.

Mr. Just. *Wilbins.* There were a parcel of them that went constantly to Church *trimmingly*.

L. C. J. *Jones.* Prisoner, what would you ask him?

Mr. *Fernley.* Only to give an account how I behaved my self.

Mr. Just. *Wilbins.* Well, Sir, what do you say?

Mr. *Whittal.* All I know is, he behav'd himself very well, and went to Church as other Neighbours did; and I never heard him speak against the Government.

Mr. Just. *Wilbins.* Did you know *Burton*?

Mr. *Whittal.* No, Sir; he was gone before I came to live there.

L. C. J. *Jones.* Have you any more to say?

Mr. *Fernley.* This, my Lord, may give some account that I had no Design against the Government. I am a poor Man, my Lord, and upon that account I owe a great deal of Money: I knew there was 100*l.* for securing *Burton*, there was no gain by concealing him; he was not a Person could requite me, that I should harbour him, and lose 100*l.* which was certain for taking him; which, my Lord, shews I had no Design.

L. C. J. *Jones.* No, this argues you to be a stronger Confederate; and that you were so firm to your Party, you would not gain 100*l.* though you might have it for doing your Duty.

Mr. *Fernley.* My Lord, I look'd upon it as sure as I had it in my Pocket. I knew nothing of him till *Sabbath-day* at Noon, and I did not design to conceal him afterwards, any farther than to serve the King.

L. C. J. *Jones.* You tell us a Story of your self, it is to no purpose to try any Prisoner, if his Saying must be taken for Evidence: We will hear what Witnesses you have to produce, or if you can object to the Evidence that's against you.

Mr. *Fernley.* My Lord, I own it to be true, I have declared more than the Witnesses have said

against me; but, my Lord, I am innocent in it, God knows my Heart, I had no design in it. It was but six hours I knew of him.

Mr. Just. *Wilbins.* You lay out of your Bed before?

Mr. *Fernley.* My Lord, not upon his account; I was a Week before out of that Bed, to prepare it for my Wife to lie-in.

L. C. J. *Jones.* Is your Wife delivered?

Mr. *Fernley.* No.

L. C. J. *Jones.* You made great haste.

Mr. *Fernley.* It was my Wife's fault.

L. C. J. *Jones.* Gentlemen of the Jury, this Prisoner stands indicted for harbouring and relieving one *James Burton*, knowing him to have committed Treason. Gentlemen, you are to be acquainted, that this *James Burton*, was not only guilty of the late Rebellion in the *West*, but he was likewise charg'd by Process with being guilty of the Plot at the *Rye-house*, and thereupon there were such Proceedings by Law, that he was outlawed, the Record of which Outlawry hath been produced to you: so that if there were no more, if you be persuaded that he is the Person guilty, whether he were in the Rebellion in the *West* or no, that may induce you to find this Indictment, for the Prisoner receiving him after the Rebellion in the *West*, and knowing him to have committed Treason, whereupon he was outlawed, it equally makes him liable to the Offence wherewith he is charg'd. But, Gentlemen, that is not all; you have express Testimony from *Burton* himself, who it seems was acquainted with him, and who had fled from his Neighbourhood, by the space of two Years almost, and yet he receives this *Burton* into his House: I will not say, at the first time that he came into his House, it doth appear by any Evidence, that he knew him to have been in the Rebellion in the *West*; but when he came thither upon *Friday*, he was so kind to him as to leave his own Chamber, and to let him have that for his Lodging, although now he gives you another Excuse plainly frivolous and false, that is, a Pretence of making way for his Wife to lie-in, who yet is not delivered. He lies there upon *Saturday* Night, and dines with him upon *Sunday*. *Saturday* perhaps might be a busy Day, and there is no Testimony at all given by any Evidence of any Discourse that was between them upon that Day; but upon *Sunday*, when they dined together, *Burton* swears, that he did tell him that he had been in the *West* in the Rebellion there, and he came thither for shelter. This Man being acquainted with this, allowed him to dine with him, and harboured him in his House for the space of seven or eight Hours more, without bringing him before any Justice of Peace, or any Magistrate who had Authority to commit him, although he had a particular Authority of his own (as he was Constable) for the Conservation of the Peace, yet he forgets his Oath as well as his Duty and Allegiance, and suffers him still to remain there. It is true, the Wife of *Burton* dined with them, as *Burton* himself says, and the Woman confesses; but she was so busy at her Victuals, that she can remember nothing, she did not hear that there was any Discourse concerning *Monmouth*. But lest you should want another Witness, for *Burton* is but one Witness to that particular, you have him plainly confessing it himself, which is above a thousand Witnesses; you have him confessing that *Burton* did acknowledge he had been in the *West*, and that *Monmouth* was routed, and yet he continues him in his House; nay more, this

this Man doth appear to be a Person in whom there was that great Confidence, that another Person, *Gaunt* came, and he bids him come into his House, and there he discours'd of some Traitors, and the means of conveying away *Burton*, though he had confessed it himself. Gentlemen, what he tells you, is, that he did mean to discover; when did he intend to discover? He did not discover to any body, before the Man was apprehended by an Officer: he lets *Gaunt*, who plainly appears to be as errant a Traitor as could be in the world, to go away meerly upon his own Parole, without taking any course to apprehend him. He pretends he is a poor Man, and he might have gain'd 100*l.* if he had discover'd him, and surely he would have discover'd him, to gain 100*l.* But this is a strong Argument, that he was deep in the Rebellion himself, and one in great Esteem with them, that being a poor Man, he would not do his Duty, for which he might have had a Reward of 100*l.* but suffers him to escape. This is the Case, Gentlemen, that is before you; if you believe he did knowingly, as he himself upon the matter doth confess, give any comfort or relief to *Burton*, knowing him to be a Rebel, you ought to find him guilty.

Then the Jury withdrew to consider the Evidence.

Clerk. Set *Elizabeth Gaunt* to the Bar, [*which was done.*] *Elizabeth Gaunt*, hold up thy Hand, [*which she did.*]

THou standest indicted by the Name of *Elizabeth Gaunt*, Wife of *William Gaunt*, of the Parish of *St. Mary White-Chapel*, in the County of *Middlesex*, Yeoman; as a false Traitor against our late Serene Lord *Charles* the Second, by the Grace of God her then natural Lord; not having the Fear of God in her Heart, nor weighing the Duty of her Allegiance, but moved and seduced by the Instigation of the Devil, and the true and natural Obedience which a true and faithful Subject of our said Sovereign Lord the King towards our said late Lord the King of right ought to bear withdrawing, and with all her Strength intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest and disturb, and War and Rebellion against our said late Sovereign Lord the King, within this Kingdom of *England* to stir up and move, and the Government of our said late Sovereign Lord the King in this his Kingdom of *England* to subvert, and our said late Sovereign Lord the King from the Title, Honour, and Kingly Name of the Crown Imperial of this Kingdom of *England* to depose and deprive, and our said late Sovereign Lord the King to Death and final Destruction to bring and put: The 24th Day of *September*, in the 36th Year of the Reign of our said late Sovereign Lord *Charles* the Second, and divers other Days and Times as well before as after, within the Parish, &c. falsely, maliciously, devilishly, and traitorously, with divers Rebels and Traitors, to the Jurors unknown, she did conspire, imagine, and intend our said late Sovereign Lord the King, her then supreme and natural Lord, not only from his Kingly State, Title, Power, and Government of this Kingdom of *England* to deprive and throw down; but also our said late Sovereign Lord the King to kill and put to death, and the ancient Government of this Kingdom of *England* to alter and wholly subvert, and a miserable Slaughter amongst the Subjects of our said late Sovereign Lord the King throughout this Kingdom of *England* to cause

and procure, and Insurrection and Rebellion against our said late Sovereign Lord the King to procure and assist. And the said most wicked and devilish Treasons and traitorous Compassings, Imaginations, and Purposes aforesaid, to fulfil, perfect, and bring to pass, the said *Elizabeth Gaunt*, as a false Traitor, then and there, to wit, the said 24th Day of *September*, in the Year aforesaid, at the Parish and Ward aforesaid, well knowing one *James Burton* to be a false Traitor, and as a false Traitor traitorously to have compassed and imagined the Death and Destruction of our said late Sovereign Lord the King, and War and Rebellion against our said late Sovereign Lord the King within this Kingdom of *England*, together with other Traitors (to the Jurors unknown) to have intended to be raised; she the said *Elizabeth Gaunt* afterwards, to wit, the said 24th Day of *September*, in the Year aforesaid, within the City of *London* aforesaid, the said *James Burton*, in a certain House of a Person to the Jurors unknown, knowingly, secretly, wickedly, devilishly, and traitorously, did entertain, conceal, comfort, sustain, and maintain, and then and there, for the comforting, sustenance, and maintenance of him the said *James Burton*, Meat, Drink, and 5*l.* in Money for the maintenance and sustenance of him the said *James Burton*, unto the said *James Burton*, maliciously, and traitorously, she did give and deliver, and cause to be given and delivered, against the Duty of her Allegiance, and against the Peace, &c. and against the Form of the Statute, &c.

Clerk. How say'st thou, art thou guilty or not guilty?

Mrs. *Gaunt*. I desire to have more time to consider of it.

L. C. J. Jones. You know whether you be guilty of this Offence; what need you have any time of Consideration for that?

Mrs. *Gaunt*. I don't know, Sir; I am ignorant in the Law, and in things of that nature.

L. C. J. Jones. But this is not Matter of Law; it is, whether you did receive these Traitors or no knowingly; this *James Burton*, knowing him to have committed Treason: Can't you tell whether you did or no?

Mrs. *Gaunt*. Not guilty.

Clerk. How wilt thou be try'd?

Mrs. *Gaunt*. By God and my Country.

Clerk. God send thee a good Deliverance.

Then the *Middlesex Jury* returning, Mrs. *Gaunt* was set aside, and *Ring* and *Fernley* brought to the Bar, who were both brought in guilty by the Jury.

Clerk. Set *Henry Cornish* to the Bar, and *Elizabeth Gaunt*, [*Which was done.*]—You the Prisoners at the Bar, these Men that have been now called, and here appear, are to pass between our Sovereign Lord the King and you, upon your several Lives or Deaths: If you challenge any of them, you must speak as they come to the Book to be sworn, before they are sworn.

Mr. *Cornish*. My Lord, I must humbly beg leave of your Lordship and this honourable Court, that I may renew my Request. The time of notice given me for my Trial being so short, it hath no Precedent, I think: I humbly pray your Lordship I may have time allowed for my Trial; I have had no Counsel, no Pannel, no Help in the world; I had not Pen, Ink, nor Paper, my Lord, these are very hard things. My Lord, his Majesty was petition'd last Night by my Children, and he was graciously

ciously pleas'd to say, that he would refer it to my Lord the Judges. I only pray your Lordships, that you would be pleas'd to allow me time: Though here is a grievous Indictment brought against me, yet I doubt not but to clear my self of what is alledged against me, if I have but time to prepare my self for it: therefore I humbly pray I may have time allotted.

L. C. J. Jones. You told us so before, that you had exhibited a Petition to the King and that the King did refer it to the Judges; you shew us nothing of that.

Mr. Cornish. My Lord, I can but only signify to your Lordship what I hear; my Children were with me, and told me they had petitioned the King, and his Majesty was pleas'd graciously to receive it.

Mr. At. Gen. The King left you to the Course of the Law.

Mr. Cornish. It is very hard measure; I have no Preparation at all, no more than at the first moment; but I bless God, I hope I shall in time satisfy you of my Innocency.

L. C. J. Jones. You were apprehended and seized upon *Tuesday* last, this is almost a Week; you knew what you were charged withal.

Mr. Cornish. My Lord, I did not know what I was charged withal, I had no liberty of Friends to come to me; my Wife at length obtained leave, but it was in the presence of Major *Richardson*; I had no Friend with my Wife, no Pen, Ink, nor Paper.

L. C. J. Jones. Was Pen, Ink, and Paper deny'd you? did you ask it?

Mr. At. Gen. As soon as he petition'd for it, he had it.

Capt. Richardson. He had Pen, Ink, and Paper.

L. C. J. Jones. When was that?

Capt. Richardson. On *Saturday*.

Mr. Cornish. My Lord, it was eight a-clock at night.

Mr. Just. Levinz. *Mr. Cornish*, I would not have you think you are us'd otherwise than other Men are; for I must tell you it is not usual to have Pen, Ink, and Paper, without leave.

Mr. Cornish. I know it hath been allowed in the like case.

Mr. Just. Withins. Ay, upon Petition, never else.

Mr. Just. Levinz. There are many Men, and of as good Quality as you, tried for killing Men: does any body give them notice? Is there any more necessity of notice in point of Treason, than in point of Murder?

Mr. Just. Withins. I told you what your Offence was, when you were committed.

Mr. Cornish. My Lord, I remember in my Lord *Ruffel's* Case he had at least seven or eight days allowed him.

Mr. Just. Levinz. It may be so; but it is not necessary. Prisoners that are tried here generally have no notice at all; if one Man hath a singular Favour, another Man cannot claim it.

Mr. Cornish. My Lord, I have a material Witness above a hundred and forty Miles off.

L. C. J. Jones. My Lord's Trial, I think, was put off but till the Afternoon.

Mr. Cornish. With submission to your Lordship, I think he had eight days assign'd him. But my Lord, I humbly conceive I have a Witness that is very material in my Case, that is 140 Miles out of Town, in *Lancashire*; I humbly pray I may have time allotted me to send for him.

L. C. J. Jones. Why did not you set forth that in your Petition to the King?

Mr. Cornish. My Lord, I did not understand the Case.

L. C. J. Jones. Were not you committed for High-Treason?

Mr. Just. Withins. I told you so my self: I shew'd you the Commitment; therefore you can't pretend you were ignorant of it.

Mr. Cornish. My Lord, it did not mention this King or the last: And I am not a Lawyer, I am not skill'd in these things; I am very ignorant, and hope your Lordship will consider me; my Innocence will appear as bright as any Man's that ever stood at this Bar.

L. C. J. Jones. I don't believe you want that Evidence a hundred and forty Miles off. Is he the only Man that can make your Innocence appear?

Mr. Cornish. My Lord, by what I apprehend he will be the most material Witness I have. My Lord, I shall desire nothing but with submission to your Lordship and the Bench; but I humbly conceive it is very reasonable I should have time, I humbly pray your Lordship to consider it.

L. C. J. Jones. *Mr. Attorney*, have you any Directions?

Mr. At. Gen. No, my Lord.

Mr. Cornish. I do not doubt, if I might have a little time, to make my defence.

Mr. Just. Withins. You should have applied your self to the King, it does not lie in our power.

Mr. Cornish. My Lord, I humbly pray you to consider my Case.

Mr. Just. Withins. *Mr. Bridgman* here on the Bench says, there was a Petition before the King for putting it off, and the King absolutely refus'd it.

Mr. Just. Levinz. We have nothing to do, Sir; we are here by Commission to try you.

Mr. Cornish. My Lord, I have been denied a Copy of the Pannel, I hope that is reasonable; I must desire a Copy of the Pannel.

Mr. At. Gen. That is none of your Right, *Mr. Cornish*.

Mr. Cornish. *Mr. Attorney*, with submission, I hope I ought to have it.

Mr. At. Gen. No, you ought not to have it; you have your peremptory Challenges, you may challenge thirty-five without cause.

L. C. J. Jones. You shall have a Copy of the Pannel here.

Mr. At. Gen. Yes, here he may.

Mr. Cornish. It is a very hard case, when I have a material Witness so far out of Town, that I can't have a little time allotted.

L. C. J. Jones. Can't every Man that comes here to be tried say the very same thing, that he hath a material Witness in *France*, *Spain*, or any where else, and that when that Witness comes, his Innocence will be as clear as the Sun?

Mr. Cornish. My Lord, my Witness is in *Lancashire*, I cannot help it; I beseech your Lordship to consider me: I am apt to believe that he would so much vindicate my Reputation in this matter, that it would be a very great satisfaction to your Lordships; and I am sure you are not for oppressing any Man.

L. C. J. Jones. No, Sir, that we are not.

Mr. Cornish. I am sure you are for the just Vindication of the Government, for executing of Justice, and I will desire no other than that.

L. C. J. Jones. Mr. Attorney, if you pray he may be tried, we can't deny it.

Mr. At. Gen. Mr. Cornish, I cannot defer it, I have no authority; and why you should be in another Condition than other Prisoners, I don't know; you have not deserved so well of the Government.

Mr. Cornish. I have not the Names of the Wards where these Men live, and their Trades.

Mr. North. He hath a Copy of the Pannel, and that is sufficient.

L. C. J. Jones. You may ask them where they live.

Mr. Cornish. I hope I may have Pen and Ink, my Lord.

L. C. J. Jones. Ay, ay.

Then the Jury were called, and after Mr. Cornish had challenged thirty five of them, the Jury sworn were as followeth:

<i>Thomas Rawlinson,</i>	<i>William Clowdesty,</i>
<i>Thomas Langham,</i>	<i>Richard Holford,</i>
<i>Ambrose Isted,</i>	<i>William Longboat,</i>
<i>Thomas Pendleton,</i>	<i>Stephen Coleman,</i>
<i>John Grice,</i>	<i>Robert Clavel,</i>
<i>Thomas Oneby,</i>	<i>William Long.</i>

Proclamation being made, *If any one can inform, &c.* Mr. Cornish was set aside, and *Elizabeth Gaunt* at the Bar.

Clerk. Elizabeth Gaunt, hold up thy Hand. [*Which she did.*]—You of the Jury, look upon the Prisoner, and hearken to her Cause: She stands indicted by the Name of, &c. (*as before in the Indictment.*) Upon this Indictment she hath been arraigned, and thereunto pleaded not guilty, and for her Trial hath put her self upon her Country, which Country you are. Your Charge is, to enquire whether she be guilty of this High-Treason whereof she stands indicted, or not guilty. If you find her guilty, &c.

Mr. Phipps. May it please your Lordship, and you Gentlemen that are sworn, *Elizabeth Gaunt* the Prisoner at the Bar stands indicted, for that she knowing *James Burton*, together with other Traitors, traitorously to have conspired the Death of the late King, and to raise Rebellion in this Kingdom, did harbour the said *James Burton* and gave him five Pounds in Money.

Mr. At. Gen. May it please your Lordship, and you Gentlemen that are sworn, the Prisoner stands indicted for harbouring of *Burton*, who was a great Traitor, and for procuring a way for his Escape beyond-sea, and also for giving him 5*l.* to bear his Charges. In the former Trial you had an account of her Husband, and in this you will hear she and her Husband were the great Brokers for carrying over such Traitors, as my Lord *Shaftesbury* and others; these have taken care to convey them over at all times. We will produce our Witnesses. Call *Burton* and his Wife. [*Mr. Burton sworn.*]

Mr. At. Gen. Do you know Mrs. *Gaunt*?

Mr. Burton. Yes, Sir.

Mr. At. Gen. Pray give my Lord and the Jury an account how she harbour'd you, and all the Passages that pass between you and Mrs. *Gaunt*. Pray tell first whether you were engag'd in the matter of the *Rye*?

Mr. Burton. How I came concerned I will tell you, if it please you.

Mr. At. Gen. Speak.

Mr. Burton. The first time I knew any thing of it, Mr. *Keeling* came to me one Saturday Morning,

and asked me if I was to go to *London*. I said, Yes, I was to go to the *Exchange*; and he desir'd me to meet him at the *Mitre-Tavern* within *Aldgate*, and ask for *Number Five*. I came at the time, and no body being there, I was going away, and met with a Country-man with a Stick in his hand, that had but one Eye; he came and ask'd for the same Number: So the Gentleman sent his Boy after me, and told me one stay'd for me. When I came, he ask'd me if I ask'd for *Number Five*; and I said, Yes. *By whose appointment?* By *Josiah Keeling's*, said I. So he ask'd the Man of the House to shew a Room: He shew'd a Box, but he would have a Room, and went up stairs, and call'd for Pipes and a Candle, and a Pint of Wine. In a little while *Keeling* came in, and brought *Barber* and *Thompson*, and no body spake almost any thing but *Rumbold*, (that was *Rumbold* with one Eye, for *Keeling* when he came in call'd him Captain *Rumbold*) and *Rumbold* talk'd about Privileges and such things at first, and he said his House was a convenient House, and there they might do the business: but before they had done, I found they design'd to kill the King, but nothing troubled him but killing the Postillion, to kill a Man in cold blood. But then says we, *If you are for killing, we have done*, and so broke up; that was the end of that. A while after Mr. *Keeling* went in, and made a Discovery: I never came among them afterwards. So after Mr. *Keeling* had discovered, I was in the Proclamation for being there at that Meeting, and absconded my self, and lay hid. A matter of two Months after, Mrs. *Gaunt* came to enquire of my Wife where I was, to speak with me; she brought her to me. She told me there were some Persons about to make an escape, and would have me go along with them. I told her with all my heart: So I ask'd her which way and how they intended to go. She told me they had provided Horses to ride down to *Rochford-Hundred*, and there was a Vessel to carry them over; and, says she, *be ready by such an Evening, and I will call for you*. Accordingly she did, and had me into *Bishopsgate-street*, and in *Half-moon-Alley* in a little Brew-house, up stairs in a Chamber, there were both the *Rumbolds*; one of them did not go, and the other and I lay there all night: and in the Morning a Man came and called us away, and we went to *White-Chapel* to take horse, to ride down to *Rochford-Hundred*, and staid for the Vessel two days; and when we met the Vessel, it was a small Vessel, and bad Weather, and the Master of the Vessel had but one Hand, and two Boys, one a very little one; and we went down the Creek, and I asked the Man where he did intend to land us; and he told us for *Ostend*. Said I, I understood we were to go for *Holland* to the *Brill*. Says he, my Vessel is only able to go to *Ostend* or *Dunkirk*, either of them. Says *Rumbold*, I don't understand the Sea. Says I, this is a very small Vessel and leaky, and the Man not able to manage it. Says I, I will go back again to *London*. Says he, I will do as you do; and we both parted at *London*, and I never saw him afterwards till I saw him at *Amsterdam*. I lay by a great many Months after; then Mrs. *Gaunt* came to me again, and told me there was two other Persons going, and I might have a Passage if I would go: So she bid me be ready by such an Evening, and I was ready, and a Boat being ready at the Water-side, carried me to *Gravesend*, where I went in a Vessel to *Amsterdam*.

Mr. At. Gen. Where were you?

Mr. *Burton*. I was with my Wife at my Daughters: I had a Daughter married, her Husband was drown'd.

Mr. *At. Gen.* How came Mrs. *Gaunt* to take so much care of you? Give the Court an account.

Mr. *Burton*. She might think I knew something of her Husband, if I should be taken; I suppose that might be the chief thing.

Mr. *At. Gen.* What had her Husband done?

Mr. *Burton*. Her Husband, I suppose, knew something of the Business.

Mr. *At. Gen.* What Business?

Mr. *Burton*. About seizing the *Tower*: He came to me, and would have had me gone with him with Capt. *Walcot* to the *Tower*, to see what Force there was of Soldiers; and Capt. *Walcot* said he had a design to take an House over-against the *Tower*, to put in some Men there to break in upon the *Tower*; and *Gaunt* was with him.

L. C. J. Jones. What discourse had you with her about the Plot?

Mr. *Burton*. Nothing with her.

Mr. *At. Gen.* What was it she would help you away for?

Mr. *Burton*. I suppose this was the reason, because she knew I knew her Husband was concern'd.

Mr. *North*. Did she assist you with any Money?

Mr. *Burton*. Yes.

Mr. *North*. How much?

Mr. *Burton*. She gave me a parcel of Money just as I was going away; I put it among other Money.

Mr. *North*. How much? 30 or 40 s?

Mr. *Burton*. More than that.

Mr. *Sol. Gen.* Were you gone from your own House when this Woman came to you?

Mr. *Burton*. My own House was broke up a great while before.

Mr. *Sol. Gen.* Did you appear publicly when she came to you?

Mr. *Burton*. No, an't please you.

L. C. J. Jones. Had there been any search for you before?

Mr. *Burton*. Yes.

Mr. *North*. You were in the Proclamation at this time?

Mr. *Burton*. Yes, an't please ye, Sir.

Mr. *At. Gen.* Did she carry you to *Rumbold*?

Mr. *Burton*. Yes.

Mr. *At. Gen.* Was there any discourse between *Rumbold* and her?

Mr. *Burton*. No; there was an elderly Man in the House, I did not know him, carried me up to *Rumbold*, there was both of them.

Mr. *At. Gen.* What Money had you of her?

Mr. *Burton*. I believe about 5 *l.* I told her I had lain a great while, and Money was very bare with me; and she told me she would get me a little.

Mr. *At. Gen.* Did she know what you were conceal'd for?

Mr. *Burton*. Every body knew that, because I was in the Proclamation.

Mr. *North*. What Directions did she give you, how you should behave yourself when she went with you to *Bishopsgate-street*? how did she say you must carry yourself?

Mr. *Burton*. Nothing there, she gave no order about that.

L. C. J. Jones. Did she tell you you were concern'd in the Plot with her Husband?

Mr. *Burton*. She did not tell me so, Sir.

L. C. J. Jones. Did you tell her you were concern'd in the Plot with her Husband?

Mr. *Burton*. I did not tell her so.

Mr. *At. Gen.* Who were the two Men that were prepared to go with you that time?

Mr. *Burton*. One *Pauchil*.

Mr. *At. Gen.* He was kill'd in the Fight. Was *Pauchil* in the Fight?

Mr. *Burton*. Yes, an't please you, he was kill'd.

Mr. *At. Gen.* And who was the other?

Mr. *Burton*. T'other was a Man liv'd in *Southwark*; I never saw him before.

Mr. *Com. Serj.* What Directions did she give you about your own Name, or any others when you went into the Boat?

Mr. *Burton*. If I knew any body, that I should not take notice I knew them.

L. C. J. Jones. You were not to take any Acquaintance of any body in the Boat?

Mr. *Just. Withins*. Heark you, Sir, you looked upon all those to be engaged in the Plot. All that she endeavour'd to save, were of the same Level.

Mr. *Burton*. *Rumbold* was; *Rumbold* was in the Proclamation.

L. C. J. Jones. Did she tell you, that you were in the Proclamation?

Mr. *Burton*. No, an't please your Lordship, she did not tell me so.

Mr. *North*. Did she never discourse of your being in the Proclamation?

Mr. *Burton*. No, not as I remember; it was a general thing.

Mr. *Just. Withins*. But why should she come to you to transport you, if it were not for such a thing?

Mr. *Burton*. Her Husband was with me about going to the *Tower*.

Mr. *At. Gen.* *Burton*, pray thus; when you came from the *West*, what Overtures were to help you here from her, or her Husband?

Mr. *Burton*. Her Husband was with me at *Fernley's* House, and he told me there were two or three Persons to go in two or three Days, and I should go with them.

Mr. *At. Gen.* You named your Daughter, what is her Name?

Mr. *Burton*. *Mary Gilbert*.

[Then *Mary Gilbert* was called and sworn.

Mr. *At. Gen.* Do you know Mrs. *Gaunt*?

Mary Gilbert. Yes, Sir, I know her, she was our Neighbour.

Mr. *At. Gen.* Then give an account of her coming to you about your Father.

Mary Gilbert. She came to our House that Night my Father went away. I never heard a word of the Discourse that past, for I always went out of the way.

Mr. *Just. Withins*. Why did you go out of the way?

Mary Gilbert. Because they were not willing I should hear the Discourse.

Mr. *Com. Serj.* You are upon your Oath, Mistrefs, you must tell the truth.

Mary Gilbert. I do, Sir; I will tell no more.

Mr. *Sol. Gen.* Did you see your Father go away? Who did he go with, in what Company?

Mary Gilbert. I can't tell.

Mr. *At. Gen.* Did Mrs. *Gaunt* go with him?

Mary Gilbert. I met my Father and Mrs. *Gaunt* in *Houndsditch*, my Mother and I were to meet them in *Bishopsgate-street*.

Mr. *Com. Serj.* Well, what was the reason why you did not meet?

Mary *Gilbert.* We were to meet at seven a-clock, and we went to the House, and they were not come; and we were coming home, and met them in *Houndsditch*, and my Father had Mrs. *Gaunt* under the Arm, and went back to a House without *Bishopsgate*.

Mr. *Sol. Gen.* Did Mrs. *Gaunt* carry him thither?

L. C. *J. Jones.* Do you know why your Father was to go away?

Mary *Gilbert.* He went upon the account of the Proclamation?

L. C. *J. Jones.* Then you knew of the Proclamation?

Mary *Gilbert.* Yes, Sir, I knew of the Proclamation.

Mr. *Com. Serj.* Whose Acquaintance was the Man in *Bishopsgate-street*?

Mary *Gilbert.* He was none of mine.

Counsel. When your Father went up stairs into a Room, did you see any body with him?

Mary *Gilbert.* Yes, Sir, it was a Man that had but one Eye, a full-set Man, full of Pock-holes; but I never saw him before, nor after.

Counsel. How came you to see him?

Mary *Gilbert.* By going up stairs to see my Father.

[Mary *Burton* sworn.

Mr. *At. Gen.* Do you know Mrs. *Gaunt* there?

Mrs. *Burton.* Yes, Sir.

Mr. *At. Gen.* Pray will you tell the Court, how she came to enquire after your Husband?

Mrs. *Burton.* Yes, Sir, at my Daughter's House.

Mr. *At. Gen.* What discourse happened between you?

Mrs. *Burton.* No discourse; but she said if I was willing, my Husband should go away, and she would take care.

Mr. *At. Gen.* But why should he go away?

Mrs. *Burton.* I don't know why, but only upon the Proclamation.

Counsel. Woman, did she take notice your Husband was gone from home, and had left his House?

Mrs. *Burton.* I knew myself, my Lord.

Mr. *Just. Lewinz.* Where did you go?

Mrs. *Burton.* My Husband went out of doors by his own self, by Appointment, and we were to meet, my Child and I together, without *Bishopsgate*, by the *Catherine-wheel*.

Mr. *Com. Serj.* Who made that Appointment?

Mrs. *Burton.* Mrs. *Gaunt*.

Mr. *Com. Serj.* Upon what account did she come to you to secure your Husband?

Mrs. *Burton.* Upon the account he was in the Proclamation, and I thought within myself, for fear my Husband should know any thing against her Husband; but I never said so, for I was glad my Husband should be helped away, willing to save his Life, for I knew it was Death.

Mr. *Just. Lewinz.* And you took that to be the meaning of it in reference to the Proclamation?

Mr. *At. Gen.* How far did you live from her?

Mrs. *Burton.* Formerly we dwelt pretty near one another, when Mrs. *Gaunt* kept a Tallow-Chandler's Shop.

L. C. *J. Jones.* Woman, do you verily believe she knew your Husband was in the Proclamation?

Mr. *Just.* — Did you never see the Prisoner at the Bar at any time in *Holland*?

Mrs. *Burton.* No.

Mr. *At. Gen.* Nor her Husband?

Mrs. *Burton.* Nor her Husband.

Mr. *At. Gen.* I ask you at this time when your Husband went away, and his House was search'd, how far did she live from you then?

Mrs. *Burton.* She had but Lodgings, I don't know where her Dwelling-house was.

Mr. *At. Gen.* Where were her Lodgings?

Mrs. *Burton.* At the upper end of *Old Gravel-Lane*, and my Daughter in the middle of *Gravel-Lane*, in *Worcester-street*, as far as it may be to *Newgate*, thereabouts.

Mr. *At. Gen.* Was it taken notice of all over the Street that the House was searched, and your Husband gone? Was that taken notice of in the Neighbourhood?

Mrs. *Burton.* Yes, yes.

Counsel. Between the time your Husband went first away, and the time he came to take care of him, had you no discourse about the reason of his going away, nor of the Proclamation?

Mrs. *Burton.* No.

L. C. *J. Jones.* What say you Woman to this Evidence, several Witnesses say you were very busy in contriving the Escape of *Burton*; what was the reason why you would send him away?

Mrs. *Gaunt.* I did not contrive to send him away.

L. C. *J. Jones.* The Woman says so, *Burton* says so, the Daughter says the same.

Mrs. *Gaunt.* Where, Sir?

L. C. *J. Jones.* At *Bishopsgate* or *Houndsditch*.

Mrs. *Gaunt.* I deny it.

L. C. *J. Jones.* And you gave him Money afterwards.

Mrs. *Gaunt.* Who saw me give it him?

L. C. *J. Jones.* He swears it.

Mrs. *Gaunt.* He was the more beholden to me.

L. C. *J. Jones.* Did you, or did you not?

Captain *Richardson.* She says she is not come here to tell your Lordship what she did.

L. C. *J. Jones.* Woman, did not you hear that *Burton's* Name was in the Proclamation about *Rumbold's* Plot?

Mrs. *Gaunt.* It is like I might.

L. C. *J. Jones.* You might hear it!

Mrs. *Gaunt.* Yes.

L. C. *J. Jones.* And yet you would by all means help him to escape?

Mrs. *Gaunt.* I can say nothing against it, if they swear it.

L. C. *J. Jones.* Do you know what you are charg'd withal? You are accused for relieving and comforting *Burton*, whom you knew to have committed Treason.

Mrs. *Gaunt.* My Lord, he says so.

L. C. *J. Jones.* And for helping him to escape, and giving him Money in order to it.

Mrs. *Gaunt.* He says so.

L. C. *J. Jones.* He swears so; what do you say?

Mrs. *Gaunt.* Is that sufficient?

Mr. *Just.* — Ay, and another swears it, that is sufficient.

Mrs. *Gaunt.* I have not heard any body else swear it.

Mr. *Just.* — Yes, his Wife.

Mrs. *Gaunt.* Not about the Money.

Mr. *Just.* — You came and solicited him to go several times.

Mrs. *Gaunt.* It is very untrue, my Lord.

L. C. *J. Jones.* Did you know his House had been search'd to find him?

Mrs. *Gaunt.* I did not know it a great while since, I might know.

[Here *Burton's Pardon* was produced again.

Mr.

Mr. *Just. Wilmbs*. It is a Pardon for *Burton*, now he is a good Witness, Gentlemen.

L. C. J. Jones. Have you any more, Woman, to say for yourself? If you can tell us any other Cause than that he was guilty of Treason, wherein your Husband was concern'd.

Mrs. Gaunt. No, I deny that, that I knew my Husband was concern'd in any thing of that kind.

L. C. J. Jones. Wherefore then would you take so much care to send him away?

Mrs. Gaunt. I don't tell you, my Lord.

L. C. J. Jones. You don't tell us, but the Witnesses have sworn it.

Mrs. Gaunt. I must leave it to them.

L. C. J. Jones. Gentlemen of the Jury, this Woman stands indicted for High-Treason, for concealing, comforting, and relieving one *James Burton*, a Person that had committed High-Treason; and for endeavouring that he might make his escape, and giving him 5*l.* in Money. Gentlemen, the Evidence that is given is by *Burton*, his Wife, and his Daughter. *Burton* says, that this Woman was very solicitous several times to help to send him beyond Sea. He does tell you, that when there was a Plot against the Life of the King, wherein *Rumbold* was concern'd, and one of the chief Actors, that he himself was present at one of the Consultations concerning it, and that afterwards he did withdraw himself from the Company, as he says; but he says, that this Woman's Husband being likewise concern'd in the Plot, and this Woman, as he believes, knowing that he was able to make some Discovery concerning her Husband, and knowing also his danger in respect of his own Guilt, she endeavours to send him away first to *Rockford*, and so to go beyond Sea. And afterwards, in another place in *Heund ditch*, and from thence he was to be convey'd beyond Sea. It is true, there is no direct Proof that there was any particular mention that *Burton* was in the Proclamation for that Treason; but the Woman says, and *Burton* himself says, that they do both verily believe, that the Prisoner at the Bar did know he was in the Proclamation, and therefore there was no particular discourse concerning it; and she herself being examined, says, she might hear that his Name was in the Proclamation, and she might hear that his House was searched, and that he could not be found; and yet notwithstanding all this, she endeavours to conceal him. What can be the meaning of all this in this Woman, but that she was very zealous to maintain the Conspiracy, and was a great Assistant to all Persons that were concern'd in it? She will not tell you any other Cause wherefore she should be concern'd to convey this Man beyond Sea, and therefore in all reason you ought to conceive it was for this; it was a known Cause, made known to all People by the King's Proclamation. If you believe she did know or believe *Burton* to have been guilty of that Treason, and that she did help to convey him away, as the Witnesses have proved that she did, by giving him Money, and soliciting him several times to be gone, then you ought to find her guilty.

Then the Jury desiring to ask a Question, *Burton* was called again; but being gone out of Court, was sent for, and *Mr. Cornish* was set to the Bar.

Clerk. Henry Cornish, hold up thy Hand; you of the Jury, look upon the Prisoner, and hearken to his Cause; he stands indicted by the Name of

Henry Cornish, late of the Parish of *St. Michael-Bassishaw*, in the Ward of *Bassishaw*, *London*, Merchant, &c. as before in the Indictment. Upon this Indictment he hath been arraign'd, and thereunto pleaded Not Guilty, &c.

Mr. Phipps. May it please your Lordship, and you Gentlemen that are sworn, *Henry Cornish*, the Prisoner at the Bar, stands indicted, for that he knowing that the late Duke of *Monmouth*, *William Russell* Esq; the late Lord *Grey*, and other Traitors, had conspired the Death of the late King, and to raise Rebellion in this Kingdom, did promise to aid and assist them in compassing this wicked Imagination, against the Duty of his Allegiance, &c. To this he hath pleaded Not Guilty, &c.

Mr. Cornish. I am innocent of the whole matter.

Officer. Burton is come.

L. C. J. Jones. Let us make an end of that first. In the Evidence that you gave against *Elizabeth Gaunt*, you said that you did receive Money from her, 5*l.* or some such Sum.

Mr. Burton. Yes, an't please your Lordship.

L. C. J. Jones. Did she owe you any Money?

Mr. Burton. No, my Lord.

L. C. J. Jones. Upon what account was it you receiv'd that Money?

Mr. Burton. She gave it me.

L. C. J. Jones. Upon what account was it? To assist you in your Escape?

Mr. Burton. She knew I was bare of Money, and gave it me of her free Will.

L. C. J. Jones. And it was at that time you went away?

Mr. Burton. Yes.

Mr. Just. Wilmbs. It was to assist you in your Escape?

Mr. Burton. Yes, I believe so.

Mr. Com. Serj. Who paid your Boat-hire?

Mr. Burton. I paid none, I don't know, the Waterman can tell.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of the Jury, *Mr. Cornish*, the Prisoner at the Bar, stands indicted for contriving the Death of the late King, and for raising Rebellion in the Kingdom, and is charged that he did consent to be assisting to that Rebellion that was then designed. It is not unknown to you, Gentlemen, for there have been several Trials of that Conspiracy, that there was a great Rebellion design'd in *England* by the late Duke of *Monmouth*, the Lord *Russel*, and Sir *Thomas Armstrong*; and particularly Gentlemen, there was a Meeting (which already hath appeared in publick,) at *Mr. Sheppard's* House, where the Lord *Russel*, the late Duke of *Monmouth*, Sir *Thomas Armstrong*, *Mr. Rumsey*, and the late Lord *Grey*, met to consider and adjust matters. At that Meeting *Mr. Cornish* indeed came in very late, (for he was invited and knew their Design then) he came in late, and so was not at the whole Discourse; but there was a Declaration framed to be put out when they should rise, and they did acquaint *Mr. Cornish* with it, and they read it to *Mr. Cornish*, and *Mr. Cornish* did like it very well, and promised he would be assisting, as we will prove to you, Gentlemen. Another Instance of *Mr. Cornish's* Rebellion, for I need not tell you what part he acted when he was Sheriff, and maintain'd that which was the Ground-work of the Rebellion, setting the Commonalty against the Government of the City: Another Instance we will give you is, his Under-Sheriff that was employed to divide the City, and to raise Men within the City, having discourse

with Mr. *Cornish* about settling that matter, he liked it very well, and promis'd he would be assisting to him, and you may easily presume Mr. *Goodenough* the Under-Sheriff was very privy to all the Acts of Mr. *Cornish* at that time. We will call our Witnesses. Mr. *Rumsey*.

Mr. *Cornish*. I desire the Witnesses may be kept apart.

Mr. *At. Gen.* They will prove it upon you at two times.

Mr. *Cornish*. You will find me guilty of neither; I am as innocent as any Person in this Court.

Mr. *At. Gen.* So was my Lord *Ruffel* to his Death, Mr. *Cornish*: do you remember that?

Mr. *Cornish*. Mr. *Attorney General*, I speak in the Presence of the great God, I am as innocent as any Man in this Court.

Mr. *At. Gen.* Mr. *Rumsey*, pray will you give my Lord and the Jury an account of the Insurrection that was to have been in *England*, in the late King's Time, and what concern the Prisoner had in that Affair.

Mr. *Rumsey*. My Lord, about the latter end of *October*, or the beginning of *November*, my Lord *Sbafestbury* desired me to go to Mr. *Sheppard's* House, where there was a Meeting of those Gentlemen that I did name before, the Duke of *Monmouth*, my Lord *Ruffel*, my Lord *Grey*, Sir *Thomas Armstrong*, and Mr. *Ferguson*, and Mr. *Sheppard*, and accordingly I went; I came late there my self, for they were just going away, when I came in. I told them my Message, and they told me they were disappointed by Mr. *Trenchard*. I had not been there a quarter of an hour, but we were going away, and Mr. *Sheppard* was call'd for by his Man, and he went down Stairs and brought up Mr. *Cornish*; and when he came into the Room, he told the Gentlemen there met, that Mr. Alderman *Cornish* was come; so as soon as Mr. Alderman *Cornish* came into the Room, he made his Excuse to the Gentlemen that he did not come sooner, and that he could not stay with them; the Reason why he could not stay with them, he told them, was, that they were to meet that Night about their Charter, and there was never another Alderman in Town but himself, and therefore he could not stay, there was a Necessity of an Alderman to be there. And upon that Mr. *Ferguson* opened his Bosom, and from under his Stomacher pull'd out a Paper; they told him, they had that Paper read, and desired to read it to him: Mr. *Ferguson* read it, and Mr. *Sheppard* held the Candle all the while that it was reading; and after they had read it, they asked him how he liked it, and he did say he liked it very well.

L. C. J. *Jones*. What were the Contents of that Paper?

Mr. *Rumsey*. The first part of it was complaining of the Misgovernment of the late King; there were two Points in it that I do remember very well, that they would declare for: One was *Liberty of Conscience*; and t'other was, That all those that would assist in that Insurrection, that had any Lands of the Church, or the King's, in the late War, should have them restored to them.

L. C. J. *Jones*. Was there any thing in that Paper that did engage any body to an Insurrection?

Mr. *Rumsey*. I did not hear all the Paper, nor did I take great notice of it; but those two Points were in it, to engage them that would assist.

Mr. *At. Gen.* What was the Effect of the Paper?

Mr. *Rumsey*. It was to be a Declaration upon the Rising; when the Rising was to have been, this was to have been dispersed abroad.

Mr. *At. Gen.* Mr. *Rumsey*, was there a Rising intended at that time?

Mr. *Rumsey*. Yes, and they met there for that Purpose; and Mr. *Trenchard* was the Man to manage the Business about *Taunton*, and he disappointed them.

Mr. *At. Gen.* What was your Message from my Lord *Sbafestbury* to them?

Mr. *Rumsey*. It was to know what issue they had come to about the Rising, and to press them to it, for such a matter as that was not to be long kept afoot; either let them come to a Resolution to rise, or let it fall for good and all.

Mr. *At. Gen.* After Mr. *Cornish* had expressed his liking of this Business and Declaration, what follow'd?

Mr. *Rumsey*. He did say, he liked it very well; and that poor Interest he had, he would join with it.

Mr. *At. Gen.* Speak that again.

Mr. *Rumsey*. Mr. *Cornish* did say, he did like the Declaration, and with the small Interest he had, he would appear to back it, or Words to that Effect.

Mr. *Cornish*. My Lord, since he takes the Freedom to charge me with these things, I never was at a Consult in my Days.

Mr. *Just. Levinz*. You were not then at Mr. *Sheppard's* that Night?

Mr. *At. Gen.* Will you deny you were at Mr. *Sheppard's* that Night?

Mr. *Cornish*. I do declare, I never was at Mr. *Sheppard's* in any Consult in my Life, as he declares; but I have had great dealings with Mr. *Sheppard*.

L. C. J. *Jones*. You shall be allowed your Liberty; pray, Sir, be not transported with Passion. I doubt, before this time, notwithstanding the Confidence you seem to have, there are few believe you to be as innocent as any Person present.

Mr. *At. Gen.* You will hear more from his Oracle.

Mr. *Just. Levinz*. Were you there when my Lord *Ruffel* was there?

Mr. *Cornish*. I was not there when my Lord *Ruffel* was there, as I remember.

L. C. J. *Jones*. Were you present, hear, hear, Sir: were you present at *Sheppard's* when *Ferguson* was there?

Mr. *Cornish*. My Lord, I have been at *Sheppard's* several times, but I never liked the Man for his Morals, and therefore never liked to be in his Company.

L. C. J. *Jones*. He pull'd the Paper out of his Bosom.

Mr. *Cornish*. It is as great an Untruth as ever was told in the World; but, my Lord, seeing he takes this Freedom to charge me, I desire to know whether he stands here as a lawful Evidence?

L. C. J. *Jones*. What is your Exception?

Mr. *Cornish*. He stands charged guilty of Treason.

L. C. J. *Jones*. That it self does not disable him to be a Witness.

Mr. *Cornish*. Before he hath his Pardon, my Lord?

L. C. J. *Jones*. I don't know whether he hath his Pardon or not.

Mr. *At. Gen.* There is no Indictment at all upon him.

Mr. *Just. Levins.* If he were convicted, or outlawed of Treason, it were something; an innocent Man may be charged.

Mr. *Rumsey.* My Lord, Mr. *Cornish* and I have been very well acquainted these fourteen Years or thereabouts, and have had great concerns together; for during the time that I managed the King's Customs at *Bristol*, six Years I was there Collector, he did return between three and four hundred thousand Pound for me; he is a very honest Gentleman, and I appeal to himself, whether I take delight to appear here to accuse him.

Mr. *Cornish.* But Colonel, what is the reason that you have not accused me all this while?

Mr. *Rumsey.* Mr. *Cornish*, I hope that is not an Objection, I think I suffer for it and not you; it was Compassion, and the same Compassion makes you deny it to save others; if you would deal openly, I make no doubt, but you might partake of the King's Favour yet, as well as I have done.

Mr. *Cornish.* I do thankfully accept of his Majesty's Favour at all times, but I thank God I am innocent in this matter, and do not stand in need of it.

Mr. *Rumsey.* And you say I accuse you falsely; then Mr. *Cornish*, you don't stand there, nor I here.

Mr. *At. Gen.* Pray, will you ask him any Questions?

L. C. J. Jones. But pray don't enter into a long Harangue.

Mr. *Cornish.* My Lord, I do humbly conceive, that he does not stand here as an Evidence.

L. C. J. Jones. You have the Judgment of the Court for that.

Mr. *Cornish.* Before he is pardon'd?

L. C. J. Jones. I don't talk of a Pardon; what Record have you against him?

Mr. *At. Gen.* You were present and heard that resolv'd before in my Lord *Ruffel's* Case.

Mr. *Cornish.* My Lord, Mr. *Rumsey* did upon his Evidence give in, and he was obliged by his Oath to speak the whole Truth—

L. C. J. Jones. Now you are making your Speech, it is not your proper time; you shall urge any thing against Mr. *Rumsey's* Evidence, or the Credibility of it when it is your time.

Mr. *Cornish.* My Lord, I do here design it.

Mr. *At. Gen.* My Lord, Mr. *Rumsey*, pray recollect; had you never any Discourse with him at other times?

Mr. *Rumsey.* We have had a long Acquaintance, fourteen Years; but in my Life, I never heard him speak any thing before or since that, to my knowledge.

Mr. *At. Gen.* Mr. *Cornish*, will you ask him any more Questions?

Mr. *Cornish.* I desire to know—

Mr. *Rumsey.* What would you know?

Mr. *Cornish.* Whether did you and I discourse of these matters at any other time?

Mr. *Rumsey.* No.

Mr. *Just. Levins.* You must not stand to dialogue between one another, but speak as we may hear you.

L. C. J. Jones. You shall argue if you will, when you come to make your Defence in the proper time, the Improbability of any thing that he hath said, or the Impossibility, or Repugnancy to any Truth, or any Evidence that you can give to the contrary; but I say, this is not your time.

Mr. *Cornish.* I never was at any Consult in my Life.

Mr. *At. Gen.* That is a Name he gives it; was you never at a Meeting about a Rising?

Mr. *Goodenough* sworn.

Mr. *At. Gen.* Mr. *Goodenough*, are you acquainted with Mr. *Cornish*?

Mr. *Goodenough.* Yes, Sir.

Mr. *Cornish.* My Lord, I humbly conceive he is not a Witness, he stands indicted upon an Outlawry; I can produce it.

Mr. *At. Gen.* We do admit it.

L. C. J. Jones. They admit your Exception, and will answer it by producing a Pardon.

Mr. *Cornish.* I need not say any thing against him, he is known well enough.

Mr. *Just. Witbins.* He was your Under-Sheriff, Mr. *Cornish*.

Mr. *Cornish.* Much against my Will; I oppos'd him to the utmost; and this is nothing but Malice against me.

[Mr. *Goodenough's* Pardon read.]

Mr. *Cornish.* I do humbly conceive this can't be done, but by a Writ of Error, or an Act of Parliament.

L. C. J. Jones. Can't the King pardon an Outlawry?

Mr. *Just. Witbins.* That is no piece of Law, I am sure of it.

Mr. *At. Gen. Goodenough*, pray what do you know of a Rising intended against the late King?

Mr. *Goodenough.* All that I have to give an account of, is a Discourse—

Mr. *At. Gen.* Answer what I ask you; what do you know of a Rising by others?

Mr. *Goodenough.* I know nothing of that Business of my Lord *Ruffel's*; but there was a Design to rise, Sir, in *London*; we design'd to divide it into twenty parts, and out of each part to raise five hundred Men, if it might be done to make an Insurrection.

L. C. J. Jones. What were these Men to do when they were raised?

Mr. *Goodenough.* They were to take the *Tower*, and drive the Guards out of Town.

Mr. *At. Gen.* Pray, acquaint my Lord and the Jury what Discourse you had with Mr. *Cornish*.

Mr. *Goodenough.* Before this was agreed on by us, I chanced to be at Alderman *Cornish's*; Sir, said I, now the Law won't defend us, tho' we be never so innocent; but some other way is to be thought on. Upon this, said he, I wonder the City is so unready, and the Country so ready. I said to him again, Sir, there is something thought of to be done here; but, says I, in the first place, the *Tower* ought to be seized, where the Magazine is: upon this he made a little Pause, and said, I will do what I can, or what good I can. To this purpose he answered me; and about some time after, he met me upon the Exchange, and asked me how Affairs went? which I understood to be relating to what we discours'd; this is all that I can say. I never met after this, but only upon the Exchange, he ask'd how matters went.

Mr. *At. Gen.* Was there any Discourse about seizing the Guards?

Mr. *Goodenough.* I have told you the whole Discourse.

Mr. *At. Gen.* Pray, repeat it.

Mr. *Goodenough.* I told him, says I, Sir, now it is plain, the Law will not defend us, tho' we are never so innocent, or to this purpose.

Mr. *Sol. Gen.* Upon what occasion was that Discourse?

Mr. *Goodenough.* Every thing going against us.

Mr. *Sol. Gen.* How?

Mr. *Goodenough.* This was in *Easter* Term, as near as I can remember, 83.

Mr. *At. Gen.* Ay 83.

Mr. *Goodenough.* Therefore, says I, something else is to be thought on, some Course else is to be taken: to this purpose he answer'd me, I wonder the City is so unready, and the Country so ready.

L. C. Baron. What Country?

Mr. *Goodenough.* He had been in the Country, as I understood before, that I don't know.

Mr. *Cornish.* What time was this, Sir?

Mr. *Goodenough.* In *Easter Term*, or thereabouts, 83. I told him then, Sir, there is something thought of to be done here in *London*, to this purpose; but says I, in the first place, the *Tower* is to be seized, where the Magazine is; so he answered me, after some Pause (he paused upon it) says he, I will do what good I can, or what I can, to this purpose.

Mr. *Sol. Gen.* Did he seem to dislike seizing the *Tower* at all?

Mr. *Goodenough.* Not at all, Sir, it did not appear so to me.

Mr. *Sol. Gen.* What Discourses had you any other time?

Mr. *Goodenough.* I never had any Discourse of this matter, or any thing relating to it at any other time, but only when I came upon the *Exchange*, how things went.

Mr. *Sol. Gen.* And did you give him an account?

Mr. *Goodenough.* I said, well. I gave him a general Answer, for that was not a place to talk in, and that I apprehended of this Discourse.

Mr. *Sol. Gen.* Had you any other matters?

Mr. *Goodenough.* I had some other matters of managing the Riot, that was brought against him, and several others, and my self also.

L. C. J. Jones. Will you ask him any Questions, Mr. *Cornish*?

Mr. *Cornish.* Whether his Pardon be allowed?

L. C. J. Jones. We heard it read.

Mr. *Cornish.* This being a Court inferiour to the King's Bench——

L. C. J. Jones. Here is a Pardon under the Great Seal, Sir, and here is a Pardon of that Offence which you charge him with, and which you take to be a sufficient Exception against his being a Witness, we are satisfied it is sufficient.

Mr. *Cornish.* Pray, my Lord, is not this Pardon special?

L. C. J. Jones. What do you mean by that?

Mr. *Cornish.* Because, my Lord, he hath been in an Act of Treason since; therefore, my Lord, if he be not pardoned of that——

L. C. J. Jones. No, no, he is not indicted for it; we can't try him now for any Treason of that nature.

Mr. *Cornish.* I humbly conceive he hath not had a Pardon for his last Treason.

L. C. J. Jones. I must tell you, if he be guilty of Treason, till he is tried and convicted, it doth not take off his Testimony.

Mr. *Cornish.* Pray, Mr. *Goodenough*, remember all your Tricks, whether or no, was there any body present when this Discourse past between you and I?

Mr. *Goodenough.* No body but you and I.

Mr. *Cornish.* You were not so conversant in my House, I know.

Mr. *Goodenough.* Sir, I came to you about the Business of the Riot.

Mr. *Cornish.* How many times might you be at my House? Not three times, I believe.

L. C. J. Jones. You ask a Question, and answer it your self.

Mr. *Cornish.* My Lord, I desire to know, where it was these Words were spoke.

Mr. *Goodenough.* Sir, in your lower Room.

Mr. *Cornish.* In my own House?

Mr. *Goodenough.* Yes, Sir.

Mr. *Cornish.* And no Company there?

Mr. *Goodenough.* And no Company.

Mr. *Cornish.* That is very strange, and that afterwards you should meet me, and discourse this matter again.

Mr. *Goodenough.* No, Sir, all I say, is this, you met me upon the *Exchange*, and asked me how things went.

Mr. *Cornish.* That might be in reference to the Suit you were managing for the Rioters; I know of nothing else.

Mr. *Just. Wilbins.* And I tell you, Mr. *Cornish*, that was a Branch of the Plot; take that from me.

Mr. *Cornish.* My Lord, he was Attorney in that Cause, and I might ask, how matters went in reference to that Trial; but I take God to witness, nothing else, as I remember.

L. C. J. Jones. But here you say, it was a strange thing that Mr. *Goodenough* and you should be in a Room alone, when you acknowledge him to have been the Attorney in a Cause of mighty Consequence among you.

Mr. *Cornish.* He was concern'd for all, and I stedfastly believe he was never with me twice about that Suit; but he hath been at Sir *Thomas Player's*; there he often went about that Affair; and I do not believe that ever he came to me about that Business.

L. C. J. Jones. Is that all you have to say to him, Sir?

Mr. *At. Gen.* Will you ask him any more Questions? if not, go on, we have done.

Mr. *Cornish.* My Lord, Colonel *Rumsey* is a Person that hath acquainted the Court, that there was a long acquaintance between him and me. I have served his Majesty in my Place, and do it to this day. My Lord, it is a very improbable thing, that I should meet him at Mr. *Shepherd's*, where I saw such wicked horrible Doings; and that he should never afterwards speak to me about that affair. He came to my House, I remember, about the return of some Monies for his own private Use; for he was then out of his Majesty's Employment. He does declare here, he never said a Word to me, never spake to me any thing of it but there. My Lord, it is a very strange thing, that there should be such a Contrivance to ruin the King and Kingdom, and that I should be one in this Business, this Villany, and not be consulted how to carry it on; it is very strange, they should see me, and never say a Word of it afterwards to me. My Lord, I hope, and you Gentlemen of the Jury, that you will consider the Improbability of it; it is as improbable as any thing in the World. I hope it doth appear to your Lordship and this Bench, that there is no probability in it; he owns we had a great deal of Freedom; he owns we were acquainted for fourteen Years together, and that I should be at such a wicked villainous place once, and see him so often afterwards, and never speak of it, and never say any thing of it, the Great God of Heaven and Earth, before whom I stand, knows that I know nothing of all that he hath sworn against me: He must swear these things to save his own Life; if he will take away my Life, he will take away many others, without question, if he can save his own. I should not urge this, but God

is my Witness, I never heard any thing of a Contrivance or Plot, till my Lord *Ruffel's* Trial: These are very strange things, if so be so good a Government as we have, shall not protect such innocent Men; truly, my Lord, I am as innocent as any Man in this Court, if I were to appear before the Great God in Judgment this Moment.

L. C. J. Jones. Look you, Mr. *Cornish*, I would with all my heart allow you all the Liberty imaginable, to speak pertinently to your Defence, but to oppose Confidence, and very great Assurance, upon your being in the Presence of Almighty God, against express Testimony, is the weakest Defence that can be; if you have any Witnesses, if you have any thing to urge against the Testimony of any of these Persons, besides the Improbability of it, which you have often mentioned over and over again, you shall be heard with all Patience: if you have Witnesses that you will call, we will hear them likewise.

Mr. *Cornish.* My Lord, I think his Treason being confessed, and not being pardoned—

Mr. Just. *Witbins.* Is that all you will say, Mr. *Cornish*?

Mr. *Cornish.* I hope you will bear a little with me, I am highly concerned.

L. C. J. Jones. You are so.

Mr. *Cornish.* I have had no help, and it is well known, I am not skilful in the Law. I don't understand what to say, nor how to plead my Cause, having no help, nor no assistance allowed me. My Lord, it is a most improbable thing that I should be at this place, where this horrible Wickedness was, and that it should lie all this time never mention'd: I have been, my Lord, several times in Prison this Year, and I think my Vertue will be so much the greater, to be again and again purged, as I have been; that which hath pleased me very much, hath been my Innocency: Would any Man in my Circumstances have staid and continued in this Nation, if he had not known himself perfectly innocent? Others have gone away, and I could as freely have gone, after I have been taken up four times.

L. C. J. Jones. I doubt there are a great many are not gone, Mr. *Rumsey* hath told you plainly, it was Compassion to you, though Injury to himself, that he did not accuse you sooner.

Mr. Just. *Levinz.* Here is *Gaunt* staid here till within this Week or Fortnight, and never stir'd.

Mr. Just. *Witbins.* Mr. *Cornish*, my Lord hath put you in the right Way for your Defence, if you can invalidate the Testimony, or call any Witnesses, do it; but to talk at this rate, you may do it this Month (for ought I know) and 'twill signify no more than it hath done already.

Mr. *Cornish.* The Improbability is so manifest.

L. C. J. Jones. Is it enough to say, Improbability, Improbability, Improbability? Is that enough? Have you said any more?

Mr. *Cornish.* My Lord, I have said this, that this Gentleman that should be so conversant in the Town, I in his Company, and he in mine; is it not improbable? —

Mr. Just. *Levinz.* Look you, Mr. *Cornish*, I will tell you what the Method is, to give Evidence first, and then apply it in summing up the Evidence; if you were summing it up, the Court hath all the reason in the World to hear you; if you have Evidence, the Way is to give your Evidence, and apply it if you can.

Mr. Just. *Witbins.* Have you any Witnesses?

Mr. *Cornish.* Against Mr. *Rumsey*?

Mr. Just. *Witbins.* Against any body, Mr. *Rumsey* if you will.

Mr. *Cornish.* My Lord, I humbly conceive that this Witness, Mr. *Rumsey*, ought not to stand; if your Lordship satisfies me, I shall be very much obliged to your Lordship: He declared upon his Oath, when he swore against my Lord *Ruffel*, that he had nothing else to swear against any Man.

Mr. Just. *Witbins.* How does it appear?

Mr. *Cornish.* I will produce it, if your Lordship please to give me time.

Mr. Just. *Witbins.* But afterwards he discover'd a great deal more.

L. C. J. Jones. Look you, Sir, if you have any Exception against Mr. *Rumsey's* Testimony, we will hear you, propound a legal Exception.

Mr. *Cornish.* My Lord, I humbly conceive, he not producing his Pardon, his Evidence is not good.

L. C. J. Jones. You have had the Opinion of the Court.

Mr. *Cornish.* If your Lordship over-rule me.

L. C. J. Jones. We must over-rule you.

Mr. *Cornish.* If that will not be granted me.

L. C. J. Jones. Then you have no more to say?

Mr. *Cornish.* But for my Innocency, for that (I know) I have enough to say.

L. C. J. Jones. That is in your own Breast, the Jury can't see that; will you call any Witnesses?

Mr. *Cornish.* I have some Witnesses to call here, as to Mr. *Goodenough*, my Lord.

L. C. J. Jones. What is your Exception against Mr. *Goodenough*?

Mr. *Cornish.* My Lord, it was my most great Unhappiness and Misfortune, that this *Goodenough* was admitted into the Office of Under-Sheriff; and my Lord, that I might fully convince your Lordship and this Court, all that I desire is, some few Men may be call'd; besides, I think there are a thousand, I may say, that will bear me witness, I did oppose him.

L. C. J. Jones. But pray, Mr. *Cornish*, is that an Exception that he does not swear true, because you would not let him be your Under-Sheriff?

Mr. *Cornish.* It looks like Malice.

L. C. J. Jones. You did admit him to be Under-Sheriff, all the World knows that.

Mr. *Cornish.* But I can set forth that I did oppose him, and the Reasons why I did oppose him.

L. C. J. Jones. You may, if you will, give Evidence, what an Instrument he was to you, and how he served you in your Office, when you were Sheriff: is this to the purpose?

Mr. *Cornish.* Yes.

L. C. J. Jones. It is not at all to the purpose.

Mr. *Cornish.* My Lord, I was imposed upon by my Partner.

L. C. J. Jones. You could not be imposed upon, you had equal Power with your Partner.

Mr. *Cornish.* If your Lordship pleases to consider the Temper of that Man.

L. C. J. Jones. What Man?

Mr. *Cornish.* *Bethel*, I mean, what an obstinate Man he was. My Lord, I hope I can purge my self greatly in these matters.

L. C. J. Jones. If you will, tell to what you will call them.

Mr. *Cornish.* The great Aversion that I had.

Mr. *At. Gen.* We will admit that he did oppose him, because he would have had more Money.

Mr. Just. *Witbins.* You have heard the Opinion of the Court,

Mr.

Mr. Just. — It is not material whether he came in with or without your Consent.

Mr. *Cornish*. Mr. *Gosfricht*, will you be pleas'd to declare to my Lord, how I was impos'd upon by suffering *Goodenough* to be Under-Sheriff?

Mr. *Gosfricht*. My Lord, after that *Bethel* and *Cornish* were chosen Sheriffs, they had some Meetings together concerning an Under-Sheriff; Mr. *Bethel* he named *Goodenough*, Mr. *Cornish* he named another; they could not agree, the Difference did arise in three or four, or more Days Debate, as I remember, and Mr. *Cornish* did tell Sheriff *Bethel*, he was resolv'd if *Goodenough* were Under-Sheriff he would fine, and not hold, and told him the reason why: He said he was a Man that he would not trust a Hair of his Head with, and he had no Knowledge he believ'd of the Business; but withal, he told him, he was a Man obnoxious to the Government, and he was an ill Man, and had done ill things, and he would not trust his Estate and his Reputation in the hands of such an Under-Sheriff. *Bethel* he insist'd upon it, and he was resolv'd he would have *Goodenough*, and *Cornish's* Man should not be.

L. C. J. *Jones*. Who was *Cornish's* Man?

Mr. *Gosfricht*. I know the Man, but forget his Name. — *Millman*.

L. C. J. *Jones*. Can you tell what *Goodenough* was to give for the Under-Sheriffwick?

Mr. *Gosfricht*. No, indeed.

L. C. J. *Jones*. Was there no Discourse?

Mr. *Gosfricht*. Not in my hearing.

L. C. J. *Jones*. Was *Goodenough* Under-Sheriff to *Cornish* at last?

Mr. *Gosfricht*. Yes, Sir.

L. C. J. *Jones*. How did they agree?

Mr. *Gosfricht*. I believe the Animosities were so great, that they were never reconciled; for *Cornish* had so bespatter'd *Goodenough*, that he was so ill a Man, that *Goodenough*, I believe, could never digest it well.

L. C. J. *Jones*. Did you hear any angry Words, after he was admitted to be Under-Sheriff?

Mr. *Gosfricht*. Truly, I never was at Alderman *Cornish's* while he was Sheriff: But I heard that Character of him.

L. C. J. *Jones*. And that was the Reason you did not go to Mr. *Cornish*?

Mr. *Gosfricht*. No, I believe *Goodenough* never came there, but I was at neither of their Houses.

Mr. Just. *Levinz*. Pray, how many Juries did you help him in?

Mr. *Gosfricht*. Truly I was so little acquainted, I could not help him.

Mr. Just. *Levinz*. I hear other People say the contrary.

Mr. *Gosfricht*. I was but newly come into *England*, and could know no Man.

Mr. *Cornish*. Alderman *Love*.

L. C. J. *Jones*. To what purpose do you call him, Sir? To the same?

Mr. *Cornish*. It is evidently to declare how much I was imposed upon.

L. C. J. *Jones*. Psha! I will tell the Jury, I will do this for you, upon this Man's Testimony, that you were unwilling that *Goodenough* should be Under-Sheriff.

Mr. *Cornish*. My Lord, there is a great deal more in it.

L. C. J. *Jones*. What is there more? he never heard an angry Word between you, during the time, he says, afterwards you admitted him to be Under-Sheriff?

Mr. *Cornish*. Mr. *Love*, will you please to declare to the Court, what aversion I had to Mr. *Goodenough* being the Under-Sheriff.

Mr. *Love*. My Lord, I did receive a Sub-pœna last Night, and I wonder'd at it, I confess; ever since I was so happy to get out of publick Employment, having apply'd my self to my private Affairs, I never came to *Guild-Hall*. But all I can say, is this, that when it was publickly talk'd upon the *Exchange*, meeting Mr. *Cornish* upon the *Exchange*, I did hear him inclined to have another Man (one I don't know,) to be his Under-Sheriff, and that he did not like Mr. *Goodenough*, but was inclin'd to another Man: but it is so long ago, I believe I might persuade him, having been Sheriff above twenty years ago, to Mr. *Lastings*, an honest Man; I got my *Quietus est*, without trouble: But I must say this for the Gentleman, I did hear him complain, that he was imposed upon to take this Man.

L. C. J. *Jones*. How long was this after the time?

Mr. *Love*. It was before they had pitched upon a Man, and he was much inclined to one Mr. *Milbourne* or *Millman*, or some such name, that is all I can say.

L. C. J. *Jones*. Do you think we sit here to hear Impertinencies? God forbid, Sir, I should hinder you from giving any Evidence; but this is not at all material.

Mr. *Cornish*. If your Lordship please to let Mr. *Jekyl* come, he will tell you what this Man did declare, why I was against him.

L. C. J. *Jones*. If you had not entertain'd Mr. *Goodenough*, then there might be something of Malice in it, but you did receive him.

Mr. *Cornish*. I had private Covenants with *Bethel*, before I would let him come into the Office. Mr. *Jekyl*, pray will you declare to my Lord, and the Jury, what aversion I had against Mr. *Goodenough's* being Under-Sheriff?

Mr. *Jekyl*. Truly, my Lord, Alderman *Cornish* and I, living near together, I had occasion to go to him, several times, about Bills of Exchange; and he told me, when he was Sheriff, how he was troubled with *Bethel*, because he would put *Goodenough* upon him, for I don't intend to have him, says he, for I know he is obnoxious to the King and Government, and desired me to speak to Mr. *Bethel* about it, but I had no acquaintance with him till he was Sheriff: And some came to me, to desire me to speak to Alderman *Cornish* to receive *Goodenough*. Truly, says I, I find him so averse against him, that it is not for me to persuade him, to take a Servant he must put such trust and confidence in; for I saw Alderman *Cornish* was so averse to it, that I would not do it.

Mr. *Sol. Gen*. Pray do you think, in your Conscience, he was more obnoxious to the Government than his Partner, Sheriff *Bethel*, was?

Mr. *Jekyl*. I must confess, I have heard much of Sheriff *Bethel*, but I never heard that *Cornish* was any disaffected Man to the Government.

Mr. *Sol. Gen*. But which was the most disaffected Man to the Government, *Bethel*, or *Goodenough*?

Mr. *Jekyl*. Truly, as I remember, he said, he would not have him, because he was obnoxious to the King and Government.

Mr. Just. *Withins*. This Gentleman was in a Limb of the Plot himself, as great a Rioter, and as hot as any of them, this Evidence that they call: I remember you, Mr. *Jekyl*, I'll assure you.

Mr. *Cornish*. If Sir *William Turner* be upon the Bench, I desire him to speak.

L. C. J. Jones. We will hear Sir *William Turner* any thing.

Mr. Cornish. I desire he would declare how I was used.

Sir William Turner. I don't remember that ever I saw *Mr. Goodenough's* Face before this time, so I have nothing at all to say against him, nor can I say any thing, but what *Mr. Cornish* told me; and that was, he once came to my House some time after he was chosen Sheriff, and told me, that *Mr. Bethel* prested very much for taking *Goodenough* to be his Under-Sheriff; that he had no mind to accept him, and he would propose another, and it caused a great Difference, but it was at last compos'd, but how, I can't tell.

L. C. J. Jones. Now, *Mr. Cornish*, by my consent, if you will, call all the Aldermen upon the Bench; whether they will, or will not, say the same thing, for my part, I will agree, that they have given Evidence (if they will be contented themselves) to the same purpose.

Mr. Cornish. My Lord, I shall not give your Lordship unnecessary trouble, but I think it is convenient to call some Witnesses, to prove the Manner of my Life and Conversation.

L. C. J. Jones. Your Life hath not been in the dark.

Mr. Cornish. The Dean of *Canterbury*, *Dr. Tillotson*, (who did not appear.)

L. C. J. Jones. Will any Man attest your Loyalty in *London*?

Mr. Cornish. The Dean of *Norwich*, *Dr. Sharp*. Is the Dean of *Norwich* here?

Officer. No, Sir.

Mr. Cornish. My Lord, here is *Mr. Lane*, I desire he may be asked what he knows.

Mr. Lane. Upon the Trial of my Lord *Russel*, according as *Mr. Cornish* desires I may be heard, it is with respect to Colonel *Rumsey's* Evidence; Colonel *Rumsey* says, in my Lord *Russel's* Trial, he did not hear the Declaration read, because it was read before he came there.

Mr. North. Were you present at my Lord *Russel's* Trial?

Mr. Lane. No, Sir.

Mr. Just. Levinz. Sir, that signifies nothing.

Mr. Cornish. That is a very material thing, my Lord.

L. C. J. Jones. What is? it is no proof at all.

Mr. Cornish. Not the printed Trial?

L. C. J. Jones. No.

Mr. Cornish. It is by Authority.

L. C. J. Jones. Any body that was present may swear it.

Mr. Cornish. My Lord, I desire I may have the Minister of the Parish, *Dr. Calamy*, for my constancy at my Parish-Church, and receiving the Sacrament, according to the Rites of the Church of *England*, that I am, to all appearance, a Person that does as well affect the Government as any Man.

L. C. J. Jones. I doubt you are all Appearance.

Dr. Calamy. My Knowledge of *Mr. Cornish* hath been since I came to be Minister of the Parish, which is about two Years, a little above two Years; whenever he was in Town he did use to come to Church as constantly as any one, and come with his Family to Prayers, and did come to the Sacrament, and he did not only come at *Easter*, to save himself from a Presentment, but at our monthly Communion; and since I have been Minister of the place, I have often conversed with

him: All that I can say, is, that I never heard him say a disrespectful Word of the Government.

L. C. J. Jones. I hope he took you to be a Man of another Kidney.

Dr. Calamy. I marked his words, because of the Character I had heard of him.

Mr. At. Gen. Pray, what was the Character he had before those two Years?

Dr. Calamy. That was, what was publick.

Mr. Cornish. Joseph Reeve *Esq;*

Mr. Reeve. My Lord, I received a Subpœna, from the Prisoner at the Bar, yesterday. I have been acquainted with him about fourteen or fifteen years, and had a considerable trade with him, and sometimes we had some Conversation, and drank a Glass of Wine together; I thought he was always very Loyal, and drank the late King's Health, and this King's Health, and all the Royal Family. I have no more to say.

Mr. Cornish. *Mr. John Cook.*

L. C. J. Jones. What do you examine this Witness to?

Mr. Cook. My Lord, I have dealt with him for these twenty Years last past, I always found him a very honest Man, and a just Man, and very upright in his dealing, I always reckon'd him a very honest just Man; I have dealt with him for great Sums, and always knew him very just and upright.

L. C. J. Jones. Your Observation of him, as to the Government.

Mr. Cook. I never knew any thing to the contrary, but that he was always very Loyal.

Mr. Cornish. *Mr. John Knap.*

L. C. J. Jones. *Mr. Cornish*, it is not impossible for you to produce Men enough, that shall say, they know nothing against you, concerning the Government, and that you have been a Loyal Man, sure those you chuse, will say so, you have chosen them; and, perhaps, if it were the Business of the King's Counsel, they could do contrary: you are not accused touching your general Conversation, but concerning a particular Fact.

Mr. Cornish. It is improbable I should be a Person ever concern'd in these matters; if you consider, you find *Cornish* mentioned only about being there.

L. C. J. Jones. Does not *Mr. Rumsey* tell you the meaning why?

Mr. Cornish. It is very strange a Man should be at such an Hellish Meeting, and I see him over and over so many times, and never speak of it again.

L. C. J. Jones. *Mr. Cornish*, do not you know that *Goodenough* could not be produced, till the Rebellion in the *West*?

Mr. Cornish. Is it probable that I should entertain any Treasonable Discourse with *Mr. Goodenough*, when I had so much oppos'd him in coming into the Office?

L. C. J. Jones. But you let him in.

Mr. Cornish. It is known to hundreds in this Town, that I was impos'd upon by an unreasonable Man; my Innocency is as great as any Man's and my Virtue should be considered, when I have been under these Impositions: I have been Loyal and Dutiful to my Prince, and Faithful to the Government in all respects; I have oppos'd all manner of Heats, as much as any Man whatsoever; I can bring hundreds to shew, that where I heard Heats I allay'd them, and it is strange I should be such a Man as I am represented here.

L. C. J. Jones. Have you done, Sir?

Mr. Cornish. My Lord, I have thus much further to say, that I do think there is no probability that I could be at this Meeting; though a man should have a care how he takes God's Name in vain, I have said it, and I do in the presence of the great God of Heaven declare it, I was never at the Debate about these Affairs; I take the great God to Witness, I would not do it for a whole World, if I were not innocent. My Lord, it is most improbable what *Mr. Rumsey* says.

L. C. J. Jones. It is a probable thing that *Rumsey* should forswear himself, it is a probable thing that *Goodenough* should forswear himself, who have taken the great God to witness to the Truth of what they swear against you; but it is improbable that *Mr. Cornish* should not speak the Truth.

Mr. Cornish. I will call some other Friends, if your Lordship please, to prove my Loyalty.

Mr. Knap. I ever found him a fair, good Pay-master.

Mr. At. Gen. He calls you for his Loyalty. Did you never hear him speak any thing against the Government?

Mr. Knap. I have not been in his Company but now and then.

Mr. Cornish. Did you ever know me speak any thing against the Government?

Mr. Knap. No, Sir.

L. C. J. Jones. I marvel that you who have been an Alderman a great while, don't call some of the Aldermen; you have call'd Sir *William Turner*, a very worthy Alderman, I wonder you don't call some others of your Brethren, that are known Persons.

Mr. Cornish. *Mr. Carleton.*

Mr. Carleton. I have been acquainted with my Cousin *Cornish* ever since the Year 61, when, being a Merchant, trading in Cloth, I began my acquaintance with him, and afterwards, he recommended me to the Party I married, and being Relations, we had great intimacy together; I have been several times at his House, he did always assure me of his Loyalty: I have told him what I have heard People say abroad, but he did assure me he was Loyal, and I do hope the very fame of him.

L. C. J. Jones. But you remember you have heard that he was not a Person of such eminent Loyalty.

Mr. Carleton. That was upon the account, my Lord, of his being in with *Bethel*; but he did always assure me of it.

Mr. Cornish. My Lord, I hope your Lordship will consider what temper the Man was of that I was to be with, and how obstinate he was; and I hope I shall not answer for his Crimes.

Mr. Just.— *Mr. Cornish*, why did you qualify yourself to serve with him? for you were not at first qualified.

Mr. Cornish. I had been travelling up and down in the Country.

Mr. Just.— At that time to qualify your self to be an Officer, then you could lay aside all your Scruples, and receive the Sacrament.

Mr. Cornish. *J. Seph Smart Esq;*

Mr. Smart. I have known *Mr. Cornish* above these twenty Years, and dealt with him considerably, I never knew him but a very fair Dealer.

Mr. Cornish. *Mr. William Crouch.*

Mr. Crouch. I have had acquaintance a great while with *Mr. Cornish*, and have had several Dealings; I found him a very honest Dealer, and a good Pay-master.

L. C. J. Jones. What know you of his Loyalty?

Mr. Crouch. For his Loyalty, I took it as the Town did, though I never knew any Disloyalty from him.

Mr. Cornish. *Mr. James West.*

L. C. J. Jones. Do you think you profit yourself with this Testimony?

Mr. Cornish. I would not offend you.

L. C. J. Jones. No, no, you don't offend, I would gladly hear you, if there were any thing pertinent to your Defence.

Mr. Just. Withins. *Mr. Cornish*, you have this Happiness, that you will be tried by your Fellow-Citizens, of very good Quality and Understanding, I must needs tell you.

Mr. Cornish. I am satisfied I have appeared here with all the Care and Caution that becomes an honest Man; I have spoke nothing but what I have consider'd as I have been in presence of the great God; I never was at any Meeting, nor never heard any thing of this till the Trial about my Lord *Russel*, never heard one Word.

L. C. J. Jones. Gentlemen of the Jury, the Prisoner at the Bar, *Mr. Cornish*, is indicted, that knowing that there was an Insurrection intended to be against the late King, of blessed Memory, he did promise to be aiding and assisting in it; this is the Substance of the Indictment. There have been two Witnesses produced, *Mr. Rumsey*, and *Mr. Goodenough*: *Rumsey's* Testimony (so far as I am able to remember, after so long a Discourse and so much time that hath been spent) was to this purpose; That the Duke of *Monmouth*, the Lord *Russel*, *Ferguson*, and others, being in *Mr. Sheppard's* House, there came at length *Mr. Cornish*, and excus'd himself for coming late, and said, That he was to depart from them very speedily, because he was to go to attend the Business (as I take it) of the Charter, where the Presence of an Alderman was necessary, and none like to be there but himself; That *Ferguson* pull'd a Paper out of his Bosom, so says *Mr. Rumsey*, and upon the desire of the Company, it was read to *Mr. Cornish*, and *Sheppard* held the Candle; there were these two Points, *Rumsey* says, they had agreed on in that Paper, when the Rising should be, they would declare for Liberty of Conscience, and for the Restitution of those Lands, Bishops Lands, and King's Lands, to those Persons from whom they had been taken after the King's Restauration. This Paper being read to *Mr. Cornish*, he said, He did like it very well, (these were the very words of *Rumsey*) and with that poor Interest that he had in the World, he would join in the Assistance of them, for those Ends and Purposes that were mentioned in that Declaration. Then comes *Goodenough*, and he tells you, that he came to him in his Parlour, when he was Sheriff, said, Now there was no Safety, no Defence at all by Law, all was gone, there must be some other Course taken, for the Law would not sufficiently protect them: Why, says *Mr. Cornish*, I marvel they are so slow in the City, when they are so ready in the Country. Ay, but says *Goodenough* again to him, there hath been something done in the City; this was after the time that the City had been put into

into several Divisions. I don't see there is any Testimony from Mr. *Goodenough*, that Mr. *Cornish* knew any thing of that; but says he, there is something done here, the *Tower* is to be seiz'd, there is the Magazine, and that is to be seiz'd upon, and then we shall be able to do something: says he, I will do what good I can, or says he, what I can; he is not confident whether of these Expressions he did use, I will do what good I can, or I will do what I can. Afterwards he meets Mr. *Cornish* upon the *Exchange*: here, I confess, it is not so expressly to be applied to this Purpose, that it doth fasten directly upon the point in the Indictment; but says he, How do Affairs go? How do our Affairs go? says he, very well: This is the Testimony given against him. If this be true, notwithstanding Mr. *Cornish's* Protestations of his Innocency, sure there is nothing doth more plainly prove this Indictment, than this Testimony. He says it is improbable, very improbable that I in my Circumstances, that I should say so; it is improbable, because Mr. *Rumsley* had Acquaintance with me for fourteen Years together, that I have dealt with him for vast Sums, and that I should say it in his presence never but once; and that *Rumsley* does say, He never heard him speak any thing to that purpose, but that one time; and therefore it is mighty improbable I should say so. But what is the Reason, says he, that this was not discover'd before? To this *Rumsley* gives a positive Answer, Truly says he, Mr. *Cornish*, I had more Compassion for you, than for my self, I have suffer'd for it, you have not suffer'd for my silence. Then *Goodenough* ought not to be allowed to be a competent Witness, because when Mr. *Cornish* and *Betbel* were chosen Sheriffs of the City, Mr. *Cornish* was much against receiving *Goodenough* to be his Deputy, and *Goodenough* must say all this maliciously against him, because he so much oppos'd his being Under-Sheriff to him and *Betbel*. He hath produced several Witnesses to that Purpose, and they say there was some reluctance in him to the receiving *Goodenough* to be his Under-Sheriff; but it is plain and clear to you all, Gentlemen, and every body in the City knows that *Goodenough* was his Under-Sheriff, and how well he serv'd him, and to what purposes, I believe many of you very well know. Another Improbability is, that he should admit *Goodenough* to come into his Parlour alone, a Man that he had so much displeas'd; but if so be he was once against him, he did afterwards take him not only to be his Under-Sheriff, but employ'd him to be his Attorney, and then he might very well admit him into his Parlour alone, to discourse of his Business as an Attorney, and this might fall in among other Discourse. Gentlemen, there are several other Witnesses produced concerning the Honesty of his Dealing, and the Honesty of his Conversation, that they have nothing at all to say against; but Gentlemen in a popular City, where he is, and hath been so well known, it is a very easy matter to bring millions of Men to give the very same Testimony, and certainly he will bring none, having the choice of them, but such as shall speak in his Favour; but he speaks in the Presence of God, he speaks from the bottom of his Heart, that he never had any such disloyal Thought enter'd into his Mind. Gentlemen, hath no body any Sense of the Presence of God but Mr. *Cornish*? Hath not *Rumsley* call'd God to be a Witness to his Oath? and *Goodenough* hath done the like?

Why is it maliciously against the Life of Mr. *Cornish*? for I don't know he does, in the least, object any thing against *Rumsley*, that there was ever any Displeasure between them two: Why should he deliver this Testimony, if it were not the Testimony of his Heart? and that which he says himself, he had too long concealed out of the Compassion he had for him. Gentlemen, if a great many Protestations and Asseverations should make a Man as innocent as confident, no Man should die by the Sentence of the Law; it is an easy matter for any Man to take up the same Assurance and Confidence that he hath done: And for his being such a Church-man, as he now pretends himself to be, for that is one thing by which he would argue the Improbability of the thing, and he would have you believe very much of his Loyalty from it; Gentlemen, all the Evidence he hath given, is but of two Years standing, and since the Trial of my Lord *Ruffel*: and such a Man as he, and many Men that were conscious to themselves of their Guilt, did think it very fit to purge themselves that way, to gain themselves a good Opinion that they were loyal to the Government. But it is not deny'd by Mr. *Cornish*, that before that time he did not frequent the Church, nor receive the Sacrament.

Mr. *Cornish*. These seven Years, my Lord.

L. C. J. *Jones*. Who did say so? Sure no body said so yet. I repeat the Evidence truly, all you said of that was out of the mouth of Dr. *Calamy*.

Mr. *Cornish*. Dr. *Calamy* came in but lately, and his Predecessor Dr. *Whitecot* is dead.

Mr. Just. *Withins*. Sir, you were not qualified for your Office if you had not took the Sacrament.

L. C. J. *Jones*. You did lay aside all your Scruples to qualify your self to be Sheriff by receiving the Sacrament, which otherwise you could not have been. Others that have spoken of your Conversation likewise say, that the Report was abroad, that you were not so loyal and firm to the Government as you ought to have been. Gentlemen, you have heard the Evidence; I have done my endeavour to repeat it faithfully: if you believe that he did promise to aid or join, or agree with that Rebellion or Insurrection, then you ought to find him guilty of this Indictment.

Mr. *Cornish*. I am as innocent as any mortal Man.

Then the Jury withdrew, and after a considerable time return'd.

Mr. *Cornish*. My Lord, I hope I may have one Word.

Mr. Just. *Withins*. No, not till your Verdict.

Mr. Bar. *Gregory*. No, no, Mr. *Cornish*, we can't.

Mr. *Cornish*. I had a Witness more that was very material, but I would not offend your Lordship: Mr. *Rumsley* said Mr. *Sheppard* held the Candle.

Mr. Just. *Withins*. Why did not you call him? You called a great many impertinent Witnesses.

Mr. *Cornish*. I was not come to him, I would have call'd them in Order.

Mr. Bar. *Gregory*. Why did not you produce him then?

Mr. *Cornish*. Because your Lordship seem'd to be angry.

Mr. Bar. *Gregory*. No, not at all.

Mr. *Cornish*. I did forbear purely upon that account. I pray, my Lord, let him be call'd.

Mr. Bar. *Gregory*. Here were eight Judges and my Lord Chief Justice, and now here is only two: Do you think we will defer things of this nature? It is never asked. Apply your self to the Judges: It is a strange thing.

Mr. Just. *Wilbins*. This is only to delay time.

Mr. Bar. *Gregory*. If he does so, the Jury must go out again.

Mr. Just. *Wilbins*. After the Jury hath been out an Hour, we must have new Allegations.

Mr. *Cornish*. I was tender of offending.

Mr. Just. *Wilbins*. That is a Reflection upon the Court; under favour, Mr. *Cornish*, I told you my self over and over to call your Witnesses.

Clerk. *Elizabeth Gaunt*, hold up thy Hand.

Mrs. *Gaunt*. My Lord, I beseech you, hear me, you won't take advantage I hope of me.

Mr. Just. *Wilbins*. I declare my Opinion freely, it ought not to be done.

Recorder. I think she ought to have it as well as t'other.

Mr. Bar. *Gregory*. You call never a Witness.

Mrs. *Gaunt*. No, Sir, I could not tell, I have some to call.

Mr. Just. *Wilbins*. I am of that Opinion you ought to take the Verdict.

The Judges came again upon the Bench, and the Jury found Mrs. Gaunt guilty.

L. C. J. *Jones*. Is *Rumsey* come in?

Captain *Richardson*. I have sent for him, he will be here presently.

Mr. *Cornish*. My Lord, I must pray your Lordship, to consider my Tenderness in offending you, which made me omit calling Mr. *Sheppard*; I had him in my Paper, he is in my Paper.

L. C. J. *Jones*. Don't you begin your Preface something untowardly, as though the Court would not do you all the Kindness possible; half a dozen times you were admonish'd to call for pertinent Witnesses. You did call, I am sure, a great many impertinent Witnesses. Had you Mr. *Sheppard*'s Name in your Paper?

Mr. *Cornish*. Yes my Lord, but I was tender of offending; pray my Lord, be pleas'd to remember Mr. *Rumsey*'s Evidence.

L. C. J. *Jones*. Is Mr. *Rumsey* here? Sir, pray hold your tongue.

Mr. At. Gen. I would acquaint you, my Lord, I sent a Subpœna for Mr. *Sheppard*, but could not find him, but I understand that Mr. *Cornish*'s Son was with him yesterday, and he has absconded; this I will give an account of upon Oath: This my Lord, is a dangerous Practice after Examination, and after the Jury is withdrawn.

Mr. *Cornish*. I pray do not aggravate the matter.

Mr. At. Gen. I must do my Duty for the King.

Mr. *Cornish*. My Son went to him, and found him at Church.

Mr. At. Gen. Now Mr. *Atterbury* is gone. I desire you should have all your right, but not have Tricks put upon the King's Evidence.

Mr. *Cornish*. His Evidence was, Mr. *Sheppard*'s holding the Candle.

Mr. Just. *Levinz*. For God's sake, could you examine so many to your Reputation, and forget an Evidence that was material? but I must tell you, if you will bring Mr. *Sheppard* to be ex-

mined, sure it is requisite, that the Witness that swears what you did there, should be face to face with him; therefore Mr. *Rumsey* should be here certainly.

Mr. Just. *Wilbins*. It is fit to have *Atterbury* here, to enquire if he did abscond; if Mr. *Cornish*'s Son was with him, and he absconded upon that account, it is very material. This is a meer Trick put upon the King's Evidence.

L. C. Baron. Mr. *Cornish*, if you intend to produce Mr. *Sheppard* for that, to contradict *Rumsey*'s Testimony, I wonder that you should miss him, without you have had some notice since.

Mr. *Cornish*. My Lord, I was not come to him: my Lord, though I have such a vile Charge, I am perfectly innocent.

Mr. Just. *Wilbins*. Now you may see what we have got.

Mr. *Cornish*. I beseech you, my Lord, consider me, it is as improbable a thing as any in the world.

L. C. J. *Jones*. This is running over the same thing twenty times. Where is *Sheppard*?

Mr. *Cornish*. He was here within this quarter of an Hour.

Mr. Just. *Wilbins*. Mr. *Cornish*, is this fairly done, when you said he was upon the spot?

Mr. At. Gen. He was subpœna'd by you, he would not be found to be subpœna'd by the King.

Mr. Just. *Levinz*. To make the Court come down, and then to have no notice of the Person at all; sure you may give the Court leave to take notice, that they are not civilly dealt with.

L. C. J. *Jones*. Who told you he was here?

Mr. *Cornish*. This Gentleman says, he saw him. Pray, my Lord, don't be offended.

L. C. J. *Jones*. I never saw such a thing, the time was, you and your Partner would not have allowed it.

Mr. At. Gen. If he comes, I will give him his Oath.

Mr. *Cornish*. My Lord, here is Major *Richardson* can bear witness, I said I must subpœna Mr. *Sheppard*; I named him before Major *Richardson* again and again, and said, I must not omit him.

Mr. Just. *Levinz*. Sir, I tell you what; you han't shewed so little skill to-day here, but that you could maintain so long a Discourse with Mr. *Rumsey* as you were allow'd to do, and should not offer to call *Sheppard* to contradict him; you dwelt half an hour upon it.

Mr. Bar. *Gregory*. And relied only upon the Improbability of the thing.

Mr. *Rumsey*. There is another Gentleman in the Tower, the late Lord *Grey*, that was in company when the Declaration was read.

Mr. Bar. *Gregory*. Have you been in company at *Sheppard*'s?

Mr. *Cornish*. I have been at *Sheppard*'s very often. Pray, my Lords, don't be offended, my Life will do you no good, I don't know but here is a Gentleman that hath been in my Company forty times over since that Business.

Mr. *Rumsey*. Pardon me, Mr. *Cornish*, not above three times since, and then there was other Company.

Mr. Just. *Wilbins*. It is impossible for any, but those that were Complices with you, to give such Evidence; and, because they were your Complices, now you won't believe them.

L. C. J. Jones. Are you subpœna'd by Mr. *Cornish*?

Mr. Sheppard. I have a subpœna from the King.

L. C. J. Jones. But were you subpœna'd by Mr. *Cornish*?

Mr. Sheppard. Yes.

Mr. At. Gen. When?

Mr. Sheppard. Last Night; this Morning I was not at home.

Mr. At. Gen. Was Mr. *Cornish*'s Son with you yesterday in the Afternoon?

Mr. Sheppard. Yes, Sir.

Mr. At. Gen. And what Discourse had you with his Son?

Mr. Sheppard. He was very pressing and urgent with me to be here to-day, and I told him, I could not tell whether I could or not.

Mr. At. Gen. Is there any Account between you and Mr. *Cornish*?

Mr. Sheppard. Yes, Sir.

Mr. At. Gen. To what Sum?

Mr. Sheppard. We were always Trading.

Mr. At. Gen. That is very true, you were Trading—To what Value?

Mr. Sheppard. About one or two Hundred Pounds.

Mr. At. Gen. Who is Debtor?

Mr. Sheppard. I am Debtor.

Mr. Sol. Gen. Mr. *Sheppard*, since when did you contract that Debt?

Mr. Sheppard. Since when, Sir?

Mr. Sol. Gen. Ay.

Mr. Sheppard. I believe it was some six or eight Months ago.

Mr. Sol. Gen. For what was it? Upon what Account?

Mr. Sheppard. For Cloth, Sir?

Mr. Sol. Gen. Was there no Money lent?

Mr. Sheppard. Money lent me?

Mr. Sol. Gen. Ay, Sir.

Mr. Sheppard. No, Sir.

L. C. J. Jones. Is the Debt due to Mr. *Cornish*?

Mr. Sheppard. My Lord, the Debt is due to him.

L. C. J. Jones. Or some body for whom he is a Factor?

Mr. Sheppard. I am indebted to Mr. *Cornish*, for whom it is I can't tell.

Mr. Sol. Gen. Did you leave Word, whither you went, when you went out yesterday?

Mr. Sheppard. No, Sir.

Mr. Sol. Gen. Which subpœna was served first upon you?

Mr. Sheppard. Mr. *Cornish*'s yesterday.

Mr. Sol. Gen. What time was it served upon you?

Mr. Sheppard. Presently after I came out of Church in the Afternoon, Sir.

L. C. J. Jones. What have you to say?

Mr. Cornish. My Lord, Mr. *Rumsey* was pleased to give in his Evidence, that I had been at a Consult or Meeting at Mr. *Sheppard*'s House, where Mr. *Ferguson* should pluck out a Declaration out of his Bosom, and should read it by the Candle, and Mr. *Sheppard* should hold the Candle to him while he read it.

L. C. J. Jones. Do you remember Mr. *Cornish* was ever at your House?

Mr. Sheppard. At one of those Meetings that was at my House, Mr. *Cornish* came into the House to speak a few Words with the Duke of *Monmouth*, or some other, I can't be positive in that, it is so many Years ago, and did not stay half a quarter of an Hour in the House; I came up stairs, and went out with him, and there was not one Word read, and no Paper seen while he was there.

Mr. Just. Levinz. Was Mr. *Cornish* in the Room with the Duke of *Monmouth* and those others?

Mr. Sol. Gen. Mr. *Sheppard*, do you remember that the late Duke of *Monmouth*, the Lord *Russel*, the Lord *Grey*, and Sir *Thomas Armstrong* were there together, and the Declaration read?

Mr. Sheppard. I remember there was a Declaration read, *Ferguson* pull'd out a Declaration out of his Shoe, he pull'd off his Shoe, and pull'd it out there.

Mr. Sol. Gen. Do you remember Mr. *Cornish* was by, any time that Night?

Mr. Sheppard. Truly I can't say whether it was that Night when the Paper was read, but I do positively say, that there was no Paper read, for he was not looked upon to be of the Company: Mr. *Ferguson* told me positively, there is the Duke of *Monmouth*, my Lord *Grey*, my Lord *Russel*, Sir *Thomas Armstrong*, Col. *Rumsey*, my self, and you.

Mr. Sol. Gen. Who did Mr. *Cornish* come to speak with, when he came to your House?

Mr. Sheppard. Truly I don't know whether it was with the Duke of *Monmouth*.

Mr. Sol. Gen. How came Mr. *Cornish* to know the Duke of *Monmouth* was there?

Mr. Sheppard. Truly my Memory will not call it.

Mr. Sol. Gen. Did his Coach stand publickly at your Door?

Mr. Sheppard. Whose Coach?

Mr. Sol. Gen. The late Duke of *Monmouth*'s.

Mr. Sheppard. No, Sir, they all came private, there was no Coaches at the Door as I saw, I let none of them in.

Mr. Sol. Gen. Was Mr. *Cornish* but once there, when the Duke of *Monmouth* was there?

Mr. Sheppard. But once.

Mr. Sol. Gen. Did he call the Duke of *Monmouth* out to him?

Mr. Just. Street. How came you to carry him up to the Duke of *Monmouth*, if he were none of the Company?

Mr. Sheppard. Mr. *Cornish* did go up into the Room and spake to the Duke of *Monmouth*, or some other Person, but I think the Duke of *Monmouth*.

Mr. Sol. Gen. Do you remember he was there in Company, when Col. *Rumsey* was there?

Mr. Sheppard. No, I can't remember that.

Mr. Rumsey. My Lord, when I came to Mr. *Sheppard*'s House, Mr. *Sheppard* came down and fetch'd me up, and I deliver'd my Message I had to the Duke of *Monmouth*, and to the Company, and indeed I was not a quarter of an Hour there, I believe; but by that time I had spoke my Words, somebody knock'd at the Door, and Mr. *Sheppard* went down, and immediately brought up Mr. *Cornish* into the Room, without asking a Question of any body: and when he was come into the Room, Mr. *Cornish* said, he could not come sooner, because he had Business; and could not stay, because there was a Committee for the Management of the Charter, to meet that Night, and there was a Necessity of his being there, because there was never another Alderman in Town, and there must be an Alderman there.

Mr. At. Gen. Mr. *Sheppard*, do you remember any thing of that?

Mr. Sheppard. No, Sir, I do not remember it, I'll assure you.

Mr. Sol. Gen. Did you let him in at the Door?

Mr. Sheppard. No, Sir, I had word brought me up stairs, that Alderman *Cornish* was below; and I went down, and brought him up.

Mr. Sol. Gen. Did you ask for Mr. *Cornish* to come up?

Mr. *Sheppard*. I don't remember I did: When Mr. *Cornish* was there, there was not above three Persons.

Mr. Sol. Gen. Who were they?

Mr. *Sheppard*. There was the Duke of *Monmouth*, and there was Mr. *Ferguson*, and truly I can't tell whether t'other was my Lord *Ruffel* or my Lord *Grey*.

Mr. Just. *Levinz*. You acknowledge now, Sir, you did carry the Prisoner up to the Duke of *Monmouth* and those Persons: Did you use to carry all Persons up there?

L. C. J. *Jones*. There was a Cabal of Rebels met together, and you go and bring up this Man to them, without any leave or licence from them; which is incredible certainly, unless you knew him to be one of the Company, and equally engaged with them.

Mr. Sol. Gen. Mr. *Sheppard*, you say, when Mr. *Cornish* came up, there was not half the Company there. Had they been there, or were not they yet come?

Mr. Just. *Witbins*. Look you, Sir, it is marvellous how Mr. *Cornish*, if he were none of the Parties, should have notice that the Duke of *Monmouth* was there, who came in privately at the Back-Door, and came to speak with him there.

Mr. *Sheppard*. My Lord, I have no Back-Door.

Mr. Just. *Witbins*. He came in privately.

Mr. Just. *Levinz*. Mr. *Sheppard*, I think I heard you say, they came privately without their Coaches.

Mr. *Sheppard*. Yes, Sir, they had no Coaches.

Mr. Just. *Levinz*. They came privately, I suppose, that no body should know they were there.

Mr. *Sheppard*. I suppose so, Sir.

Mr. Just. *Levinz*. Why then did you carry Mr. *Cornish* up? If you were below in the House, he might come about your own Business; but to be carried into the Chamber where they were, looks as if it were about their Business.

Mr. *Cornish*. I never heard any thing of the Business, my Lord.

Mr. At. Gen. So far, Gentlemen, you remember he confirms what Mr. *Rumsey* says; that Gentleman denied he was there with the Duke of *Monmouth*.

Mr. *Cornish*. Pray Mr. Attorney don't strain, I have Dealings with Mr. *Sheppard*, and have often been there, but never at any Meeting.

Mr. At. Gen. He says, you spake with the Duke of *Monmouth*.

Mr. *Cornish*. I never saw the Declaration, he declares it.

L. C. J. *Jones*. Had you any Dealings upon account with the Duke of *Monmouth*?

Mr. *Cornish*. Never for a Farthing.

Mr. Just. *Witbins*. What Business had you with him then?

Mr. *Cornish*. I don't know but I might enquire for him in other places.

L. C. J. *Jones*. Your own Witnesses carried you up.

Mr. *Cornish*. My Lord, if he did, I did not stay; he says Mr. *Sheppard* held the Candle.

Mr. Just. *Witbins*. Mr. *Cornish*, he confirms great part of what Mr. *Rumsey* says.

Mr. *Cornish*. Not one Tittle, for he declares I was not of the Company.

L. C. J. *Jones*. He says no such thing.

Mr. *Sheppard*. My Lord, to my knowledge, I can safely say, he knows nothing of it.

L. C. J. *Jones*. And yet you could bring him up among them.

Mr. *Sheppard*. My Lord, I declare I never spake any thing to him in my Life about the Business, nor never in any Company.

Mr. Just. *Witbins*. It is plain, Mr. *Rumsey* says he was the Man that brought you up: How should Mr. *Rumsey* know that?

Mr. At. Gen. Mr. *Sheppard*, I will ask you this Question: Had you order from that Company not to bring up any Person? Do you remember you swore so at a former Trial?

Mr. *Sheppard*. I remember when I was there, they desired I would let none of my Servants up, and that I would go down and fetch up what they wanted, and I fetch'd up Wine and what they wanted.

Mr. Sol. Gen. Mr. *Sheppard*, why were none of your Servants to come up?

Mr. *Sheppard*. Because they were in private, Sir.

Mr. Sol. Gen. Were Strangers to come up therefore?

Mr. *Sheppard*. It is so long ago, I cannot remember.

Mr. Just. *Levinz*. They came privately, without Coaches, because none should know they were there, and you carry Mr. *Cornish* up to them.

Mr. *Cornish*. I think this Witness is confronted.

L. C. J. *Jones*. Hold your tongue, Sir, he hath not done yet.

Mr. *Rumsey*. My Lord, as soon as Mr. *Cornish* had made his excuse for his not coming sooner, and that he could not stay, I could not make that, and Mr. *Cornish* can't say I would do any thing maliciously or spitefully against him; my Lord, as soon as he had done, all the Company went about him, and somebody did tell him, They would tell him what they had done: they told him the Declaration had been read; that Mr. *Ferguson* had prepared it, and they said, Look you, Mr. *Cornish*, you shall hear it read; and with that, this Gentleman, though he denies it, did take the Candle, and held it: they did not come to the Table, but the Company stood round while Mr. *Ferguson* pull'd it out of his Bosom.

Mr. Just. *Witbins*. Mr. *Sheppard*, you are very forward.

Mr. At. Gen. My Lord, I would ask Mr. *Sheppard* a Question.

Mr. *Rumsey*. My Lord, the Declaration was read, and Mr. *Cornish* did approve of it, and did say, with that small Interest, or little Interest, or Words to that effect, that he had, he would assist.

Mr. At. Gen. I wonder why you did not give me notice when you came in the Morning. Why did not you give notice?

Mr. *Sheppard*. I was here attending from eleven a-clock till half an hour after three.

Mr. At. Gen. Did you send in any Word?

Mr. *Sheppard*. I could not tell who to send in: I was here expecting to be call'd.

Mr. Just. *Street*. You have had a favour that no Man ever had.

Mr. Sol. Gen. Gentlemen, there hath been a very great Indulgence given to the Prisoner, and it is to shew you what Tenderness a Court of Justice hath, and always will have, of the Lives of the King's Subjects: After a full Evidence, though he had neglected his Defence, yet you were again sent for into Court, to hear what further Evidence he had to offer to you. I cannot but observe,

serve, this looks like a subtle Contrivance on the Prisoner's part; you see what endeavours have been made by Mr. Attorney-General, to have had him here a Witness for the King; you have observed he told you he had a Subpœna for him, but he was absent; in what Company he was absent yesterday he hath told you, with Mr. *Cornish's* Son: this morning he was not to be found, after he had received this Subpœna, and a Subpœna from Mr. *Cornish*; he stays without, and gives no notice, but when you are withdrawn, can send Intelligence to Mr. *Cornish*, that he hath something to say, that he hopes will excuse him: now what that is, I must beg you a little to observe. Truly I am very glad for the Satisfaction of all Men, that Mr. *Sheppard* hath now been here, and he is so far from invalidating any one part of the Testimony, that by all the Circumstances you can collect from this Evidence that is given, it is a Corroboration of it. Mr. *Cornish* was accused of being present at Consultations that have been held against the Life of the King, and for raising Rebellion at Mr. *Sheppard's* House; his excusing his not coming there is a sufficient Argument to prove he was privy to their Meeting; he hath gone on further, and proved to the reading the Declaration. Now what says *Sheppard* to this Witness? Mr. *Cornish*, by the way, I must observe to you, before did deny his being there; he had been sometimes in company with *Ferguson*, but he did not like the Man, he says, because of his Morals: now the Witness he hath produced hath given you this Testimony, that Mr. *Cornish* hath been there in that Company, that he came in such a manner, that no Man but must be satisfied he was privy to their Designs, and did know of their Meeting, for he comes when the Duke of *Monmouth*, and the rest of the Conspirators were there met in private, with a direct charge to Mr. *Sheppard*, that is the Witness, that they should be so private, that no one Servant should come up into the Room: yet Mr. *Sheppard* tells you, that when Mr. *Cornish* came he carried him up into the Room, without so much as acquainting any one of the Company that Mr. *Cornish* had a desire to come, but brings him up as if he were (and I make no doubt but you will imagine, he was) one of the Company. When he comes there, he says his business is with the Duke of *Monmouth*, the Head of that Conspiracy, and he himself tells you he never had any dealings with the Duke of *Monmouth* in his life. What can a Man imagine of that Man that had no dealings with the Duke of *Monmouth*, to find him out in a place, where no Mortal could know, and none was to know, and coming to him at that time and at that place, under those Circumstances of Concealment, no Man almost but out of his own mouth must believe that he was privy to that Conspiracy: therefore though this Witness doth seem to forget some part of the Evidence, the reading the Declaration, and holding the Candle; yet these are such Circumstances that in themselves do carry a Proof of the Charge, and do confirm all the rest that the Witness hath said; and this must be a great Satisfaction to you, that he was there present and privy to that Design. And so I leave it to your Consideration.

Then the Jury withdrew for a short time, and returning, brought Mr. Cornish in Guilty, and found

One Hundred and Forty Pounds for the King in Mr. *Sheppard's* Hands.

Clerk. Set *Elizabeth Gaunt* to the Bar.

Cryer. O-Yes, all manner of Persons are commanded to keep silence, whilst Judgment is giving, upon pain of Imprisonment.

Clerk. *Elizabeth Gaunt*, hold up thy Hand, thou standest guilty of High-Treason, &c.

Recorder. You *Elizabeth Gaunt*, you have here been indicted for that great Crime of High-Treason, and that particular part of it, for harbouring, and comforting, and assisting, and cherishing of Traitors, more especially of one *Burton*; you have had your Trial, and a very fair Trial, and upon that, the Jury have found you Guilty: It is the Duty of my Place to pronounce the Sentence the Law hath provided for such high Crimes as these are, and that is no other but this:

That you are to be carried back to the Place from whence you came, from thence you are to be drawn upon a Hurdle, to the Place of Execution, and there you are to be burnt to death; and the Lord have mercy upon your Soul.

Mrs. Gaunt. I say that this Woman did tell several Untruths of me.

Recorder. Is that all you have to say?

Mrs. Gaunt. I don't understand the Law.

Clerk. Bring *Henry Cornish* to the Bar. *Henry Cornish*, hold up thy Hand, &c.

Mr. Cornish. My Lord, now the Law hath past upon me, I do humbly pray your Lordship, and this honourable Bench, that you will be pleas'd to intercede for me with his Majesty, I shall lead a peaceable, quiet, and dutiful Life: and I hope, when you come to reflect upon what hath been said to-day, that perhaps you will be of another Mind, and have more Charity for me than you had upon my Trial; for in the Simplicity of my Heart, and in the Presence of God, I do declare, I am innocent: and if your Lordship, and this honourable Bench, intercede with his Majesty, it will be an eternal Obligation upon me, and I shall live faithfully, peaceably, and loyally as long as I live. I presume to beg this, and I promise myself, and hope it will stir up the Hearts of some Persons, that they will not leave me destitute of Friends in such a Case as this; having a Wife and several Children, it will be an Act of Charity.

Recorder. The Court does give you your Request, and if there be any Misery brought upon your Family, it is done by yourself.

Clerk. *William Ring*, hold up thy Hand, &c.

Mr. Ring. I had no notice given me, an't please your Lordship.

Recorder. Where is the Executioner, is he here?

Executioner. Yes.

Recorder. Why don't you do your Duty to Mr. *Cornish*?

Clerk. *John Fernley*, hold up thy Hand; thou standest convicted of High-Treason, for traitorously harbouring one *James Burton*; what canst thou say for thyself? &c.

Mr. Fernley. It is very hard measure I have had, I have nothing to say, but the King's Mercy.

Recorder. Is that all you have to say?

Mr. Fernley. I have nothing but the King's Mercy.

Recorder.

Recorder. Tie him up then, tie him up.

Cryer. O. Yes, all manner of Persons are commanded to keep silence, whilst Judgment is giving, upon pain of Imprisonment.

Recorder. You, the several Prisoners at the Bar, you have been severally indicted here of the high Crime of Treason. For you, Mr. *Cornish*, I apply myself first to you, your Crime is for Treason that was committed in his late Majesty's Lifetime, being one of those notorious Conspirators that designed to raise Rebellion, and others some of them immediately designed the Life of his Majesty that then was, and his present Majesty, that was the Design of some of them; and others, they had another part, that was to raise Rebellion, and particularly some of them in and about this City, and it was carried on some time before it was discover'd, may be a Year or more, under colour and pretence of Law: For so did they invade the Government first of all by packing of Juries, there was the Foundation laid whereby to bring on that Business, which they had at last design'd, when they could bring it to a ripe Head. Too many Persons in that business, I believe, were very busy, meddling with that they had not to do with; clubbing and caballing how to bring their Designs about, in opposition to the Government, not to support it in the least, but to overthrow it if it were possible: But then, at last, they must take another Course, for no longer could they carry it on by pretence of Law, as you have heard today: Now we must take other Measures, and take down-right Blows. This is the business, Mr. *Cornish*, that you have been indicted for; and, I must tell you, whatever Apprehensions you have to the contrary, and may please yourself in, I am sorry to see such a sort of pleasure in your Countenance, as if you had had no favour shewed you. I believe the Court hath shewed you more favour, and had more patience with you than ever any Man that stood in your place had; for calling a Witness after the Jury hath been out, is a thing I never saw a Precedent for: And I am glad it was done, for I think it hath clear'd the thing beyond all manner of Contradiction; before it looked something dark for want of *Sheppard*, and so it is a Happiness that that Man was called to convince you of many things that you protested so solemnly against, which I am sorry to see in you, in this Condition that you are, to make such solemn Protestations, and afterwards call a Witness to confront you in them. For the other two, here is Mr. *Ring*, is very notorious for harbouring a couple of Traitors, knowing from whence they came; and if it were not for such Persons as these are, that do harbour them when they fly, it may be there would not be so many bold Attempts to commit such Crimes as these are: To provide for them, and nourish them, and comfort them, after they have committed their Villanies, this does encourage them to commit their Villanies as they do, and so I reckon Harbourers to be worse than Traitors themselves, they are like Receivers to Thieves; there would not be so many Traitors, if there were no Harbourers: You have been convicted of these great Crimes; it is too late, and not fitting to spend time any longer, but to pronounce the several Sentences against you, which is this:

You must, every one of you, be had back to the Place from whence you came, from thence you must be drawn to the Place of Execution, and there you must severally be hanged by the Necks, every one of

you by the Neck till you are almost dead; and then you must be cut down, your Intraills must be taken out and burnt before your Faces, your several Heads to be cut off, and your Bodies divided into four Parts, and those to be disposed of at the pleasure of the King; and the Lord have mercy upon your Souls.

Fernley and *Ring* were reprieved, but *Cornish* and *Gaunt* were ordered for Execution; accordingly four days after, *viz. October 23.* *Henry Cornish* was drawn on a Sledge to *King's-street* end in *Cheapside*, where a Gibbet was erected on purpose, at which Place he spoke as follows:

I Am come here this Day, condemn'd to die; but God is my Witness, the Crimes laid to my charge were falsely and maliciously sworn against me by the Witnesses; for I never was at any Consult, nor any Meeting, where Matters against the Government were discuss'd of: I never heard nor read any Declaration, nor ever acted wilfully any thing against the Government. I confess, through the Justice of God, my private Sins have brought me to this infamous End; yea, it were just with God, not only to deprive me eternally of his Presence, but to condemn me to eternal Torments; but thro' Christ, I hope to be eternally bless'd: Yet, as to the Crimes for which I suffer, on the Word of a dying Man, I am altogether innocent. I bless God I was from my younger Years brought up in, and have for some Years continu'd a Protestant, in the Communion of the Church of *England*; in which Communion I now die. I have often partaken in the Ordinances, the blessed Effects and Comfort thereof I now feel in this my Agony. I bless God I was born under a Government, in the Constitution of which I did ever acquiesce, and in which I was once a Member; at which time I did, according to the best of my Understanding—*[Here he was interrupted by the Sheriff.]*—I bless God I was born in a Land of Light, where the Gospel hath been preach'd in Power and Purity; he might have brought me forth in a Land of Darknefs and Ignorance; but blessed be God for Jesus Christ.—*Then he intreated the Sheriff to intercede with his Majesty to be Kind to his poor Wife and Children: The Sheriff promised him to wait on his Majesty the next Day about it.* He replied, Mr. Sheriff, I thank you, the Lord reward you a thousand fold; the Lord put it into the Hearts of you to be kind to the Widows and Fatherless; it is your Duty: The Lord put it into the Hearts of all good People to pray for me."

More could not be taken, by reason of the Noise of the People, and Interruption of one of the Sheriffs.

When he had made an end of Speaking, the Executioner did his Office; his Head was afterwards fix'd upon the *Guild-Hall*. His Attainder was reversed by Act of Parliament, first of *Wil. & Mar.*

The same Day *Elizabeth Gaunt* was executed according to her Sentence. She left the following Paper.

Newgate, 22 October, 1685.

NOT knowing whether I should be suffered or able, because of Weaknesses that are upon me, through my hard and close Imprisonment, to speak at the place of Execution, I write these few Lines, to signify I am well reconciled to the Way of my God towards me; though it be in Ways I looked not for, and by terrible things,

things, yet in Righteousness; for having given me Life, he ought to have the Disposing of it, when, and how he pleaseth to call for it; and I desire to offer up my All to him, it being but my reasonable Service; and also the first Terms that Christ offers, that he that will be his Disciple, must forsake all and follow him. And therefore, let none think it hard, or be discouraged, at what hath happened unto me; for he doth nothing without Cause, in all that he hath done unto us; he being Holy in all his Ways, and Righteous in all his Works; and it is but my lot in common with poor desolate *Sion* at this day: neither do I find in my Heart, the least Regret of any thing that I have done, in the Service of my Lord and Master Jesus Christ, in favouring and succouring any of his poor Sufferers, that have shewed favour to his righteous Cause; which Cause, though it be now fallen and trampled on, as if it had not been anointed, yet it shall revive, and God will plead it at another rate, than yet he hath done, with all its Opposers and malicious Haters: and therefore let all that love and fear him, not omit the least Duty that comes to hand, or lieth before them, knowing that Christ hath need of them, and expects that they should serve him. And I desire to bless him that he hath made me useful in my Generation, to the comfort and relief of many distressed ones, that the Blessing of those that have been ready to perish, hath come upon me, and I have been helped to make the Heart of the Widow to sing; and I bless his holy Name, that in all this, together with what I was charged with, I can approve my Heart to him, that I have done his Will, though I have crossed Man's Will; and the Scripture that satisfied me in it, is the 16th of *Isa.* 3, 4. *Hide the Out-casts, betray not him that wandereth; let my Out-casts dwell with thee.* Obadiah xii. 13, 14. *Thou shouldst not have given up him that escaped, in the Day of Distress.* But Man saith, You shall give them up, or you shall die for it. Now whom to obey, judge ye. So that I have cause to rejoice and be exceeding glad, in that I suffer for Righteousness sake, and that I am accounted worthy to suffer for well-doing, and that God hath accepted any Service from me, that hath been done in Sincerity, though mixed with manifold Weaknesses and Infirmities, which he hath been pleased for Christ's sake to cover and forgive. And now, as concerning my Fact, as it's called, alas, it is but a little one, and might well become a *Prince* to forgive; but, *He that sheweth no Mercy, shall find none:* and I may say of it, in the Language of *Jonathan*, I did but taste a little Honey, and lo, I must die for it; I did but relieve a poor, unworthy and distressed Family, and lo, I must die for it. I desire in the Lamb-like Will, to forgive all that are concerned; and to say, Lord lay it not to their Charge; but I fear and believe, that when he comes to make Inquisition for Blood, mine will be found at the door of the

* *Wythins.* " could not remember things, through my Dauntedness at *Burton's* Wife and Daughter's Witness, and my Ignorance; took advantage thereat, and would not hear me, when I had called to mind, that which I am sure would have invalidated their Evidence; and tho' he granted some things of the same nature to another, yet he granted it not to me. My Blood will be also found at the door of the unrighteous Jury,

who found me guilty upon the single Oath of an outlawed Man; for there was none but his Oath about the Money, who is no legal Witness, tho' he be pardoned, his Outlawry not being recall'd: and also the Law requires two Witnesses in point of Life; and then, about my going with him to the Place mentioned, it was, by his own Words, before he could be outlawed, for it was two Months after his absconding; and though in a Proclamation, yet not High-Treason, as I have heard: so that I am clearly murdered by you. And also bloody Mr. *Atterbury*, who so insatiably hunted after my Life; and tho' it is no Profit to him, yet through the Ill-will he bore me, left no Stone unturned, as I have ground to believe, until he brought me to this; and shewed favour to *Burton*, who ought to have died for his own Fault, and not to have bought his Life with mine. And lastly, *Richardson*, who is cruel and severe to all under my Circumstances, and did at that time, without all Mercy or Pity, hasten my Sentence, and held up my Hand that it might be pronounced; all which, together with the * Great one of all, * *K. James II.* by whose Power all these, and multitudes of more Cruelties are done, I do heartily and freely forgive, as done against me: But as it's done in an implacable Mind against the Lord Christ, his righteous Cause and Followers, I leave it to him who is the Avenger of all such Wrongs, and hath said, *I have raised up one from the North, and he shall come upon Princes as upon Mortar, and as the Potter treadeth Clay,* *Isa.* xli. 25. *He shall cut off the Spirit of Princes, and be terrible to the Kings of the Earth,* *Psal.* lxxvi. 12. And know this also, that tho' you are seemingly fixed, and because of the Power in your hands, and a weighing out your Violence, and dealing with despiteful Hand, because of the old and new Hatred, by impoverishing, and by every way distressing those you have got under you; yet unless you secure Jesus Christ, and his holy Angels, you shall never do your business, nor your hands accomplish your Enterprizes; for he will come upon you e'er you are aware, and therefore, O that you will be wise, instructed, and learn, is the Desire of her that finds no Mercy from you,

Elizabeth Gaunt.

POSTSCRIPT.

SUCH as it is, you have it from her, who hath done as she could, and is sorry she can do no better; hopes you will pity and cover weakness, shortness, and any thing that is wanting, and begs that none may be weakened or humbled at the lowliness of my Spirit; for God's Design is to humble and abase us, that he alone may be exalted in this Day: and I hope he will appear in the needful time, and it may be serves the best Wine till last, as he hath done for some before me; none goeth to Warfare at his own Charge, and the Spirit bloweth,* not only where, but when it listeth; and it becomes me, who have so often grieved, quenched, and resisted it, to wait for and upon the Motions of the Spirit, and not to murmur: but I may mourn, because through want of it, I honour not my God, nor his blessed Cause, which I have so long loved and delighted to love; and repent of nothing about it, but that I served him and it no better.

The Trial of CHARLES BATEMAN, Surgeon, at the Old-Bailey, for High-Treason, December 9. 1685. 1 Jac. II.

THE *Sessions* of Peace, Oyer and Terminer, and Goal-Delivery of Newgate, for the City of London and County of Middlesex, beginning at Justice Hall in the Old-Bailey, on the 9th of December, 1685. Charles

Bateman, against whom an Indictment of High Treason had been found, for conspiring the Death of the late King, &c. was brought in the Custody of the Keeper of Newgate in order to his Arraignment; and being ordered to hold up his Hand, he desired that he might first say something for himself, in order to put off his Trial, but was told by * Mr. Recorder, he must plead before he could be heard. Whereupon desiring to know whether he might have the same advantage after his Pleading as before, as to gain longer time for his Trial; and being answered he might, he held up his Hand, and then the Indictment was read.

Mr. Bateman pleaded not guilty, and desired his Trial might be put off, saying, *He was not prepared to make his Defence*, and therefore prayed a longer time, saying, *He had been close Prisoner for the space of ten Weeks, and was ever and above very much indisposed*; and farther alledged, *he had had no Notice nor Pannel of the Jury*. As for Notice of Trial, he was answered, that it was not usual to give any in that Court, but that he ought to have expected it, and prepared for it accordingly; and as for the Pannel, it was not deny'd him. Then he pray'd a Copy of the Indictment, but was told it could not be allowed; and upon his further alledging his unpreparedness and no notice of Trial, and the like, the King's Counsel urged that he had Opportunity enough to take notice of his Trial, for that it was upon an Indictment of the precedent *Sessions*. Then he asked what time he might have between his Arraignment and Trial; and was answered, as much as would stand with the conveniency of the Court: and after several Hours respite, he a second time was brought to the Bar, and then upon his humble Request, Pen, Ink, and Paper was allowed him, and his Son to assist him; and then were sworn to try the Issue,

Richard Aley Esq;	Edward Rbedish
Richard Williams	George Libburn
John Cannum	Daniel Fouls
Patrick Barret	Peter Floyer
John Palmer	Lawrence Cole
James Raynor	John Cooper.

And he making no Exceptions to them, then the Indictment was read.

The Jurors, &c.

THAT Charles Bateman, late of the Parish of St. Dunstan in the West, in the Ward of Farringdon without, London, Surgeon, as a false Traitor, against the most illustrious and excellent Prince, Charles the Second, late King of Eng-

land, Scotland, France and Ireland, Defender of the Faith, and his natural Lord; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance; but being moved and seduced by the Intigation of the Devil, the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our late Lord the King, towards him should, and of right ought to bear, altogether withdrawing and practising, and with all his Strength intending the Peace and common Tranquillity of this Kingdom to disquiet and disturb, and War and Rebellion against our late Lord the King, within this Kingdom to stir up, move, and procure; and the Government of our late Lord the King, of this Kingdom to subvert, and our said late Lord the King, from the Stile, Title, Honour, and Kingly Name, of the imperial Crown of this Kingdom to depose and deprive, and our said late Lord the King to Death, and final Destruction to bring and put; the 30th Day of May, in the 35th Year of his Reign, and divers other Days and Times, as well before as afterwards, at the Parish and Ward aforesaid, falsely, maliciously, devilishly, and traitorously, with divers other Rebels and Traitors to the Jurors unknown, did conspire, compass, imagine, and intend our said late Lord the King, then his supreme and natural Lord; not only of his Kingly State, Title, Power and Government of his Kingdom of England, to deprive and depose, but also our said late Lord the King to kill, and to Death to bring and put, and the ancient Government of this Kingdom to change, alter, and subvert; and a miserable Slaughter amongst the Subjects of our said late Lord the King to cause and procure, and Insurrection and Rebellion against our said late Lord the King to procure and assist. And the same most wicked Treasons and traitorous Conspiracies, Compassings, Imaginations and Purposes aforesaid to effect, and bring to pass; he the said Charles Bateman, as a false Traitor, then and there, (to wit) the said 30th Day of May, in the 35th Year aforesaid, and divers other Days and Times, as well before as afterwards, at the Parish and Ward aforesaid, falsely, unlawfully most wickedly, and traitorously, did promise and undertake to the said other false Rebels and Traitors then and there being present, That he the said Charles Bateman would be assisting and aiding, in the taking and apprehending the Person of our said late Lord the King, and in taking and seizing the City of London, and the Tower of London, the Savoy, and the Royal Palace of White-Hall, against the Duty of his Allegiance, against the Peace, &c. and against the Form of the Statute in this Case made and provided, &c.

Mr. Phipps, Counsel for the King, opened the Nature of it, and was seconded by Mr. Serjeant Selby and Mr. Charles Moloy; after which, Mr. Josias Keeling was sworn, whose Evidence was, that he

he had been at divers Meetings and Consults, where the Methods had been proposed for the Purposes aforesaid; and more particularly one time with *Rumbold the Malster*, since executed for *High Treason*, and that then, three Papers were produced by *Rumbold* and opened, containing the Model of the Design, to divide the City into twenty Parts, and to raise five hundred Men in each Part, to be under one Chief, and nine or ten Subordinates whom he should appoint, the Names of the Lanes and Streets of each Division being likewise inserted therein; and at that time *Rumbold* proposed the business of the *Rye-House*, saying, *He had a House very convenient to plant Men in, to seize the King in his return from New-Market*, but that he somewhat boggled about the killing of the Postillion, which had been proposed the better to stop the Coach, because it looked too much like an Exploit in cold Blood. He further deposed, that he had been at divers other places where it had been discoursed to the same Effect, and that *Mr. Bateman* was looked upon as a Person fitting to manage one Division in order to an Insurrection, to seize the *Tower*, *City*, &c. This being the Sum of *Mr. Keeling's* Evidence; *Mr. Bateman* said, that what he had sworn, did not affect or charge any Treason upon him; and was answered by the Court that it did not, and bid the Jury take notice, that what *Mr. Keeling* had sworn, was only to the Conspiracy in general, and did not affect the Prisoner in particular.

Then *Thomas Lee* was sworn, and gave Evidence, That he being made acquainted with the Design by *Mr. Goodenough*, &c. and how the City was to be divided into twenty Parts and managed; and being asked who was a fit Man to manage one part, he nominated *Mr. Bateman*, and thereupon was desired to go to him, and speak with him about it as from *Mr. Goodenough*; and when he came to discourse him about that Affair, he apprehended very plainly, that he was no Stranger to it, nor boggled to give his Assent, and seem'd much desirous to speak with *Mr. Goodenough* about it: That he likewise went one day to the late Duke of *Monmouth's* House with *Mr. Bateman*; and *Mr. Bateman*, after he had had some Discourse with one of the Duke's Servants, came to him and told him, the Duke was willing to engage in the Business, and assur'd him, that he had divers Houses kept in the Country, to be in a readiness when matters should come to Extremity; and from thence he went with him to the *King's-Head Tavern*, and there had discourse to the same effect: and from thence they came to the *Devil-Tavern* within *Temple-Bar*, where *Mr. Bateman* proposed the seizing the *City*, *Tower*, *Savoy*, *White-hall*, and the Person of the late King, and promised not to be wanting therein. At another time, he met him at the *Half-Moon-Tavern* in *Aldersgate-street*, where discoursing about the Condition the Conspirators were in, as to the intended Insurrection, he said, *If he could but see a Cloud as big as a Man's Hand, he would not be wanting to employ his Interest*: and that there were other Discourses tending to the Insurrection, but were broke off by the coming in of one *John Almege*, before whom *Mr. Bateman* would not discourse, because he knew not of his coming.

Mr. Lee being asked the Design of that Meeting, reply'd it was upon the account of carrying on the Conspiracy, and that *Mr. Bateman* had

told him, that he intended to take a House near the *Tower*, to place Men in, in order to surprize it, and that he had held divers Conferences with some Sea-Captains on that Affair; and that he had been with them at *Coffee-Houses*, &c. at sundry other times; but there, to prevent discovery, they spoke of the Design at a great distance.

To this Evidence, *Mr. Bateman* objected, that if he had been conscious of what was laid to his Charge, he was fit for *Bedlam*; saying, *He wonder'd if he had heard him speak such words, he had not accused him sooner*: but was answered that *Mr. Goodenough* was not to be had till after the Rebellion in the *West*; and that *Lee's* single Testimony in Case of *High Treason* in so high a nature, was not sufficient.

Then *Mr. Richard Goodenough* was called, who being sworn, deposed, that being in Company with *Mr. Bateman* (to the best of his Remembrance) at the *King's-Head Tavern* in *St. Swilbin's-Alley* near the *Royal Exchange*, and having some Discourse about the intended Insurrection, and of *Wade* and others that had engaged to promote it; *Mr. Bateman* not only approv'd of the Design, but promised to use his Interest in raising Men; and not only to be assisting in the Division allotted him, but in surprizing the *City*, *Savoy*, &c. and in driving the Guards out of Town. To this he objected, that he was not at the *King's-Head*, with *Goodenough*; to which *Mr. Goodenough* reply'd, *He had not sworn positive to the place, though he verily believed that was the place; but however, as to the Discourse and Words then spoken by Mr. Bateman, he was positive.*

The Evidence being thus full against *Mr. Bateman*, and Liberty granted him to make what Defence he could, he desired that *Sir Robert Adams* might be heard, in relation to a false Report the said *Mr. Lee* had raised of *Sir Robert* and others; and *Sir Robert* being in Court, gave Evidence that there had been a Report abroad, said to be raised by *Mr. Lee*, that he (*viz. Mr. Lee*) had beaten three Knights, and that *Mr. Lee* came to him and asked his pardon, acknowledging the thing in it self was altogether false.

To the same purpose *Sir Simon Lewis* was called, but appeared not.

Amos Child being called by *Mr. Bateman*, to testify his Knowledge of *Mr. Lee*, and being asked what he could say against him, declared, *That he knew nothing to the contrary, but Mr. Lee was an honest Man.*

One *Baker* being called by *Mr. Bateman*, to testify that *Mr. Lee* would have suborned him against him to his Prejudice, some Years since, of which he had made an Affidavit before *Sir William Turner*, and the said *Baker* not then appearing in Court, he desired *Sir William Turner* to give some account of *Baker's* Examination, which the said *Sir William* had taken; but it being about two Years since, *Sir William* declared, *He could not charge his Memory with any of the Particulars contained therein.*

Mr. Tompkins, *Sir William Turner's* Clerk, being called, and asked what he could say concerning any Examination of *Baker's* taken before *Sir William*, that related to *Lee*; he said, *there was an Examination taken Anno 1683, wherein Mr. Lee was mentioned; but to the best of his Remembrance it was returned before the King and Council, and he could not give any account of the Particulars.*

Then Mr. *Bateman* desired to know upon what Statute he was indicted, and was informed by the Court, That *the Treason wherewith he stood charged, was comprehended within the 25th of Edward the 3d, and the 13th of Car. 2. by Overt-Act*; and having little more to say in his own Defence, after a favourable hearing of all he had materially to offer, and his Son having been allowed by the Court to assist him, in looking over his Notes, and calling his Witnesses, by reason he through sickness pretended himself incapable: Then the *Lord Chief Justice of the King's Bench* summ'd up the Evidence at large, and omitted nothing that might be for the advantage of the Prisoner, whereby the matter was fairly, fully, and clearly left to the Jury; and thereupon Mr. *Bateman* was taken from the Bar. After which the other Prisoners being called and tried, and the Jury ready to go forth to consider of their Verdict, Mr. *Bateman's* Daughter came in and besought the Court, that *Baker, whom she said she had found out, might be heard against Mr. Lee*; but Mr. *Lee* being gone, and the Trial already over, the King's Counsel opposed it, unless Mr. *Lee* could be found (which he could not be at that time) and the Court having deliver'd their Opinion that it was not convenient to examine any Witnesses after the Jury had received their Charge, it being a very ill Precedent and of dangerous Consequence; yet some of the Jury desiring it, the Court, to prevent any Objections that might be made, consented, and *Baker* had leave to speak: whose Evidence was, *that being in Company with Mr. Lee, some time in the Year 1683, and discoursing about divers matters, he bid him go to the Sign of the Peacock, and to the Angel and Crown, to a Surgeon and a Linnen-Draper whom he named, the former of which he remembered to be the Prisoner, and to insinuate himself into their Company and discourse them; and when he demanded of Mr. Lee to what end he should do it, or about what he should discourse them, he told him it might be about State-Affairs, and by that means he would find a way to make him a great Man; and when he excused his attempting to intrude into such Company as was above him, he being but a Shoe-maker, Mr. Lee told him he knew that he kept Company with such and such men, and why could he not as well do it with those he had mentioned.* And of this he said his Examination was taken before Sir

William Turner; but this being nothing to the purpose, but was rather looked upon as a Design Mr. *Lee* had to make a discovery of the Conspiracy, if he could have procured further Evidence to have corroborated his own, and *Baker* being looked upon as a broken Fellow, and that he lodged near the *Sessions House*, and yet came not in before, though often called; the Consideration of the whole matter was left to the Jury, and an Officer being sworn to attend them went out, and after about half an Hour's debating that, and what else was before them, gave in their Verdict, that *Charles Bateman then at the Bar, was Guilty of the High Treason as laid in the Indictment*; which Verdict was accordingly recorded, and the Prisoner re-conveyed to *Newgate*: And being again brought to *Justice-Hall*, on *Friday the 11th of December*, in order to receive Sentence; and upon holding up his Hand, being asked *What he could say for himself, why the Court should not give Judgment against him according to the Law*; he desired to know whether Mr. *Goodenough* was fully pardoned, and was told, that as for the *Out-lawry* he was pardoned, and that his *Pardon* hath been allowed and approved of in that Court, and in the Court of King's-Bench, and for any thing else he was not prosecuted. Then he said his Opinion was altogether for *Monarchy*, and that he hoped he should have an Advocate with the King; but had nothing more material to offer.

Then Mr. *Recorder*, after having spoke several things in aggravation of that great Crime, whereof, after a fair and favourable Trial, he was convicted, advised him not to flatter himself with hopes of Life, and thereby delay his Repentance necessary for his future Happiness; pronounced the Sentence, which was, *That he should return to the place from whence he came, from thence he drawn to the Place of Execution, there to be hang'd by the Neck, and whilst alive be cut down, and his Bowels to be taken out and burnt; his Head to be sever'd from his Body, and his Body divided into four Parts, and that his Head and Quarters be disposed at the Pleasure of the King.*

Upon this he prayed a Divine might have leave to come to him, as likewise his Relations; which being allowed, he departed the Court, and was on *Friday the 18th of December*, executed at *Tyburn* according to the Sentence.



Remarks upon the Trials of Edward Fitzharris, Stephen Colledge, Count Coningsmark, the Lord Ruffel, Col. Sidney, Henry Cornish, and Charles Bate-man ; as also on the Earl of Shaftesbury's Grand Jury, Wilmer's Homine Replegiando, and the Award of Execution against Sir Thomas Armstrong. By Sir John Hawles, afterwards Solicitor-General.

THE strange Revolution which hath of late happen'd in our Nation, naturally leads one into the Consideration of the Causes of it. The Danger of subverting the establish'd Religion, and invading Property, alone could not be the Causes. For if it be true, that the same Causes have generally the same Effect ; it is plain, that in the Reign of a precedent Monarch, the Subversion of the establish'd Religion was as much design'd, or at least was believ'd to be so, as of late ; and it is not material whether what was suspected was true or not ; and Property was as much invaded as of late, by imposing Ship-Money, and other Taxes in the Nation, but more especially Ship-Money ; which at first was light and easy, but in progress of Time was increas'd, according as it was found the Nation would bear it. And at length it was feared, as there was just Reason so to do, that it would become as burdenfom as what is now imposed on the *French* Nation by the *French* King ; and yet, when the War broke out, if the History of those Times, or the Persons who liv'd about those Times, are to be believ'd, the majority of the Nation took part with the King. There was therefore some other Reasons for the Disaffection of the Nation to the late Government, and they may be rank'd under these six Heads.

Exorbitant Fines ; cruel and illegal Prosecutions ; outrageous Damages ; seizing the Charters ; dispensing with the Test and Penal Laws ; and undue Prosecutions in criminal, but more especially in capital Matters.

For the First, I shall only observe, that when the House of Commons, in the Parliament 1680, took that Matter into Consideration, and intended to impeach several Persons for the same, the highest Fine, at that time complain'd of, was but 1000 *l.* and yet in few Years they were heighten'd to

10,000 *l.* 20,000 *l.* 30,000 *l.* and 40,000 *l.*

For the Second, the Punishment of *Oates*, *Dangerfield*, and Mr. *Johnson* ; and the close Imprisonment of Mr. *Hampden*, Sir *Samuel Barnardiston*, and of several other Persons, as they were against the Law, so they were without Precedent.

For the Third, tho' the Damages given to *Bolsworth* were the first outrageous Damages given, which were taken notice of, and in truth were such ; yet in little time Damages for Matters of like kind were quickly improved to 10,000 *l.* 20,000 *l.* 40,000 *l.* nay 100,000 *l.* the Truth of which a great many living Witneses, to their sorrow, can testify.

For the Fourth, the seizing the City, and other Charters, upon the Pretences on which they were question'd, was without Example.

For the Fifth, the dispensing with the Test and Penal Laws, was as mischievous as it was illegal ; it making Persons capable, who were incapacitated by Law of being in Places, of exercising Offices, for whom the Persons who had Power to confer or bestow the same, had more affection, than for the Persons who at that present enjoy'd them : The Consequences of which were quickly seen, in turning out the present Possessors to make room for others ; which was the thing, which, as a *Scotch* Bishop said of another matter, *set the Kilm as fire.*

Of these five Particulars something hereafter may be said ; at present, this Treatise is only to consider how far the Proceedings in capital Matters, of late Years, have been regular or irregular : And as to that, I shall not at all consider how far the Persons hereafter mention'd were guilty of the Crimes of which they were accus'd, but how far the Evidence against them was convincing to prove them guilty, and what Crimes the Facts prov'd against them in Law were.

Remarks on Fitzharris's Trial.

THE first Person I shall begin withal shall be *Fitzharris* ; and that it may not be wonder'd, that the Trial and Condemnation of a Person who was confess'dly an *Irish* *Papist*, should be complain'd of ; and one whose Crimes were such, that if the Law declar'd had not made

Capital, it had been just, in respect of the Malesfactor, for the Legislative Power to have enact'd, that he should suffer the severest Punishment usually inflict'd for the highest Crime : yet, in respect of the common Good, it had been just and fit to have pardon'd him, if he would have confess'd

feſs'd who were his Conſpirators and Setters on ; for I am apt to think, that if that Matter had been thoroughly look'd into, ſome Perſons, afterwards Witneſſes in the Lord *Ruffel's*, Colonel *Sidney's*, and Mr. *Hampden's* Trials, had either never been produc'd, or had not been credited if produc'd ; nor would my Lord of *Effex's* Throat have been cut ; and my Lord *Ruffel*, and Colonel *Sidney* might have worn their Heads on their Shoulders to this Day.

All will agree, that there was a great ſtruggle between the *Whigs* and *Tories*, as they were then call'd, for hanging or ſaving that Man : Both agreed he deſerv'd to be hang'd ; the firſt thought it their Advantage to ſave him if he would confeſs, the laſt thought it was fit to hang him for fear he would confeſs. And to explain the matter, it is fit to go a little higher : It cannot but be remembered, that before the breaking out of the Popiſh Plot, Mr. *Claypole* was imprifon'd in the *Tower* for deſigning to kill the King, in ſuch place and manner as *Oates* afterwards diſcover'd the Popiſts intended to do it. In *Trinity Term*, 1678, he had an *Habeas Corpus* to the *King's Bench*, and was brought thither in order to be bail'd, and produced Perſons of Worth to bail him ; but the Penalty of the Bail ſet by the Court was ſo high, and the Court ſo aggravated the Crime for which he was committed, and the likelihood of the Truth of it, that the Bail refus'd to ſtand, and *Claypole* was remanded to the *Tower*. But the Term after, when the Matter, of which he was accus'd, appear'd bare-fac'd to be the Deſign of other People, he was let go, for fear the Examination of it ſhould go further in proving the Popiſh Plot, than any thing at that time diſcover'd. And if it were now diſcover'd, upon whoſe and what Evidence he was committed, it would go a great way in diſcovering the Truth of many Matters, as yet in the dark, (but that Deſign miſcarry'd, becauſe the Intrigue was diſcover'd before it took effect ; and yet a like Deſign was ſtill carried on, and many of the Clergy of the Church of *England* had been prevail'd with to cry the Popiſh up as a Fanatick Plot.) The *Papiſts* and the Clergy of the Church of *England* being in the late Times equally Sufferers, and oppreſs'd by the *Fanaticks*, they naturally grew to have a Kindneſs for each other, and both join'd in hating the *Fanaticks* ; and therefore pretended, at leaſt, that they did not believe any thing of the *Popiſh Plot*, but that Report was given out by the *Fanaticks*, whiſt they themſelves were deſigning ſomething againſt the Church of *England*. The *Papiſts* having to great a part of the Clergy of the Church of *England*, ready to believe any thing of a *Fanatick Plot*, which they ſhould forge, and obſerving that that which gave Credit to the *Popiſh Plot*, was Writings concurring with Oral Teſtimony, which it did ; for very little of the Truth of the *Popiſh Plot* depended on the Credit of *Oates*, *Bedloe*, or any other Perſon, moſt of the Facts of that Deſign, when diſcover'd, proving themſelves : To inſtance in one ; *Oates* diſcover'd *Coleman* had Intelligence with *Le Chaiſe*, of a Deſign on *England*, and that *Coleman* had Papers teſtifying as much ; when thoſe Papers were ſeiz'd, and own'd by *Coleman*, and the purport of them was what *Oates* ſaid they were, it was not material, whether *Oates* was a Man of Truth or not, the Papers, without *Oates's* further Evidence, ſufficiently prov'd

the Deſign : I ſay, the *Papiſts*, having obſerv'd what the Evidence was which gave Credit to that Plot, reſolv'd to purſue the ſame Steps, and therefore *Dangerfield* was made uſe of to leave Papers in Colonel *Manſel's* Lodging, who was an Acquaintance of my Lord *Sbaſtesbury's* importing a Plot ; but that was ſo fooliſhly carried on, and the then * *Attorney-General*, who had the Examination of that Matter, not being qualify'd with the Aſſurance his Succeſſor had, to carry on a thing that had neither Senſe nor Honesty in it, made ſuch a ſcurvy Report of the Matter to the King and Council, that they were enforc'd to vote *Manſel* Innocent, *Dangerfield* Guilty, and that it was a Deſign of the *Papiſts* to lay a Plot to the Diſſenters Charge, and a further Proof of the *Popiſh Plot*. But that *Attorney-General* being remov'd to a Place of more Honour, though of leſs Profit, and * another put in his Place, the *Papiſts* reſolv'd to carry on the ſame Deſign ; and no Perſon a fitter Inſtrument than *Fitzbarris*, in reſpect of his Religion and his Acquaintance ; but before his Deſign came to perfection, it was diſcover'd.

He was firſt imprifon'd in *Newgate*, where ſome Perſons (amongſt whom Mr. *Cornifs*, as I remember, then Sheriff, was believed to be one, and it was not the leaſt of his Crime, that he endeavour'd to look into that *Arcanum*) went to examine him as to the Particulars of that Deſign ; which was quickly taken notice of, and the Priſoner, in breach of the *Habeas Corpus* Act, remov'd from thence to the *Tower*, where he was kept cloſe Priſoner.

The Parliament at *Oxford* meeting ſoon after *Fitzbarris's* Apprehenſion, and the Houſe of Commons being inform'd of as much of his Deſign as was then diſcovered, they thought themſelves highly concern'd to examine him ; but how to do it they knew not : only they reſolv'd (upon a Report which one of their Members made them of one *Hubert*, who confeſſed himſelf guilty of firing the City of *London*, upon which it was reſolv'd to examine him in the Houſe of Commons the next Morning, but before the Houſe ſat *Hubert* was hang'd) that *Fitzbarris* ſhould not be hang'd without their knowledge and conſent ; and to effect it, they remember'd a Deſign to try the five *Popiſh* Lords in the *Tower* upon Indictments ; whereupon, if they ſhould be acquitted, it was thought that thoſe Acquittals might be pleadable to Impeachments. To prevent which, the Houſe had exhibited general Impeachments of High-Treaſon againſt them in the Houſe of Lords ; which had ſuch ſucceſs, that the Lords were never, and the Judges gave their Opinion that they could not be, tried on the Indictments, as long as the Impeachments were in being ; for which Reaſon, the Houſe of Commons exhibited a general Impeachment of High-Treaſon in the Houſe of Lords againſt *Fitzbarris*, which was receiv'd ; after which the Houſe of Lords made an Order, that *Fitzbarris* might or ſhould be try'd in the *King's Bench* for the ſame Treaſon : ſuddenly after which, that Parliament was diſſolv'd. Whether *Fitzbarris's* Buſineſs was the break-neck of that Parliament, I know not, but it was ſhrewdly ſuſpected it was.

There was at that time a * Chief Juſtice in the *King's Bench*, who was himſelf under an Impeachment of

* *Sir Crefwel Levinz.*

* *Sir Robert Sawyer.*

* *Sir William Scroggs.*

† *Burnet's History of his own Times, Vol. I. p. 475.*

High-Treason, and had not, for that Reason, sat in Court for some Terms preceding; and the Trial of *Fitzharris* being generally look'd upon to be as illegal as it was odious, it was thought convenient to carry it on by a Person of

* *Sir Francis Pemberton.* better Credit; whereupon * one who had been a Justice Judge of that Court, and had behaved himself very plausibly, and had gained Credit by being turn'd out, was thought to be the fittest Person to undertake it; and accordingly the then present Chief Justice was remov'd, and the other was preferred to his Place.

It being resolv'd that *Fitzharris* should be try'd, the Business was how to get Witnesses to give Evidence to a Jury, and how to get Juries to find the Bill, and to convict the Prisoner, which were difficult Preliminaries.

* *Sir William Waller.* A * Person who had been one of the House of Commons, which had exhibited the Impeachment, was a principal Witness; but if he should give Evidence on the Indictment, he knew not how far he might be hereafter questionable and punishable for it, when a Parliament should sit again; but at last that Person was prevail'd upon to give Evidence, but by what Means is best known to himself. And as for the Juries, Grand and Petty, they were satisfy'd with the Direction of the Court, that they not only might, but ought to find the Bill, and Verdict, according to their Evidence. And I think the Court was so far in the right.

That Matter being adjusted, a Bill of High-Treason was found against the Prisoner; whereupon he was presently arraigned, and after much Contest and Declaration of the Court, that they could hear nothing till he had pleaded in chief (which if he had done, the *Plea* he afterwards pleaded, which was to the Jurisdiction of the Court, had come too late) he had Leave given him to plead the special Matter of the Impeachment; and accordingly Counsel were assign'd him to draw up and argue his *Plea* put in to the Jurisdiction of the Court; which was, *That he was impeach'd in a superior Court for the same Treason.*

Great Endeavours were used to have the *Plea* over-ruled, without so much as hearing the Prisoner's Counsel for the maintaining it. The Pretences were, that the Prisoner on his *Plea* ought to have produced the Record of his Impeachment, and that the *Plea* of the Impeachment for High-Treason in general was naught, without specifying what the High-Treason was for which he was impeach'd; for an Impeachment, or an Indictment of High-Treason in general was naught; that the King had power to proceed on an Impeachment or Indictment for the same thing, at his Election: That the Allegation, *that Fitzharris was impeach'd, which Impeachment stood in full force*, not having mention'd an Impeachment before, was naught. But afterwards the *Attorney-General* demurred, and the Prisoner join'd in the Demurrer. And then a Day was given to argue the *Plea* till Saturday the 7th of May, at which time the *Attorney* added to the Exceptions he took to the *Plea*, Whether a Suit in a superior Court can take away the Jurisdiction of another inferior Court, who had an original Jurisdiction of the Cause, of the Person, and of the Fact, at the time of the Fact committed?

To maintain the *Plea*, the Counsel for the Prisoner alledged, that an Impeachment differ'd from an Indictment; the first was at the Suit of the Commons of *England*, and was like an Appeal, or ra-

ther an Appeal resembled an Impeachment; that the Proceedings were different in the Trials: In the first, the Trial is by the House of Lords; in the last, of a Commoner, by a Jury of Commons. In the last, but little time was allowed for giving or considering of the Evidence; in the first, a much longer time. That this Matter was never practis'd before; that the King may pardon a Criminal prosecuted by an Indictment, but not by an Impeachment, no more than if prosecuted by an Appeal. If he should be acquitted on the Indictment, it might be a Question whether that may be pleaded in Bar to the Impeachment; and if not, the Prisoner should be brought twice in jeopardy of his Life for the same Crime, contrary to the Rule of Law.

To the Objection, that the *Plea* was not certain, it being pleaded as an Impeachment of High-Treason, not setting forth the High-Treason in particular; it was answer'd, that an Impeachment differ'd from an Indictment: For by the Custom of *Parliament*, which is the Law of the Land, such a general Impeachment is good; but by the Law, a general Indictment of High-Treason, without specifying what, when, where, or how, is not good; and therefore the *Plea* of an Indictment and an Impeachment is variant.

To the Objection, that there was no Impeachment mention'd before the Averment of *quæ quidem impetio*, it was frivolous; for it was before mention'd that he was impeach'd, and then by a necessary Consequence there was an Impeachment.

As to the Objection, that the King might, in which Court he would, prosecute for High-Treason, it was little to the purpose; for the Case did not come up to it, the Impeachment being the Suit of the Commons, and not of the King; and that the Courts of *Westminster-Hall* had refus'd to meddle with Matters relating to the *Parliament*. That though the Impeachment was general, yet it was made certain by the Averment; that it was for the same Crime for which the Indictment was: That the *Attorney-General* might have taken Issue, that there was no such Impeachment as was plead'd; or else he might have said, that the Impeachment was not for the same Treason for which he was indicted; but having demurr'd, he had confess'd both to be true. That at common Law, if an Appeal of Murder had been brought, the King could not proceed on the Indictment, till the Appeal was determin'd; that the Judges, whereof some were then in Court, had given their Opinions to the King and Counsel, concerning the five Popish Lords, that they could not be try'd upon Indictments, so long as general Impeachments were depending for the same Treason: and yet their Cases and this differ'd; there the Indictments were found before the Impeachments prefer'd, and here, after the Impeachment.

In the Reply to vitiate the *Plea*, it was insisted, that it did not conclude *si Curia procedere debeat* as well as *vult*, as was usual for *Pleas* of that nature to do; that perhaps this Matter, if the Prisoner had been acquitted upon the Impeachment, might have been pleaded in bar to the Indictment, but it was not pleadable to the Jurisdiction of the Court; that in the Case of the five Lords, the Indictments were removed into the House of Lords; that Appeals in Treason are taken away by the First of *Henry* the IVth; that in the *Plea* it ought to be aver'd, what *Lex & Consuetudo Parl.* are; that till Articles carried up, no Man impeach'd is oblig'd

lig'd to answer ; that in all Cafes of Appeals, a Man is put twice in jeopardy of his Life, if he be try'd upon an Indictment within a Year.

To take a short Review of what hath been recited, it was thought the King's Counsel run the Court upon a Rock, and it was hard for them to get off. The Court had advis'd them to take time to confider what Courfe they would take ; but the King's Counsel were haſty, as they always were when they were reſolv'd to carry a Matter right or wrong ; and having three bad Ways, they choſe the worſt.

If they had taken Iſſue on the Record, or the Averment, that the Impeachment and Indictment were not for the ſame Treason, they might have pretended that the Journal of the Houſe of Lords was not a Record, or that the Debates in the Houſe of Commons were not good Evidence ; or if they had reply'd, the Order of the Houſe of Lords for trying the Priſoner in the *King's Bench*, to the Plea, they might have inſiſted on the Power of the Houſe ſo to do : but having demur'd, they confeſſed the Truth of all the Matter of the Plea, and wav'd the Benefit of that Order, and ſtood upon Points of Law, either conced'd by the Court, or reſolv'd by the Judges before, or ſuch neceſſary Inferences from them as were impoſſible to be deny'd.

It could not be deny'd, but a general Impeachment of High-Treazon, by the Cuſtom of Parliament, was good ; it could not be deny'd, but, by the Reſolution of the Judges in the Caſe of the Lords in the *Tower*, a general Impeachment of High-Treazon ſtopt Proceedings upon an Indictment for the ſame Matter. It did not differ the Caſe, that the Indictments in the *King's Bench* againſt the Lords were remov'd into the Houſe of Lords ; for every one knows new Indictments might have been preferred againſt them for the ſame Crimes. And if that had been the Reaſon of the Judges Reſolution, why did not the Judges then in Court, all, or moſt part of whom were Judges at the giving that Opinion, deny the Opinion, or the Reaſon alledg'd, which they did not ? It was not a Reaſon to diſallow the Plea, becauſe particular Articles uſe to follow general Impeachments, and the Impeach'd are not bound to answer till the particular Articles were exhibited, which is true ; for by the ſame Reaſon, a Defendant cannot plead an Action depending againſt him for the ſame Matter in a ſuperior Court, unleſs the Plaintiff hath declar'd againſt him in the ſuperior Court, which is not true. It was not a Reaſon that all Records in inferior Courts muſt be pleaded particularly, as Indictments, and the like ; becauſe ſuch Records muſt be certain and particular, or elſe they are erroneous, and cannot be pleaded ; but an Impeachment may be general.

Where the Matter of a Plea is naught, no Form can make it good ; though where the Matter of a Plea is good, an ill Form may ſpoil it. If therefore a general Indictment or Record is naught, as in all the Cafes cited againſt the Plea, it was no ſpecial Averment to reduce it to a certainty, or any Form can make it a good Plea : But a general Impeachment is good, and therefore it may and muſt be pleaded generally ; and pleading it ſpecially, would make it falſe, if there were no ſubſequent Articles, as in this Caſe there were not, to aſſertain it.

It is to no purpoſe to run through all the Ramble of the Council or Court againſt the Plea, when they all ſaid the Matter of the Plea was not in

question, but the Form ; and yet when ſo often ask'd in what of the Form it was defective ? they were not able to answer. If it be agreed that the Matter of a Plea is good, but it is defective in Form, they always ſhew how it ought or might have been mended, which in this Caſe was never done. And as this Caſe was new in ſeveral Particulars, ſo it is in this, that in reading all the Arguments of this Plea, no Man knows, by what was diſcourſ'd, what was the Point in question.

After the Arguments, the Chief Juſtice, in ſhew at leaſt, very favourably offers the Priſoner's Council liberty to amend the Plea, if they could ; which they (apprehending, as they had Reaſon, for I think none can ſhew how it might have been mended, rather a Catch than a Favour) refus'd to do ; whereupon the Court took time to confider of it, and on the 11th of May, there being a great Auditory, rather to hear how the Judges would bring themſelves off, than to know what the Law of the Plea was, the Chief Juſtice, without any Reaſons, deliver'd the Opinion of the Court, upon Conference had with other Judges, that his Brothers, *Jones*, *Raymond*, and himſelf, were of Opinion that the Plea was inſufficient ; his Brother *Dolben* not reſolv'd, but doubting concerning it, and therefore awarded the Priſoner ſhould plead to the Indictment, which he did, *Not Guilty* ; and his Trial order'd to be the next Term.

I think it would puzzle any Perſon to ſhew, if ever a Court of *Westminster-Hall* thought a Matter to be of ſuch difficulty as fit to be argu'd, that they gave their Judgments afterwards without the Reaſons : 'Tis true, that the Courts of Civil Law allow Debates amongſt the Judges to be private among themſelves ; but the Proceedings at Common Law always were, and ought to be, in *aperta curia*. Had this Practice taken place heretofore, as it hath of late (but all ſince this Precedent) no Man could have known what the Law of *England* was, for the Year-Books and Reports are nothing but a Relation of what is ſaid by the Council and Judges in giving Judgment, and contain the Reaſons of the Judgment, which are rarely expreſs'd in the Record of the Judgment ; and it is as much the Duty of a Judge to give the Reaſons why he doubts, as it is of him who is ſatisfied in the Judgment. Men ſometimes will be aſham'd to offer thoſe Reaſons in publick, which they may pretend, ſatisfy them, if conceal'd ; beſides, we have a Maxim in Law undeniable, and of great uſe, that any Perſon whatever may rectify or inform a Court or Judge publicly or privately, as *Amicus Curia*, a Friend to the Court, or a Friend to Juſtice : But can that be done, if the Standers-by know not the Reaſon upon which the Court pronounce their Judgment ? Had the three Judges, who were clear in their Opinion, given their Reaſons of that Opinion, perhaps ſome of the Standers-by might have ſhew'd Reaſons unthought of by them, to have made them ſtagger in, if not alter that Opinion ; or if Juſtice *Dolben* had given the Reaſon of his Doubt, perhaps a Stander-by might have ſhewn him a Reaſon unthought of by him, which would have made him poſitive that the Plea was or was not a good Plea.

If a Man ſwears what is true, not knowing it to be true, though it be logically a Truth as it is diſtinguiſh'd, yet it is morally a Lye ; and if a Judge give Judgment according to Law, not knowing it to be ſo, as if he did not know the Reaſon of it at that time, but bethought himſelf of a Reaſon

for it afterwards, though the Judgment be legal, yet the pronouncing of it is unjust.

Judges ought to be bound up by the Reasons given in publick, and not satisfy or make good their Judgment by after-thought of Reasons. How very ill did it become the Chief Justice *Popbam*, a Person of Learning and Parts, in the attainting *Sir Walter Rawleigh*, of which Trial all since that time have complain'd? when he gave his Opinion, that the *Affidavit* of the Lord *Cobham*, taken in the absence of *Sir Walter*, might be given in Evidence against him, without producing the Lord *Cobham* Face to Face to *Sir Walter* (which was desir'd by him, altho' the Lord *Cobham* was then forthcoming.) When he summ'd up the Evidence, he said, *Just then it came into his Mind, why the Accuser should not come Face to Face to the Prisoner, because he might retract his Evidence; and when he should see himself must die, he would think it best that his Fellow should live to commit the like Treason, and so in some sort seek Revenge. Which besides that it is against the common Law, and Reason, it is against the express Statute of *Edw. VI.* which takes care, that in Treason the Witness shall be brought Face to Face of the Person accus'd.

Did it become a just Man to give his Opinion, and bethink himself of a Reason afterwards? And I am mistaken if it will not herein appear, that many Persons complain'd of, have not been guilty of the same Weakness or Injustice, call it which you will; so foolish are the best Lawyers and plausible Speakers, when they resolve to carry a Point, whether just or not: However they may deceive the Ignorant, yet they talk and argue very absurdly to the Apprehension of the majority of Mankind. And they had been sooner discover'd, but that the Discoverers were quickly suppress'd and crushed, as Scandalizers of the Justice of the Nation. And I think this may be justly called the first mute Judgment given in *Westminster-Hall*.

But to return to *Fitzharris's* Trial, which came on the 9th of *June*; and then the King's Counsel made use of their Arts in managing the Jury. And first, there were a great many Persons for Jurors to whom Mr. Attorney had no stomach; some challenged for Cause, for that they were no Freeholders, as *John Kent*, *Giles Shute*, *Nathaniel Grantbam*, and several others; and the Challenge allow'd to be a good Challenge by all the Court; for though the Chief Justice only spoke, yet all the Court assent to what one Judge says, if they do not shew their dissent. I do not take notice of this, as complaining of it, for I think it is a good Cause of Challenge in Treason; but then I cannot but wonder at the Assurance of the same King's Counsel, who denied it to be a good Cause of Challenge in the Lord *Ruffel's* Trial. It is true, that was a Trial in the City, but that Matter had no Consideration in the Judgment; for after the Lord *Ruffel's* Counsel had been heard, all the Judges deliver'd their Opinions, That at common Law, *No Freehold* was no Challenge in Treason; and that the 1 and 2 *Phil. & Mar.* had restor'd the Trial in Treason to be what it was at common Law: Of which Number of Judges, *Sir Francis Pemberton* and *Sir Thomas Jones* were two; nay, *Sir Francis Pemberton* ask'd Mr. *Pollexfen*, Whether he found any Resolution at common Law, that no Freehold was a Challenge in Treason. And that Judgment is afterwards cited in Colonel *Sidney's* Trial, as the

Opinion of all the Judges of *England*, That no *Freehold* was no Challenge to a Juror in Treason at common Law; and Colonel *Sidney's* Trial was in a County at large.

But if it was not a Challenge at common Law, I would know how it came to be a Challenge in *Fitzharris's* Case? There was no intervening Act of Parliament to alter the Law between the two Trials, that I know of.

Another Art us'd, was to challenge for the King without Cause, where no Cause could be shewn, such Jurors as they did not like.

The Prisoner was troubled at this, and appeals to the Court, whether the Attorney-General was not oblig'd to shew his Cause of Challenge; but is answer'd by the Court, that he need not till all the Pannel was gone through, or the rest of the Jurors challeng'd, which is true; but had the Prisoner been advis'd to challenge the rest of the Jury, as he would have been if he had had Counsel, the Attorney must have wav'd his Challenge, or put off the Trial. And since he was not allowed Counsel, why should not the Court, according to their Duty, as they have said it is, advis'd him so to do? I am sure, in Count *Coningsmark's* Trial, when *Sir Francis Warrington* challenged a Juror without Cause, for the King, the Court presently ask'd the Cause; and such Answer was made by the Prosecutor's Counsel as was made to *Fitzharris*: Whereupon the Court told the Count, that the way to make them shew their Cause of Challenge, was to challenge all the rest of the Jury; and thereupon the Challenge was waved. They were different Practices, tending to different Ends; and accordingly it succeeded, *Fitzharris* was convicted, and the Count acquitted.

Upon the Trial the Evidence was this; *Fitzharris* was, the 21st Day of *February*, 1681, with *Everard*, and gave him Heads by word of Mouth, to write the Pamphlet in the Indictment mentioned, to scandalize the King, raise Rebellion, alienate the Hearts of the People, and set them together by the ears; the Libel was to be presented to the *French* Ambassador's Confessor, and he was to present it to the *French* Ambassador; and it was to set these People together by the ears, and keep them clashing and mistrusting one another, whilst the *French* should gain *Flanders*, and then they would make no bones of *England*: For which Libel *Everard* was to have forty Guineas, and a monthly Pension, which should be some thousands of Pounds. *Everard* was to be brought into the Cabal, where several Protestants and Parliament-Men came, to give an account to the Ambassador how things were transacted. *Everard* asked what would be the use of the Libels? *Fitzharris* said, we shall disperse them we know how; they were to be drawn in the Name of the *Nonconformists*, and to be put and fathered upon them. This was the Sum of *Everard's* Evidence.

Mr. *Smith* prov'd *Fitzharris's* giving Instructions to *Everard*; and *Sir William Waller* and others prov'd the Libel, and the Discourse about gaining *Flanders* and *England*: Other Witnesses were examin'd to prove *Fitzharris's* Hand. For the Prisoner, Dr. *Oates* said, *Everard* told him the Libel was to be printed, and to be sent about by the Penny-Post to the protesting Lords, and leading Men of the House of *Commons*, who were to be taken up as soon as they had it, and searched, and

to have it found about them. He said the Court had an hand in it, and the King had given *Fitzharris* Money for it already, and would give him more if it had success.

Mr. *Cornish* said, when he came from *Newgate* to the King, to give him an account in what Disposition he found the Prisoner to make a Discovery; the King said he had had him often before him and his Secretaries, and could make nothing of what he did discover; that he had for near three Months acquainted the King he was in pursuit of a Plot, of a Matter that related much to his Person and Government, and that in as much as he made Proteſtations of Zeal for his Service, he did countenance and give him some Money; that the King said he came to him three Months before he appeared at the Council-Table.

Colonel *Mansel* said, that Sir *William Waller* gave him an account of the Business in the presence of Mr. *Hunt*, and several others; and said, that when he had acquainted the King with it, the King said he had done him the greatest piece of service that ever he had done him in his Life, and gave him a great many thanks: But he was no sooner gone, but two Gentlemen told him, the King said he had broken all his Measures, and the King would have him taken off one way or other; and said, that the Design was against the Protestant Lords, and Protestant Party. Mr. *Hunt* confirm'd the same thing, and added, that he said the Design was to contrive those Papers into the hands of the People, and make them Evidences of Rebellion; and appealed to Sir *William Waller* who was present, whether what he said was not true. Mr. *Betbel* said, *Everard* before he had seen *Betbel*, or heard him speak a Word, put in an Information of Treason against him, at the Instigation of *Betbel's* mortal Enemy; which Information was so groundless, that tho' it was three Years before, yet he never heard a word of it till the *Friday* before.

Mrs. *Wall* said, *Fitzharris* had 250 l. 200 l. or 150 l. for bringing in the Lord *Howard of Esrick*; she added, that *Fitzharris* was looked upon to be a Roman Catholic, and upon that account it was said to be dangerous to let him go near the King, that he never was admitted to the King.

The Lord *Conway* said, that the King had declared in Council, that *Fitzharris* had been employed by him in some trifling Businesses, and that he had got Money of him; but added, as of his own Knowledge, that the King never spoke with him till after he was taken, which was the 28th of *February* last.

All the Evidence being over, it was sum'd up by the Counsel, That upon all the Circumstances of it, *Fitzharris* was the Contriver and Director of the Libel; that it was a treasonable Libel, and a Jesuitical Design; that the Excuse he made, as if *Everard* drew him into it, or trepanned him into it, was vain, nothing of that being prov'd. That *Everard* could do nothing alone, and therefore Sir *William Waller* must be in the Contrivance; but that was unlikely: That the Prisoner would insinuate that the King hir'd him to do it, because the King gave him Money, but that was out of Charity; and therefore concluded, with a great many Words, that an *English* Protestant Jury of twelve substantial Men, could not but find the Prisoner guilty.

The Court added, that though Dr. *Oates* said, *Everard* said it was a Design of the Court, and was to be put on some Lords, and into some Par-

liament-Men's Pockets; yet *Everard* was there upon Oath, and testified no such thing in the World; and for the Impeachment in the Lords House, they were not to take notice of it.

After which the Jury inform'd the Court, that they heard there was a Vote in the House of Commons, that the Prisoner should not be try'd in any inferior Court: To which the Chief Justice said, That that Vote could not alter the Law, and that the Judges of that Court had Conference with all the other Judges, concerning that matter; and it was the Opinion of all the Judges of *England*, that that Court had a Jurisdiction to try that Man. After which, Justice *Jones* was of Opinion, that if he were acquitted on that Indictment, it might be pleaded in bar to the Impeachment; and Justice *Raymond* deliver'd his Opinion to the same purpose. It is strange that all the Judges should be of that Opinion; yet before it was said, Justice *Dolben* doubted. It is more strange, that if Justice *Dolben* was not of that Opinion, he would hear it said he was, and not contradict it. It is most strange, that if the Judges of that Court were of that Opinion, they had not declar'd so, in the arguing or giving Judgment on the Plea; for that was the Matter of it, being pleaded to the Jurisdiction of the Court, that they had not power to try the Prisoner for that Crime, so circumstanced.

If the Plea had been over-ru'd as to the Matter, none would have been so impertinent, as to go about to maintain the Form of it.

Now to say truth in behalf of the Publick, and not on behalf of *Fitzharris*, the Evidence was unfairly summed up; for *Everard* never pretended *Fitzharris* drew him in, or was to trepan him: It is true, he ask'd *Fitzharris* what the Design of the Pamphlet was, and whether he was not put upon it to trepan others? who answer'd, he was not. But afterwards being too nearly prest by the Attorney-General, he said, *Fitzharris* told him the Use of the Libels was to disperse them he knew how; that they were to be drawn in the Name of the *Nonconformists*, and put upon them. And *Oates* said, *Everard* said the Libels were to be printed, and sent abroad by the Penny-Post to the protesting Lords, and leading Men of the House of Commons, and the Persons seiz'd with them in their Pockets; which is all strong Evidence that the Libel was design'd to trepan others, and that was all along the Import of *Fitzharris's* Questions, tho' cunningly not answer'd by some of the Witnesses, and as cunningly omitted in summing up the Evidence.

It is true, the Chief Justice said, *Everard* said no such thing as *Oates* had said; but why was not *Everard*, who was then present, ask'd, Whether he said what *Oates* had given in Evidence?

There cannot be shewn any Precedent where a Witness contradicts, or says more or less than a Witness that went before him, by the hear-say of that Witness; but the first Witness is ask'd, what he says to it. Why was not Sir *William Waller*, who was also present, ask'd what he said to the Evidence of Mr. *Mansel* and Mr. *Hunt*? And who it was that inform'd Sir *William* what the King said? It was no way in proof, nor pretended by *Fitzharris*, that any Person was concern'd in that matter, but *Everard* and *Fitzharris*, though it was shrewdly suspected by the House of Commons; and no Man that reads the Trial, but believes there were many more concern'd, not yet discover'd: But

the Counsel might have brought in any Judge of the Court by the Head and Shoulders to be a Confederate, as well as Sir *William Waller*, who was a *Jack-a-lent* of their own setting up, in order to knock him down again.

It was not pretended by *Fitzbarris* that the King gave him any Money to frame that, or any other Libel; there was Evidence, that he had got Money of the King for some little matters he was employed in, perhaps, for bringing in Libels dispersed abroad, or discovering Plots.

Upon the whole Evidence, it was plain that *Fitzbarris* was an *Irish* Papist; it was plain he was the only visible Contriver of the Libel; who were behind the Curtain is not plain, and to know them, was the Design of the Impeachment.

It was plain it was a devilish Jesuitical Design, as the Court and Counsel, in summing up the Evidence, agreed it to be; it was plain, that the Libel was such, that if dispers'd with intention to stir up the King's Subjects against him, it had been High-Treason within the Statute of the 13th of the King: But what the Intention of the contriving of the Libel was, was not very certain; and therefore, consequently what the Crime of it was, was uncertain.

To take the Evidence all the ways, as to the Design of the contriving of the Libel, it is capable of being interpreted; the easiest Construction is to say, he fram'd a Libel with intention to pretend to the King, that he had intercepted a Libel privately dispersed; and to make it more likely, it should be framed in the Nonconformists Names, to make his Report the more credible (for of Papists or Church-men it could not be believed) to get more Money of the King; and that matter, by all his Questions to the Witnesses, he most drove at: and that would at most be but a Cheat.

A more criminal, but less credible Construction, is to believe he design'd to disperse them, to excite and prevail upon the Discontented to take up Arms.

For what Effect had that Pamphlet, when it was (for it was afterwards) dispersed, upon the Minds of the People? Or what Effect could any Man of Sense think it could have? For though it was a virulent, yet it was as foolish a contriv'd Libel as ever was writ; yet I own, if it had been writ and dispersed with that Design, it had been High-Treason within the Statute of *Ed. III.*

But the most natural Construction of the worst Design of it, was to trepan the Parliament-Men, and make the Libels Evidences of a rebellious Conspiracy: This *Everard* confesses *Fitzbarris* told him was the Use to be made of them; and *Everard* could not know the Design of them, but by what *Fitzbarris* told him. And *Oates* well explains what *Everard* meant by the Words, in his Evidence, *put the Libel on the Nonconformists*, by what *Everard* told him.

But yet even that, though in itself the highest Crime a Man can be guilty of, next to putting it in execution, is but a Conspiracy; which was mildly punish'd in *Lane* and *Knox* their Case, though this exceeded that; that being a Design only against one Person, this against many.

Yet though this was of no higher Crime by the Law, as now establish'd, than a Misdemeanor, it was fit for the Legislative Power to have punish'd it in the manner it was punish'd; which yet the Legislative Power ought to resent as an Injury, for an inferior Court's snatching the Exercise of that

Power out of their Hands, which only belongs to the supreme Authority.

That this Crime, upon construction of the Evidence taken in the best Sense, is no Treason; tho' the Libel should in all probability incite the Subject to levy War, which it was not likely to do, or in Fact it had been the cause of a Rebellion, yet, if it was not designed by the Contriver to that purpose, it was not Treason by the Statute of *Edward* the Third, or *Charles* the Second; for in the last Statute, it is designing to levy War, and in the Statute of *Edward* the Third, it is a strained Construction, to make designing to levy War, Treason; yet none ever pretended to strain the Sense of that Statute farther than designing to do it.

If the ill Effects the Libel did, or might produce, made it Treason, then Sir *Samuel Afrey*, who read it in Court at the Trial, and the Printer, that afterwards printed and publish'd it, and Sir *William Waller*, who read it to Mr. *Hunt*, and others, were guilty of Treason; for the Libel carried no Venom or Charm with it the more, for being fram'd by *Fitzbarris* or *Everard*, or for being publish'd by either of them, than if publish'd by another Person.

The difference is, *Afrey* read it aloud, as his Duty; the Printer printed and published it for Gain; Sir *William Waller* publish'd it as a Novelty; and if *Fitzbarris* contriv'd it, to put it upon the Nonconformists, or Parliament-Men, and not to stir up a Rebellion, though it tended to all the ill Consequences mention'd in his Indictment, yet it was not Treason.

But it will be urged, how shall *Fitzbarris's* Intention be proved? It was a Question which made a mighty sputter in arguing the Plea. How shall it be proved, that the Impeachment was for the same Treason for which the Indictment was? But in the Trial of *Fitzbarris*, that Question was fully cleared; for it was proved there, that the very Libel then produced in Court, was the same Libel read in the House of Commons, upon which the Impeachment was voted.

And to say truth, nothing can be put in Issue, but is capable of Trial: *Quo animo* a thing is done in all Overt-Acts of a Design, is one of the main Questions; or to speak in Law Phrase, whether done *proditorie* or not, an Adverb of great Use and Sense, though heretofore slighted; and under which, I believe, a great many Persons will be enforc'd to shelter themselves from being punished by the Law establish'd.

No Man will pretend that Libel did any Man mischief but the Contriver; nor in probability could have done, if not used to the purpose *Everard* said to *Oates*. Yet other Persons have been guilty of as illegal Acts, of worse Consequences in prospect, and much worse in effect, and it did not amount to Treason. I dare say, the Allegation, that they disturb'd the Kingdom by their Acts, and War caus'd to be mov'd against the King, is true of them, and they are guilty of all the Aggravations us'd in Indictments of Treason.

To instance in some of many; Did it not make a mighty heart-burning in the City against the Government, and rais'd great Jealousies between the King and People, when the Sheriffs, *North* and *Rich*, were impos'd on the City? Did not the taking away the City's Right of electing Sheriffs, and the suspicions for what end it was done, besides the Illegalities that followed? If what Sir *Edward*

Herbert says in his late *Vindication*, *Fol.* 16. be Law, as it hath an aspect as if it were, that Grand-Juries return'd by such as are Sheriffs in fact, but not in right, are illegal, and Convictions on their Presentments are illegal and void, give great disturbance: and that Opinion seems to be countenanc'd by my Lord *Coke's* third *Instit.* *Fol.* 32. in his Comment on the 11th of *Henry* the IVth, and consequently my Lord *Ruffel's*, and other Attainers void? Did it not add to the heart-burning, the punishing those Citizens as Rioters, who were at *Guldball*, innocently contesting their Right of electing? Was it not an increase of the Mischief, the bringing the *Quo Warranto* against the City, whereby the Credit of the City was lost, and many Orphans starved, and more impoverish'd, beyond the possibility of recovery? And it was yet heighten'd by the Judgment given in the highest Case that ever came into *Westminster-Hall*, by two Judges only, and that without one Word of Reason given at the pronouncing, according to the Pattern of *Fitzharris's* Case, and was the second mute Judgment. Did it not fright all honest Men from being on Criminal Juries, when *Wilmer* was so illegally prosecuted for not giving a Verdict against his Conscience, by an *Hominis Replegiando*, and Information? And did not that make all Merchants, who had Transactions beyond Sea, afraid to send their Servants thither, for fear they might be laid by the heels till they fetch'd them back again? Did it not startle the Lords, and the leading Men of the House of Commons, mention'd so often in *Fitzharris's* Trial, when the Earl of *Essex*, Lord *Ruffel*, Colonel *Sidney*, Mr. *Hampden*, and several others, were clapp'd up close Prisoners in the *Tower*? Did it not deter any honest Man from appearing to witness the Truth, when Sir *Patience Ward* was convicted of Perjury? Did it not provoke two great and noble Families, when the Lord *Ruffel* and Colonel *Sidney* were so illegally and unhandfomly dealt withal, as shall be hereafter declar'd? Did it not provoke all the Nation, except the Clergy and Soldiery, when all the Charters of *England* were seiz'd, and not re-granted, but at excessive Rates, to the starving the Poor, who should have been fed with the Money which went to purchase the new Charters, and reserving the disposition of all the Places of Profit and Power, within the new Corporations, to the King, but which indeed the Confederates shar'd among themselves? Nay, the very Election of Burgesses, the freeness of which is the great Fundamental of the Government, was monopoliz'd, and put into a few hands. Did not the unreasonable Fines, and cruel Punishments inflict'd, oppress many, terrify all, and consequently made the Government odious to the Subject? Did not the Cruelties acted in the *West*, enrage above a third part of the Nation? Did not the turning out many of the Soldiery and Clergy, without any Reason; and for that purpose erecting arbitrary Courts, and granting Dispensations to Persons by Law disabled, to enable them to have and enjoy the Places and Offices of such as were illegally turn'd out, and of all who should be in like manner turn'd out? And was it not seen what the Consequences of those things would be, by all who did not wink their Eyes, or who were not blinded by the Profit they made of such illegal and cruel Acts? Was not the King at last sensible, that the Consequence of what is before recited would be what afterwards happen'd? And did he not in less than a Month's time, when too late, throw down all that *Babel* of

Confusion which had been so long a building? and did all in his power, and would have done more if he could, to have set things as right as they were before the Parliament of *Oxon*; for from thence the Extravagancies may be dated. But alas! more Mischief can be, and was done by weak Brains, than the best Wits can retrieve; those that were dead could not be brought to life; the restitution of the City's Charters was but in shew a Relief. How shall all those defend themselves who have acted under all the illegal Sheriffs constituted, and not elected? How shall those defend themselves, who have acted under Officers appointed by the new Charters, which by the restitution are gone as if they never had been? How shall Sheriffs, Goalers, and other Officers, who have had, or now have Custody of Prisoners, and having not taken the Test, trust to the Validity of a Dispense, behave themselves? Shall they continue to keep their Prisoners in custody, or let them go? If the last, they are subject to Actions of Escape; if the first, they are liable to false Imprisonment. These, and a great many more Mischiefs, not yet seen, are the natural results of these illegal Actions.

I never reflect on these things, but I remember *Tully*, in his Offices, lays down as a Rule, that nothing is profitable but what is honest, and gives many Reasons for it; but nothing so convincing, as the Examples he brings in publick and private Matters. And tho' the Empire was vast, and he bore a great Figure in it, and was very knowing, and was well read in the *Greek* and *Roman* Histories, yet he was not able to bring a hundredth part of Examples, to prove his Position, as have been in this little Island in the space of eight Years. And the Persons, by whose Advice these things were transacted, are the more inexcusable, if it be true what a certain Nobleman (who bore a considerable Character in the two late Kings Council) once said to me was true. He was complaining that the King was misled by the Advice of his Lawyers. I ask'd him whether the King put his Judges and Council upon doing what was done, without considering whether it was legal, as the common Vogue was he did; or that his Lawyers first advis'd what to be done, was Law? He answer'd me, on his Honour, the King's Council at Law first advis'd, the King might do by Law what he would have done, before he commanded them to do it.

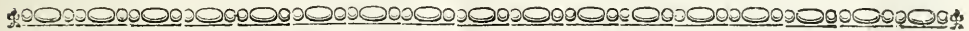
Yet I agree, none of those matters, though so inconvenient and grievous, are Treason by the Statutes of *Ed. III.* or *Car. II.*

For Profit in some Cases, Revenge in others, the endeavouring means to escape Punishment, and a natural propensity to Cruelty in many, were the true ends driven at; and not the bringing their Prince into the hatred of his Subjects, though that was a necessary consequent of all recited, and of many more matters omitted. And let *Fitzharris's* Crime, and those recited, be but examin'd, his was but a *Peccadillo* to the least of those; though this was acted by an *Irish* Papist, and these by *English* Protestants, Sons of the Church of *England* as by Law establish'd, as they call themselves; though I doubt, not sincere Protestants, as my Lord *Ruffel* said; Words which were matter of Laughter to those who brought him to the Block.

But, though neither *Fitzharris's* Crime, taken in the last Sense, nor the above Crimes, were High-Treason by any Statute; and the Judges have not power to punish any other Treasons: yet in all times the Parliaments have practis'd, and it is necessarily

cessarily incident to all supreme Powers, in all Governments, to enact or declare extravagant Crimes to be greater than by the established Law they are declared to be, not by virtue of the Clause in the Statute of *Edward the Third*, whereby some have, by mistake, thought that a Power was reserved to the *Parliament* to declare other matters Treason, than what is therein express'd: For admit that Clause had been omitted, there are none can doubt, but in point of Power, the *Parliament* could (how far in Justice they might, is another Question) have declar'd any other matter to be Treason; and the Words of that Clause are very improper Expressions, either to vest or reserve a Power in the *Parliament*; for the Words are only prohibitory to the Judges, to adjudge any other matters Treason than those express'd in the Act, though they were somewhat like those express'd, and therefore might be suppos'd Treasons; and it is a sort of monition to Offenders, that they should not presume to be guilty of enormous Crimes, upon presumption that they were not Treasons within that Act. For in the Preamble 'tis said, because many other like Cases of Treason (which in Sense are Cases like Treason declared in that Act) may happen in time to come, which could not be thought of or declared at that present; therefore if any such should happen before any Justice, the Justice should tarry, and not

proceed to give judgment of Treason on it, till it should be judg'd in Parliament, Treason or Felony. How well the Judges, in late days, have observed this prohibitory Law, let the World judge; and most certainly the Parliament might have declar'd in *Fitzbarris's Case*, as they may in those other, that the Crimes were Treason, Felony, Misprision of Treason, Trespass, or what other Crime known in the Law, and inflict what Punishment they thought fit: and it is no injustice for the supreme Power to punish a Fact in a higher manner than by Law establish'd, if the Fact in its nature is a Crime, and the Circumstances make it much more heinous than ordinarily such Crimes are. It was not injustice in the Parliament of the second and third of *Philip and Mary* to enact, that *Smith*, and others, who were suppos'd to be guilty, as Accessaries, to a barbarous Murder, and were equally, if not more guilty than the Principal, to enact, as they did, that if they should be found guilty as Accessaries, they should not have their Clergies, which at the time of committing the Fact Accessaries to Murder were allowed to have. It is true, to declare or enact a Fact, after it is committed, to be a Crime, which when committed was in it self none, such as transporting Wooll beyond Sea, and the like, would be high Injustice.



Remarks on Colledge's Trial.

BUT to return whence I have digress'd, *Fitzbarris* being executed according to his Sentence, though there was great grumbling amongst the Protestants, that those who set him on work were conceal'd, and never like to be discover'd now he was dead; yet all was quiet, and the Conspirators, who resolv'd, though *Fitzbarris* miscarried in his Design, yet the *Plot* should go on; but what it should be, or where the Scene of it should be laid, or who the *Plotters* should be, they were not well resolv'd.

Great Noise of Warrants being issu'd out there was, but at last all center'd in an inconsiderable Fellow, one *Stephen Colledge*, a Joyner by Trade, who for his Honour, as a Prisoner of State, was committed to the Tower for High-Treason. At first it was design'd to lay the Scene in *London*, and accordingly a Bill of Indictment of High-Treason was exhibited to the Grand Jury (whereof *Wilmer* was Foreman) at the Sessions-House: But the Business of *Fitzbarris* was so new, and smelt so rank, that the Bill could not be digested, but was spew'd out with an *Ignoramus*; for which *Wilmer* was afterwards forc'd to fly his Country.

Then it was resolv'd the Scene should be at *Oxford*, and accordingly the King's Counsel, with *Irish* Witnesses, at the Assizes, post thither, and prevail with the Grand-Jury to find the Bill; but by what Arts is not known, for he was privately shut up by them: and I should wonder, if he, who frequently, in the hearing of those who understood better than himself, had Assurance enough to impose upon the Courts, should scruple in private to impose any thing on an ignorant Jury.

I know not how long the Practice in that Matter of admitting Counsel to a Grand-Jury hath

been; I am sure it is a very unjustifiable and unsufferable one. If the Grand-Jury have a Doubt in point of Law, they ought to have recourse to the Court, and that publickly, and not privately, and not rely upon the private Opinion of Counsel, especially of the King's Counsel, who are, or at least behave themselves as if they were Parties.

It is true, it is said they are upon their Oaths; and though it be not express'd in their Oaths, that they should do Right between the King and Subjects, yet that is imply'd in the Oath, I agree. But have they behav'd themselves as if they were under an Oath? Besides, all Men are not capable of giving Advice to be rely'd on in so great a Matter as Life; but the manner of doing it being in private, can never be justify'd. I know, in *Fitzbarris's Case*, the King's Counsel were cajoling the Grand-Jury in private for some Hours: but I did not think fit to take notice of it in that Trial, because I think both the Grand and Petty-Jury did very well; they acted according to the best of their Understanding, which is all that God or Man requir'd of them; they ask'd pertinent Questions, they were over-rul'd in some, not fully answer'd in others; not that I think either of them gave a Verdict according to Law upon the Fact, as it appear'd upon the Evidence; but that was not the Fault of the Jury, but of the King's Counsel, and of the Court, who misled the Jury. I thought it more proper to take notice of it in this Trial, wherein the first Bill was rejected by an understanding Jury, and all Men wonder'd how the second came to be found *Billæ Vera*; and for that Reason, one of the King's Counsel boasted at Court, of his Service and cunning Management in the matter.

The Bill being found, the next matter was to bring the Prisoner to his Trial: and as he had more Honour than what usually is bestow'd on so mean a Man to be committed to the *Tower*, tho' in truth it was to keep him from all means of Defence; so to carry the matter on, he was allow'd to have, by order of the King and Council, a Counsel and Solicitor to come to him, and advise him for his Defence at all Events; a Favour deny'd to *Fitzbarris*, for his Counsel was to advise to the matter of the Plea only: but that Favour in shew was only to betray him, as shall be shewn. And a third Favour he had, which no Man of his Quality ever had; there were then three of the King's Counsel sent from *London*, and all the Counsel that could be pick'd up upon the Spot, which were three more, and no less than four Judges to prosecute and try him; but that was to make sure work of him.

The 17th of *August*, 1681, he came to his Trial: his Indictment, as to part, was in common Form for Treason, but particularly for designing to seize the King's Person at *Oxford*, mixt with Words he should say, as, That there was no good to be expected from the King, he minded nothing but Beastliness, and that he endeavour'd to establish Arbitrary Power and Popery. To which being requir'd to plead, he desir'd a Copy of the Indictment, a Copy of the Jury, to know upon what Statute he was indicted, and Counsel to advise him whether he had any thing pleadable in Bar; all which were deny'd him. Then he desir'd he might have his Papers, which were taken from him after he was brought from the Prison, and before he came into Court, at an House over-against the Court; for so it seems the King's Counsel had order'd the matter, that the Goaler *Murrel*, and the Messenger *Saxvel*, after they had him out of the Prison, should run him into an House, and take away all his Papers, which they believ'd were the Instructions, as in truth they were, of the Counsel assign'd him when in the *Tower*, and bring the Papers to them; whereby they would not only disable him of his Defence, but they could be better instructed how to proceed in a way for which he had not provided himself of any Defence.

Murrel and *Saxvel* did as the King's Counsel directed them. Much wrangle there was whether he should have his Papers or not; all the Court agreed he should not have them till he had pleaded *Guilty*, or *Not Guilty*; and afterwards he should have the Use of some, and not of others, because they did not appear to be written by himself, but by some Counsel or Solicitor; and as they said, none is allowed in Treason, unless assigned by the Court. The Chief Justice *North* said, they were not taken away by him; but, says *Colledge*, they were taken away by the Keeper, under pretence of bringing them to his Lordship. The Court said they knew not what Papers he meant, and knew nothing of it: he said, the Indictment mention'd something of Misdemeanor, as well as Treason, but he knew not how to make his Exceptions without his Papers. I have thought fit to mention all these things, because this Trial was the Inlet to all that follow'd, and gave Encouragement to spill nobler Blood. The Injustice of the Violence us'd to the Prisoner, must be measur'd from the Reasons given for it, that the Papers were Instructions from Counsel and Solicitors, and none in Law was allow'd in Treason. 'Tis true, no Counsel are allow'd for the Prisoner in a Trial

upon an Indictment of any Capital Matter; but in an Appeal for Capital Matters, Counsel are allow'd even on the Trial. The Reason given, that the Indictment is the Suit of the King, and no Counsel or Witness is allowable in a Capital Matter against the King, is foolish, as shall be hereafter shown; and as vain is the Reason that the Judges are Counsel for the Prisoner, which they ought to be: but I doubt it will be suspected, that in this Case, and many others, they did not make the best of their Client's Case; nay, generally have betray'd their poor Client, to please, as they apprehended, their better Client, the King: for so they say they are to be Counsel likewise for the King in Indictments, that is to say, they are to be indifferent and upright between both, so certainly they are to be in Appeals; therefore that is not the Reason why no Counsel is allowed the Prisoner in the Indictment: but the true Reason in probability is, that the Prisoners in Indictments are generally so very poor that they could not be at the charge of having Counsel, and so Non-usage gave colour of a Law.

The other Reason my Lord *Coke* gives for it, viz. that much of the Truth may be discern'd by the Prisoner's Behaviour, or Answers, which would be conceal'd if he spoke by another, is not satisfactory; for the same is to be said in an Appeal. As to the Publick, 'tis not material whether a Man is prosecuted and punish'd by an Indictment, or an Appeal; and that Appeals are less frequent than Indictments, is only that the first is more chargeable than the last; for though we hear not of late of any Appeals but in Murder, yet they lie in Robbery, Burglary, Felony, and in all Crimes at Common Law punishable by loss of Life or Member: but though the Rule in Indictments is, That no Counsel is allow'd, yet it is confin'd to the Trial. No Law, Common or Statute, nor any Usage, says, a Prisoner shall not have Counsel to advise him before or after the Trial; and in Murder, and all other Crimes, it is always admitted; and why not in Treason?

In Treason, say some, 'tis criminal for one to advise or sollicite for the Prisoner; and the King's Counsel said, he had known one indicted for being a Solicitor for one in High-Treason; and says the Court, it is criminal for one to be Solicitor or Counsel in Cases of High-Treason, unless assign'd by the Court: and whether it be so or no, is worth Inquiry.

First, No Law-Book as to this Matter makes any difference between Treason, and other Crimes; and Advising and Solliciting is spoken of in general Terms; which being reduc'd to Particulars, will shew the Absurdity of it.

Suppose I observing the Indictment on which the Prisoner was arraign'd, was erroneous, and should therefore advise him to move and quash it for that Error: for, say I, if you should be try'd on this Indictment, and found guilty, unless you move in Arrest of Judgment, you will be attain'd, and then you can take no advantage of that Error; and if you are acquitted, you may be indicted again, and try'd again, because the first Indictment was erroneous.

If this be Law, as none can deny it, is it not lawful to advise him? and is it not fit for the Court to quash the Indictment faulty, notwithstanding all the Cant of Dilatories, Subterfuges, and defending himself by plain Matter of Fact? Or suppose I advise in Fact, that I hear that such

a Witness is to come against him, I know he is hired to do the Job, and I will prove it on him, if call'd: Or suppose I tell him, I know such a Witness is convict of Perjury, and if he will call me, I will produce the Records of his Conviction; can any Lawyer say these things are criminal? But if I should advise a Prisoner to escape out of Prison, shewing him the Way of doing it, it is criminal.

In all Cases comforting a Traitor is Treason; but it is meant where you do it to keep him from Justice; for else feeding a Traitor in Prison is Treason, which none will affirm. So that reducing general Words to particular Facts, clears the Sophistry of them: nor is it criminal to be a Solicitor in Treason, for where there is no positive Law, as in this Case there is not, natural Reason must take place; and better Reason cannot be given than what the Prisoner in this Case gave: If a Man be coop'd up and not suffer'd to go about his Business himself, and no Friend must be employed to do it for him, how is it possible for him to make his Defence? I know it is said his Innocency must defend him; but the Folly of that Saying shall be shewn in another place. But say they, The Court shall assign him a Counsel and Solicitor; but when, and for what? only for a Point of Law. May not a Prisoner want a Solicitor for a Matter of Fact? Suppose he had occasion for a Witness which he could not readily find, or occasion for a Copy of Record, for want of which Mr. *Cornish* suffer'd; was it not reasonable for him to have a Solicitor? And when shall the Court assign him a Solicitor? only when the Prisoner comes upon his Trial, and then it is too late to have any use of him; as *Colledge* was arraign'd at twelve, and try'd at two a-clock the same Day; and as was Mr. *Cornish's* Case. But, say the King's Counsel, they had known one indicted for High-Treason for being a Solicitor in such a Case, though I do not believe it, yet that Authority goes no farther to prove the Matter, than an Indictment I knew against a Person once, for stealing an Acre of Land; and against another for wickedly and devilishly breaking an Award, whereby two unjust Arbitrators directed the Prisoner to convey his Land to a certain Lord, without any Satisfaction or Recompence; prov'd those Matters to be Felonies.

But though a Prisoner may be advis'd, yet that Advice must not be reduc'd to writing. Then suppose one Man's Memory be good, and can bear all the Advice given him, and another Man's Memory bad, and cannot do it: Is not the last hang'd for having a bad Memory, rather than for his Crime? But though it may be reduc'd to writing, yet it must be his own Hand writing, and not another's; how ridiculous is the Distinction? Suppose the Prisoner cannot write, then is he hang'd for his Parents Fault or Misfortune, for not educating him, or for not being able to educate him better.

Which is somewhat of kin to the late Practice in the *West*, where many Men were hang'd for having old *Jewish* Names, as *Obadiab*, or the like, with a Jest, that their Godfathers hang'd them. But, suppose it is not lawful in general to be a Counsel or Solicitor, with, or to a Prisoner committed for High-Treason; yet the Prosecution being the King's, he may give a Privilege which the Law of Courts doth not allow, and in this Case it was so done: for, to the Confusion of those who did this Injury, and of those Judges who would not do the Prisoner Right, they have printed the Or-

ders of the King and Council, which appointed Mr. *West* and *Aaron Smith* to be his Counsel and Solicitor.

If it was lawful for the Prisoner to have Counsel, and to have Advice in writing; it was very unlawful, and as high a Misdemeanour in the King's Counsel to order his Papers to be taken away, as they were capable of being guilty of; both the Prisoner and the Matters of his Defence being under the Protection of the Court.

It is not an ancient Practice the seizing of Papers, though of late us'd; it began, I believe, upon my Lord *Coke*, whose Papers were seiz'd and carried to the Secretaries Office, upon the like Pretences as of late, and when return'd, were gelt of many Bonds and other Securities, to a great many thousand Pounds value, which never came to light. It was afterwards practis'd upon some Members of Parliament, and, as I remember, voted Illegal, as undoubtedly it is: for though, sometimes you may meet with Papers which may be Evidence against the Prisoner; yet it is possible that other Papers than the Prisoner's may be mix'd with his to make good an Accusation; nay, which is worse, some of the Papers may be withdrawn, which may be the only Matter of his Defence, and that hath been often practis'd. And I cannot but remember a Story about this Matter: When Sir *William Jones* died, it was said, that one from *Whiteball* offer'd Sir *William Jones's* Servant a great Sum of Money but to let him search his Master's Study, to find a Paper which would discover great Matters. A certain Person discoursing with a Privy-Counsellor about it, the Privy-Counsellor said, It was not true; for, says he, if we had a mind to have done it, could we not send a Messenger on pretence of searching for treasonable Papers, and bring all the Study to *Whiteball*, and keep what we would of them?

But though that hath been often practis'd, yet this was the first time that ever a Prisoner had the Instructions for his Defence taken away from him; and the Manner was worse than the thing, it being done just as he was coming to his Trial, relying upon his Writing, not his Memory, for his Defence; besides the Agony so great an Injury put him in, when he had so great a Concern upon him, as the Trial for his Life, and he could not but know by all that Preparation, that it was more than ten to one against him: all which is well seen in his Trial, where he so pathetically and sensibly press'd the Court for Justice in this Matter, which they excus'd with such mean Answers, that all Mankind must see they were satisfy'd of the Injustice, and were resolv'd not to do him Right: They knew not which way he came by the Papers, they knew not but he may be criminal who brought them him; they knew nothing of his Papers, they knew not what Papers he meant; that his Lordship did not take them away, and such like stuff: as if it was not the Duty of the Court to relieve the Prisoner against the Oppression of any such Persons but themselves; else why did they not ask *Murrel* and *Saxel* who stood by, and were charged with taking them, for the Papers, and have satisfy'd themselves of them? But in truth they knew before what they were. And *Colledge* was a true Prophet, when finding his Life so beset, he said, This was a horrid Conspiracy to take his Life: but it would not stop there, for it was against all the Protestants of *England*. And the Rule the Court made at last was as unjust, That he should have the use of some of his Papers after he had pleaded not Guilty, but

not before; for suppose there was Matter in them which could not be made use of after such Plea, as a Plea to the Jurisdiction of the Court, a Pardon, or otherwise acquitted, and the like, could not be pleaded, or advantage taken of them after not Guilty pleaded; although there was not such, yet there might have been such Pleas for ought the Court knew. How unjust then was it for him to plead not Guilty before he should have the use of his Papers? But there was Matter in them for quashing the Indictment; and he hinted so much to the Court, as that the Indictment contain'd Crimes of different Nature, as Treason and Misdemeanour, and I think it was good Cause to quash the Indictment.

In all Civil Matters, two Matters of different Natures cannot be put into one Action, as Debt and Trespass; two Capital Crimes of different Natures cannot be join'd in one Indictment, as Murder and Robbery: and for the same, and another Reason, Treason and Misdemeanour cannot be join'd in one Indictment; for the Jury may observe that one part of the Indictment, which in it self is but Misdemeanour, as that he said, The King minded nothing but Beastliness, &c. though charg'd in the Indictment as Treason, was prov'd, and not the material Parts of the Indictment, as designing to seize the King's Person, &c. and finding some part of the Indictment prov'd, might find him Guilty generally, which extends to every Article of the Indictment, and so the Jury deceiv'd, and the Prisoner in danger; or suppose he was acquitted of such an Indictment, if it ought to have been quash'd, whether the Prisoner shew the Error or not, he may be try'd again upon another good Indictment for the same Treason. If therefore what he offer'd was an Error, or but like an Error in the Indictment, by the Law which favours Life, and the jeopardy on Life, the Court ought not to have try'd him on that Indictment, but have directed another Indictment to have been found. It is a vain Objection to have said, That that would have been troublesome. Is the Mischief of that comparable to that of putting a Man twice in jeopardy of his Life for the same thing? But it would have been a delay. I say none; for there was a Grand Jury in Court, and within the two Hours time the Court adjourn'd (to give the King's Counsel Opportunity of viewing the Prisoner's Papers which were taken from him, and to consider of the Method of his Prosecution by them, which they did, and alter'd it from what they at first design'd it) the King's Counsel might have had a new Bill found; but peradventure they could not prevail with that Grand Jury to have found a new Bill; they remembered they had ill luck with the first Bill at London, which I believe was the true Reason: but I'll do the Court no Injury, in supposing that to be the Cause of the Adjournment which was not; 'tis true, in the printed Trial, 'tis pretended they adjourn'd in order to Dine; yet those that knew the Adjournment was by the Direction of the King's Counsel, and overheard their whispering with the Chief Justice (which is both an indecent and an unjust thing, and is neither better nor worse than a Plaintiff or Defendant's whispering a Judge while his Case is before him trying) and I know that the Judges had breakfasted but a little before, and had no great Stomach to their Dinners, and therefore believe, that that before assign'd, and not what was pretended, was

the true Cause: They might better have put off their Dinner to their Supper, than their Supper to their Breakfast, as they did, the Trial lasting till early next Morning.

But because all Irregularities of Court and Counsel, in all these Matters, are shifted off and excus'd by two Sayings not understood generally; the first whereof is, That the Court is to act for the King, and the Counsel are for the King, and no Person must come near the Prisoner, to the Prejudice of the King, as in *Fitzbarris's* Case was often said; a Witness was permitted to go on in an impertinent Story, of a Transaction between him and my Lord *Sbafesbury*, in my Lord *Ruffel's* Trial, of which the Prisoner complain'd that it was design'd to incense the Jury; and though the Chief Justice declar'd it was not Evidence, yet a great while afterward he went on in a like manner: nay, the Counsel in summing up the Evidence, repeated the same Matter, which was permitted because it was for the King; and yet, when the Earl of *Anglesea* began to say what the Lady *Chaworth* told him, he was snubb'd, and cut short; and Mr. *Edward Howard* was serv'd the same Sauce, because it was against the King: It is fit therefore to know what is meant in Law by those Words. No body doubts what the Courts or King's Counsel of late Days meant, but in Law they are not so meant: for though many things are said to be the King's, as the Protector of his People, and more concern'd in their Welfare than any private Persons; yet they are so in Preservation, and not in Property or Interest. The Highways are the King's, in preservation for the passage of his Subjects; and whoever obstructs them wrongs the King, as he is hurt when his Subjects are hurt; but in Property, the Soil generally belongs to private Persons. The King is hurt when his Subjects are oppress'd by Force, because he has engag'd to defend them; and therefore the Offender is punish'd by the King, to deter the Offenders, and others, from committing the same Offences; which is for the benefit of the Publick. But as a Man may be oppress'd by open Force, so he may be oppress'd by private Insinuations, and false Accusations, and the King has engag'd to defend his Subjects from such; not that it is possible to prevent them, but by consequence, that is, by punishing such as shall be found guilty of those Crimes, which heretofore were punish'd with the highest arbitrary Punishments we read of. The Consequence is, That it is for the King to punish Offenders, to acquit the false accus'd, and to punish the false Accusers; that is to say, in all Cases to do right according to Law and Truth.

Surely Queen *Elizabeth* gave the best Explanation of the * Words, when the Lord *Burleigh*, seeing Sir *Edward Coke*, the then Attorney-General, coming towards her, he said, *Madam*, here is your Attorney-General, *Qui pro Domina Regina sequitur*. Nay (*says she*) I'll have the Words alter'd, for it should be, *Qui pro Domina Veritate sequitur*.

For the King, and for Truth, they are synonymous Words; for the King against the Truth is a Contradiction. And the Judges and King's Counsel having taken an Oath to advise the King according to the best of their cunning, which is according to Law and Truth; if therefore the King's Counsel use means, and the Court permit them so to do, to suppress Truth, or to disable the Prisoner from making his Innocence appear, as in *Col-*

* 3 *Cok. Inst.* 79.

ledge's Case was done, if they urge things as Evidence of the Crime whereof the Prisoner is accus'd, which by Law are not Evidence, as in this Case, in the Lord *Ruffel's* Case, Colonel *Sidney's* Case, Mr. *Hampden's*, and Mr. *Cornish's* Case, and in many more they did, and as in some of them shall be hereafter shewn. If they insinuate any Fact as Evidence, which is not prov'd, as in my Lord *Ruffel's* Trial, that my Lord of *Essex* kill'd himself; if they wrest as Evidence of the Fact, what in Sense is not so, as in Colonel *Sidney's* Case, the writing his Book, (nay, for any thing appear'd, it was writ before King *Charles* the Second came to the Crown) they are Counsel against the King, being against Truth, as well as against the Prisoner.

I think no Man will deny the Truth of this Proposition, That it is as much the King's interest to have an Innocent accus'd of Treason, acquitted, as it is to have a Nocent accus'd of Treason, convicted. If that be true, then let any one shew me a Reason if he can; for there is no Law against it, why he may not have the same Liberty of clearing his Innocence, as the Profecutor hath of convicting him; I mean by free and private Access of all Persons to the Prisoner, as is us'd in all other capital Matters. If it be said he may get some to corrupt the Witnesses against him, or suborn others for him, the same may be said in all other Matters; but in Treason that is not a likely Matter, for generally the Prisoner never knows what he is accus'd of, and consequently cannot know his Accuser, nor how to provide a Counter-Evidence, till he comes to be arraign'd, and then it is too late: for generally he is presently tried after his Arraignment, as was the Case of *Colledge*, and my Lord *Ruffel*, and Mr. *Cornish*; and Persons committed for Treason are so much the less able to corrupt or suborn Witnesses, than any other Criminals, that they generally, according to the late Practice, have no Accuser brought Face to Face to them on their Commitment as all other Criminals have, who always are committed upon an Accusation made upon Oath in their hearing, and their Defence heard before their *Mittimus* made; and whatever the Pretence may be, yet in Experience, it is found that more Perjuries are committed in Profecutions for Treason by the Accusers, than by the Witnesses for the Prisoner.

One reason is, A Witness in Treason is more difficultly convicted than in any other Crime: For Treason is an *Ignis fatuus*, 'tis here and there, as *Colledge* was first in *London*, then in *Oxford*; it is not confin'd to place or time, as all other Crimes are; in all other Crimes, as Murder, Robbery, or the like, it must be proved to be within the Country where laid; it must be of the Person named in the Indictment, which are Evidences of Fact, which in some sort prove themselves. And there was but one that I remember (for *Oates* I do not count one) was ever justly convicted of Perjury in Treason, and that too was for want of Cunning, for he foolishly swore to Time as well as Place, which a Witness in Mr. *Hampden's* Trial would never be brought to do: Besides, Malice and Revenge, which in Profecutors and Accusers in Treason are generally the Motives, go farther than Money or Kindness, which if us'd in any Case, are the Motives of false Witnesses for the Prisoner.

Now as for the King and for the Truth are the same, so for the King and for the Law are the

same. The Laws are the King's, as he is to see the Execution and Preservation of them; so for the King against the Law is a Contradiction.

Therefore to try a Prisoner upon a vicious Indictment, as was done in *Colledge's* and Colonel *Sidney's* Cases, is against the King as it is against Law, for by that means he is in danger to be hang'd if convicted; or tried twice, if acquitted, which is against Law.

It is no Salvo of the Matter what the Judges said in *Colledge's* Case, that the Evidence of Misdemeanour is no Evidence of Treason; for the same may be said in an Indictment of Murder and Robbery; nor that the Judges would take care to inform the Jury which was Evidence of Treason, which of Misdemeanour, which they promis'd to do, but were not as good as their Words, as shall be shewn: for the Court may forget so to do, and the Jury may forget what the Court said to them of that Matter.

But notwithstanding all this, if the Prisoner was innocent, there could be no harm done to him, for his Innocence would defend him: This was a saying, and as mortal it was to *Fitzbarris*, to *Colledge*, to Colonel *Sidney*, to Mr. *Cornish*, and several others, as was the Letter © amongst the *Greeks*. It is true, my Lord *Coke* us'd the Expression, but in another Sense than that of late practis'd. I would fain know what they meant by the Expression; Is it, that no Man will or ever did swear falsely against a Prisoner in Treason? If that be true, how came the same Persons to be so violent against *Oates* for what he swore against *Ireland*? or do they mean, that, let an Accuser swear never so violently and circumstantially against a Prisoner, yet if he be innocent it will do him no harm? If that be true, I would fain know how the Prisoner shall escape; is it that his Innocence shall appear in his Forehead, or an Angel come from Heaven and disprove the Accuser? Neither of which we have observed, tho' all have said, and I believe, that some Persons have been very innocently executed. Or shall the Accuser be detected by the bare Questions of the Prisoner, that I think will not be neither; and therefore to instance in the only Person who hath of late escap'd in a Trial of Treason, where there was a Design against his Life, which was my Lord *Delamere*, if he had not had Witnesses to have prov'd the Persons mention'd to have been with him at the Place and Time sworn against him to be in other places, it was not his Denial had serv'd his turn, but he would have run the same Fate with my Lord *Brandon*. Nay, I am apt to think had he been tried by a Jury of Commoners pack'd, as at that time they usually were, he had not escap'd.

The truth is, when I consider the Practice of late Times, and the manner of Usage of the Prisoners, it is so very much like or rather worse than the Practice of the Inquisition, as I have read it, that I sometimes think it was in order to introduce Popery, and make the Inquisition, which is the most terrible thing in that Religion, and which all Nations dread, seem easy in respect of it. I will therefore recount some undeniable Circumstances of the late Practice: A Man is by a Messenger, without any Indictment precedent, which by the common Law ought to precede, or any Accuser or Accusation that he knows of, clapt up in close Prison, and neither Friend or Relation must come to him; he must have nei-

ther Pen, Ink or Paper, or know of what, or by whom he is accus'd; he must divine all, and provide himself a Counter-Evidence, without knowing what the Evidence is against him. If any Person advise or sollicite for him, unless assign'd by the Court by which he is try'd, they are punishable: He is try'd as soon as he comes into the Court, and therefore of a Solicitor there is no occasion or use; if the Prisoner desires Counsel upon a point of Law, as was done in my Lord *Ruffel's* Trial, the Counsel nam'd must be ready to argue presently, and the Court deliver their Judgment presently, without any Consideration. The Prisoner indeed hath Liberty to except to thirty-five of the Jury peremptorily, and as many more as he hath cause to except to, but he must not know beforehand who the Jury are; but the King's Counsel must have a Copy of them: He must hear all the Witnesses produc'd to prove him guilty together, without answering each as he comes, for that is breaking in upon the King's Evidence, as it is call'd; tho' it hold many Hours, as it happen'd in most of the Trials: he must not have any Person to mind him what hath been sworn against him, and forgotten by him to answer; for if that were allow'd, the Prisoner perhaps may escape hanging, and that is against the King: There is a Proclamation to call in all Persons to swear against him, none is permitted to swear for him; all the impertinent Evidence that can be given is permitted against him, none for him; as many Counsel as can be hir'd are allow'd to be against him, none for him. Let any Person consider truly these Circumstances, and it is a wonder how any Person escapes? it is downright tying a Man's Hands behind him, and baiting him to death, as in truth was practis'd in all these Cases. The Trial of *Ordeal*, of walking between hot Iron Bars blindfold, which was abolish'd for the Unreasonableness of it, tho' it had its Saying for it too, that God would lead the Blind fo as not to be burnt if he were innocent, was a much more advantageous Trial for the Suspected than what of late was practis'd, where it was ten to one that the Accus'd did not escape. If any of these things have been legally practis'd, I have nothing to say against it, but I have never read any thing of Common or Statute-Law for it. And I can with better Assurance say than any Person who hath practis'd these things, that no Law in *England* warrants them; and if not, then consider the Unreasonableness of these Methods.

There is yet one Objection to be answer'd, which being a very great Hardship upon the Prisoner, gives some colour of imposing other Hardships upon him, to wit, that a Witness cannot be examin'd for the Prisoner on his Oath in a Trial upon an Indictment of a capital Matter. It is not because the Matter is Capital, for then no Witnesses ought to be examin'd upon Oath for the Appellee in a capital Matter: Neither is it because it is against the King, for then no Witness ought to be examin'd on Oath for the Defendant in a Trial upon an Indictment of any criminal Matter; yet in Indictments of all criminal Matters, not capital, 'tis permitted to the Prisoner.

To say truth, never any Reason was yet given for it, or I think can be, if you believe my Lord

Coke, 3d *Instit.* fol. 79. of which Opinion my Lord *Hales*, * is, in his Pleas of the Crown, that that Practice is not warranted by any *Act of Parliament*, Book-Cafe, or antient Record, and that there is not so much as *scintilla Juris* for it; for he says, when the Fault is deny'd, Truth cannot appear without Witnesses. As for what is pretended, that it is swearing against the King, and therefore it is not allow'd; 'tis a canting Reason, which put into sensible *English*, a Man will be ashamed to own. And as slight is the Reason, that it being a matter of so high a moment as a Man's Life, the Prisoner will be the more violent and eager, and the Witnesses may be more prevail'd upon to swear falsely, more than they would be in a matter of less moment: The Weakness of that Reason hath been in part, and shall be further shewn. I think none will deny, but the End of Trials in any matters Capital, Criminal, or Civil, is the Discovery of Truth: Next, 'tis as necessary for the Prisoner to have Witnesses to prove his Innocence, as it is for the King to have Witnesses to convict him of the Crime; which Proposition is agreed by the Practice, it being always permitted, that the Prisoner shall produce what Witnesses he can, but they are not to be upon Oath. In the last place, since Truth cannot appear but by the Confession of the Party, or Testimony of Witnesses of both sides, it is necessary to put all the engagement as well on the Witnesses of part of the Prisoner, as of part of the King, to say the Truth, the whole Truth, and nothing but the Truth, as the nature of the Matter will bear: and as yet no better means has been found out than an Oath; which if deny'd to the *Prisoner's* Witnesses, either he is allow'd too great an advantage to acquit himself, or he is not allow'd enough.

If all that his Witnesses say without Oath, shall have equal credit as if they swore it, then he hath too much advantage; for Men may be found who will say falsely, what they will not swear, as is plain enough. How often doth a Defendant say, in a *Plea* at Law, that a Deed is not his, which yet in an answer in *Chancery*, he will confess to be his? If his Witnesses shall not have Credit because not sworn, to what Purpose then is it permitted him to produce them? If they shall have Credit, but not so much as if sworn, I ask how much Credit shall be given? Is it two, three or ten Witnesses without Oath shall be equivalent to one upon Oath? And besides, that Question never was or can be answered, what Credit shall be given them? There is an unreasonable Disadvantage put on the Prisoner, that a Witness produc'd on his part, of equal Credit with the Witness against him, shall not have equal Credit given him, because he is not on his Oath; whereas he is ready to deliver the same things on his Oath, if the Court would administer it to him: and yet that Difference was taken in *Fitzbarri's* Case, as to the Credibility of *Everard* and *Oates*, the first being upon his Oath, the last not.

I do not offer this as any Reflection upon the late Proceedings, but as a Reason why Matters in capital Proceedings ought not to have been carried further than heretofore they were, against the Prisoner by Example of so unreasonable a Practice.

But to return to the Trial of *Colledge*, which came on in the Afternoon, when the Attorney in-

* Tit. *Evidence*, p. 264.

sifted that the King's Witnesses ought not to be examin'd out of the hearing of each other; in which he was over-ruled, but the Rule not observ'd, nor was it material: for the King's Counsel having the Prisoner's Writings, and by them observ'd how he intended to make the Witnesses against him contradict themselves, they did not produce such Witnesses as were not instructed to concur in the Evidence of the same matter, but produc'd only such as were instructed to give Evidence of distinct matters. And therefore *Dugdale* was first produc'd, who gave Evidence of vilifying Words spoke of the King at several times, at *Oxford* and *London*, by the Prisoner, to himself alone; that he shew'd the Witnesses several scandalous Libels and Pictures, and said he was the Author of them; that he had a silk Armour, a brace of Horse-Pistols, and a Pocket-Pistol and Sword; that he said, *he had several stout Men to stand by him, and that he would make use of them for the defence of the Protestant Religion*; he said, *the King's Party was but an Hand-full to his Party*. *Stevens* swore the finding of the Original of the *Raree-Show* in the Prisoner's Chambers. *John Smith* swore his speaking scandalous Words of the King, and of his having his Armour; and that when he shew'd it the Witness, he said, *These are things that will destroy the pitiful Guards of Rowley*; that he said, *he expected the King would seize some of the Members of Parliament at Oxford; which, if done, he would be one should seize the King*; that he said, *Fitzgerald, at Oxon, had made his Nose bleed; but before long, he hoped to see a great deal more Blood shed for the Cause; that if any, nay, if Rowley himself, came to disarm the City, he would be the death of him*. *Haynes* swore he said, *Unless the King would let the Parliament sit at Oxon, they would seize him, and bring him to the Block*; and that he said, *the City had One thousand five hundred Barrels of Powder, and One hundred thousand Men ready at an Hour's warning*. *Turberville* swore, he said at *Oxford*, that *he wish'd the King would begin; if he did not, they would begin with him, and seize him*; and said, *he came to Oxford for that purpose*.

Mr. Masters swore, that in discourse between him and the Prisoner, he justified the Proceedings of the Parliament in 1640, at which the Witness wondred; and said, *How could he justify that Parliament that rais'd the Rebellion, and cut off the King's Head? To which the Prisoner reply'd, That that Parliament had done nothing but what they had just cause for, and that the Parliament which sat last at Westminster was of the same Opinion; that he call'd the Prisoner Colonel in mockery, who reply'd, Mock not, I may be one in a little time*.

Sir William Jennings swore as to the fighting with *Fitzgerald*, and the Words about his bleeding.

For the Prisoner.

Hickman said he heard *Haynes* swear, *God damn him*, he car'd not what he swore, nor whom he swore against, for it was his Trade to get Money by swearing. *Mrs. Oliver* said, *Haynes* writ a Letter in her Father's Name, unknown to her Father. *Mrs. Hall* said, she heard *Haynes* own that he was employed to put a Plot on the Dissenting-Protestants. *Mrs. Richards* said, she heard him say the same thing. *Whaley* said, *Haynes* stole a Silver Tankard from him. *Lun* said, *Haynes* said the Parliament were a Company of Rogues for not giving the King Money, but he would help the King to Money enough out of the *Fanaticks* Estates. *Oates* said, *Turberville* said, a little before the Witnesses were sworn at the *Old-Bailey*, that he was not a

Witness against the Prisoner, nor could give any Evidence against him: And after he came from *Oxford*, he said, he had been sworn before the Grand-Jury against the Prisoner, and said, the Protestant Citizens had deserted him, and *God damn him*, he would not starve. That *John Smith* said, *God damn him*, he would have *Colledge's* Blood. That he heard *Dugdale* say, that he knew nothing against any Protestant in England; and being tax'd, that he had gone against his Conscience in his Evidence, he said, it was long of Colonel *Warcup*, for he could get no Money else; that he had given out that he had been poison'd, whereas in truth it was a Clap. *Blake* said, that *Smith* told him *Haynes's* Discovery was a Sham-Plot, a Meal-Tub Plot.

Bolton said, *Smith* would have had him given Evidence against *Sir John Brooks*, that *Sir John* should say there would be cutting of Throats at *Oxford*, and that the Parliament-Men went provided with four, five, six, or ten Men a-piece; and that there was a Consult at *Grantham*, wherein it was resolv'd, that it was better to seize the King than to let him go, whereas he knew of no such thing; that he would have *Bolton* to be a Witness against *Colledge*, and told him what he should say, left they should disagree in their Evidence; that he heard *Haynes* say, he knew nothing of a Popish or Presbyterian Plot, but if he were to be an Evidence, he car'd not what he swore, but would swear any thing to get Money. *Mowbray* said, *Smith* tempted him to be a Witness against *Colledge*, and was inquisitive to know what Discourse passed betwixt him and my Lord *Fairfax*, *Sir John Hewly*, and *Mr. Stern*, on the Road; and said, that if the Parliament would not give the King Money, and stood on the Bill of Exclusion, that was Pretence enough to swear a Design to seize the King at *Oxford*.

Everard said, *Smith* told him he knew of no Presbyterian or Protestant Plot, and said, *Justice Warcup* would have persuaded him to swear against some Lords, a Presbyterian Plot, but he knew of none; he said, *Haynes* told him it was Necessity and hard Pay drove him to speak any thing against the Protestants; and being question'd how his Testimony agreed with what he formerly said, answer'd, he would not say much to excuse himself; his Wife was reduc'd to that necessity, that the begg'd at *Rouse's* Door, and mere Necessity drove him to it, and Self-preservation, for he was brought in guilty when he was taken up, and was oblig'd to do something to save his Life, and that it was a Judgment upon the King or People; the *Irishmens* swearing against them was justly fallen on them, for outing the *Irish* of their Estates.

Parkhurst and *Symons* said, they had seen at *Colledge's* House his Arms, about the latter end of *November*. *Yates* said, *Dugdale* bespoke a Pistol of him for *Colledge*, which he promis'd to give *Colledge*. And upon Discourse some time after the *Oxford* Parliament, *Yates* said, *Colledge* was a very honest Man, and stood up for the good of the King and Government. *Yes*, said *Dugdale*, *I believe he does, and I know nothing to the contrary*. *Deacon* and *Whitaker* said they knew *Colledge* was bred a Protestant, and went to Church, and never to a Conventicle that they knew of, and thought him an honest Man. *Neal*, *Rimington*, *Janner*, and *Norris*, to the same purpose; and *Norris*, that *Smith* (in company where was Discourse of the Parliament-Mens being agreed to go to *Oxford*) said, he hoped they would be well provided to go, if they did go. *El. Hunt* said, a Porter, in her Master's absence,

brought the Prints taken in *Colledge's* House eight Weeks before; and said, *Dugdale* told her, after her Master was in Prison, he did not believe *Colledge* had any more hand in any Conspiracy against his Majesty, than the Child unborn; and he had as lieve have given an hundred Pounds he had never spoke what he had; and that he had nothing to say against her Master, which would touch his Life.

Having summed up all the material part of the Evidence in the order it was given, for or against the Prisoner; let us see whether, upon the whole, an honest understanding Jury could, with a good Conscience, have given the Verdict the then Jury did; or whether an upright Court could, with a good Conscience, have declar'd they were well satisfied in the Verdict given, as all the four Judges in that Case did, though the Chief Justice *North* only spoke the Words. And though it is too late to advantage the deceased, yet it will do right to the memory of the Man, to whose dextrous Management on his Trial, many now alive owe the continuance of their Lives to this day. It was not their Innocence protected the Lord *Fairfax*, Sir *John Brooks*, and many others before-mention'd, and many not named in the Trial, but *Colledge's* baffling that Crew of Witnesses, and so plainly detecting their Falshood, that the King's Counsel never durst play them at any other Person but the Earl of *S Shaftesbury*, as shall be shewn; and failing there, they were paid off, and vanish'd, and never did more harm visibly: what under-hand Practices they might be afterwards guilty of, I know not.

Who could believe any one of those four Witnesses, *Dugdale*, *Haynes*, *Turberville*, and *Smith*, if it were for no other Reason than the improbability of the thing; for (as *Colledge* said) was it probable he should trust things of that nature with Papists, who had broke their Faith with their own Party, who could lay greater Obligations of Secrecy upon them than he was able to do? That he, a Protestant, should trust People who had been employed to cut Protestants Throats? And neither of them ever discovered any of the things they swore, till after the *Oxford* Parliament, tho' most of them were pretended to be transacted and spoken before.

Who could believe *Dugdale* in any of his Evidence against the Prisoner, when *Oates* testified against him, that he said he knew nothing against any Protestants in *England*? And being tax'd by *Oates*, that he had gone against his Conscience in his Evidence against *Colledge* to the Grand-Jury at *London*, he said, *It was long of Colonel Warcup, for he could get no Money else*; which was a plain Confession he had sworn wrong, and of the Cause for which he did it, and of the Person who induced him to do it. That he had given out that he was poison'd, whereas his Disease was a Clap; which was an ill thing in him, as it imply'd a Charge of poisoning him on other Persons. And when *Elizabeth Hunt* testified against him, that he said, after *Colledge* was in Prison, that he did not believe *Colledge* had any more hand in any Conspiracy against the King, than the Child unborn; and that he had as lieve have given an hundred Pound he had never spoken what he had; and that he had nothing to say against *Colledge* which could touch his Life: And when *Yates* testify'd against him, that when *Yates* said *Colledge* was an honest Man, and stood up for the good of the King and Go-

vernment; *Yes, said Dugdale, I believe he does, and I know nothing to the contrary.*

Who could believe *Haynes* in any part of his Evidence against the Prisoner, when Mrs. *Hall* and Mrs. *Richards* said, he own'd he was employ'd to put a Plot upon the Dissenting Protestants? when *Wbaley* testified against him that he was a Thief, and had stole *Wbaley's* Tankard? when *Lan* testify'd that *Haynes* said the Parliament were a Company of Rogues, for not giving the King Money; but he would help the King to Money enough out of the *Fanaticks* Estates? when *Hickman* testified against him he heard him say, *God damn him*, he car'd not what he swore, nor against whom he swore, for 'twas his Trade to get Money by swearing? when Mrs. *Oliver* said, that he had writ a Letter in her Father's Name, without her Father's knowledge? when *Bolron* testify'd against him, that he said he knew nothing of a *Popish* or a *Presbyterian* Plot, but if he were to be an Evidence, he cared not what he swore, but would swear any thing to get Money? when *Everard* testified against him, that he said, Necessity and hard Pay drove him to say any thing against the *Protestants*; and being tax'd that his Evidence against *Colledge* agreed not with what he had formerly said, he said, *he could not excuse it, but his Poverty and Self-preservation drove him to it?* which was a plain Confession of the falshood of his Evidence, and of the reason of it; and added, it was a judgment upon the King or People, the *Irishmens* swearing against them, for outing the *Irish* of their Estates: which can have no other Sense, than the *Irishmens* forswearing themselves against the *English* was a Judgment, &c.

How could *Turberville* be believed in any part of his Evidence against *Colledge*, when *Oates* testified against him, that he said, a little before the Witnesses were sworn against *Colledge* at the *Old-Bailey*, that he was not a Witness against him, nor could give any Evidence against him; and yet afterwards, at *Oxon*, *Turberville* told him he had sworn against *Colledge* to the Grand-Jury, and said, the Protestant Citizens had deserted him, and *God damn him he would not starve*: which Words, I think, need no Explanation.

And lastly, How could *Smith* be believed in any part of his Evidence against the Prisoner, when it was testified against him by *Blake*, that he said *Haynes's* Discovery was a Sham-Plot, a Meal-Tub-Plot? The meaning of the Words, I think, are well known: That he would have had *Bolron* swear against Sir *John Brooks*, the Lord *S Shaftesbury*, and *Colledge*, Things of which he knew nothing, and told him what he should swear, lest they should disagree in their Evidence. When it was testified against him by *Oates*, that he said, *God damn him*, he would have *Colledge's* Blood? when it was testified against him by *Mowbray*, that he tempted *Mowbray* to be a Witness against *Colledge* and Sir *John Brooks*, and was very inquisitive to know what Discourse he had with the Lord *Fairfax*, Sir *John Hewly*, and Mr. *Stern*, on the Road to *Oxon*; and said, if the Parliament did not give the King Money, but stood on the Bill of Exclusion, that was pretence enough to swear a Design to secure the King at *Oxon*? when *Everard*, and many others testified he said he knew of no *Presbyterian* or *Protestant* Plot. Now if *Colledge's* Witnesses were credited, it was impossible the King's Witnesses could be credited; that was agreed by the Court

to be true upon the Trial. The Answer on the Trial was, that the King's Witnesses were on their Oaths, the Prisoner's were not; which was a Reason in Words, but not in Sense.

And surely what Colledge said on that matter, without any knowledge in the Law, cannot be answer'd. *It is not fair dealing*, said he, *with a Man for his Life, because the Witnesses against him, upon their Oaths, deny the things the Witnesses for him prove; therefore the Witnesses against him must be believed, and the Witnesses for him disbelieved, when yet the Witnesses for him were ready, on their Oaths, to maintain what they said for him.*

Nor is the Law so: for taking the Law to be, that a Witness for the Prisoner shall not be sworn, which is only made good by practice; the same Law, that is to say Practice, is, that a Witness without Oath, for the Prisoner, is of equal Credit with the Witness against him upon Oath, and none can shew the contrary till of late days.

To give one Example of many, where it was necessary for the Prisoner to produce a Witness to prove his Innocency, and where the Witness for him was as much believed as the Witness against him: There was a Person, whose Name I do not remember, arraign'd (at the same time that an Indictment of High-Treason was endeavour'd to be found against the Lord *Shaftesbury*) for robbing another of Money, and of a hired Horse, of which likewise the Person was robb'd. The robbing of the Money and a Horse was prov'd by himself, and several others; but that the Prisoner was the Person that committed the Robbery, none positively swore but the Person robb'd; who likewise swore, that the Horse on which the Prisoner was taken, was the Horse taken from him; against which the Prisoner prov'd, by the Person of whom the Horse was agreed to be hired, that the Horse the Prisoner was taken upon, was not the Horse he let to hire to the Person robb'd; whereupon the Prisoner was acquitted; and yet the Prisoner's Witness was not on his Oath, and the Person robbed was on his Oath: which, besides that it proves the matter for which it is brought, shews the Folly, as well as Injustice of the Practice of imprisoning Men, without letting them know for what, and without confronting them with the Witnesses against them, upon the Commitment. For how could this Man have known what Witnesses to produce, unless he had known what in particular he was indicted for? and how could he have sent to such Witnesses, unless he had had the liberty of sending to the Persons who were to be Witnesses for him? And it shews the Folly of those Sayings, that a Man's Innocence must defend him, and that the Evidence against the Prisoner must be as clear as the Sun at Noon-day. All will agree that the Prisoner in this Case was innocent, and yet that alone, without producing a Witness to prove his Innocence, would have stood him but in little stead; and how could he have known what sort of Evidence to have ready, unless he knew what he was accus'd of?

I do not mean what Crime he was accus'd of, as Treason, Murder, Robbery, Theft, or any other Crime; but unless he knew the Person robbed, when, where, and other Circumstances; which, say some, is not to be permitted in Prosecutions of High-Treason; for if so, then no Man shall be hang'd for High-Treason; unless there was as strong proof against him, as is requir'd in any Indictment of any capital Matter: and that, they say, is not to be expected in Treason; for no Man

will call two Witnesses to be Evidences of his Words or Actions, being Overt-Acts of his Design of High-Treason. The Objection is too foolish to be answer'd; for it is neither better nor worse, than that if a Man shall not be hang'd for Treason without Evidence, he shall never be hang'd for Treason; for no Evidence, and Evidence which the Law rejects, is the same in Sense, though different in Words: and as the Intent of the Mind is difficult to prove on the part of the King, so is the Prisoner's part of producing Counter-Evidence much more difficult; and therefore the Law hath taken care, by the Statute of *Edward the Third*, that the Intent shall be prov'd by an Overt-Act; and by the Statute of *Edward the Sixth*, that that Overt-Act shall be proved by two Witnesses. And therefore, since the Law hath taken care that there shall be a stricter proof in High-Treason than in any other Crime, for the Judges to say a less proof may be admitted to convict one of High-Treason than of any other Crime, is very ridiculous; unless they will at the same time say, that the Parliament, who made those Statutes, were Men of little Understanding, and not to be regarded. And certainly, it was a good Counter-Evidence which was given in behalf of the Prisoner, by some Witnesses, though slighted by the Court, and not permitted by the Court to be given by others, that there were great Endeavours to set up Sham-plots, and charge the *Protestants* with them: For let any one shew me a Reason, why the Evidence of Sham-plots, though they do not immediately concern the Prisoner, is not as good Evidence for him, as the Evidence of a real Plot, in which he was not concerned, is against him. The last was permitted to be given in Evidence against my Lord *Ruffel*, Col. *Sidney*, and others; though the first was not permitted to many Witnesses in this Trial, and it was a material Objection which Colledge made, *That there was no proof of any Persons being concerned with him in the Design of seizing the King.*

It was an unadvised Answer the Court gave, that he alone might be so vain as to design it alone: For if from thence an Inference is made, as was insinuated by the Court to the Jury, that therefore he did alone design it, it was an Evidence of his being a Mad-man, not a Traitor. Had the Evidence been of the mischieving the King by means which a single Person is capable of using, as Stabbing, Shooting, and the like, the matter is not impossible; but it being by means which it is impossible for a single Person to execute, it carries such disbelief with it, that it is impossible to find a Man in his Senses at the same time guilty of it. And a Man that is *non compos Mentis*, if my Lords *Coke* and *Hales* are to be believ'd, cannot be guilty of High-Treason within that Branch of the Statute, *compassing and imagining*, &c.

It is true, a Mad-man may be guilty of Treason, in attempting the King's Person; but for that he is no more said to be punish'd, than Beasts of Prey are when kill'd; which are more properly said to be destroy'd than punish'd for the publick good. But if so good a Counter-proof in Colledge's Case was not made, as ought to have been, some Allowances ought to be made for the Prisoner's ignorance of what he was accus'd of, his usage and strict Imprisonment before his Trial, the rubbing him just before his Trial in the manner before declar'd, the depriving him of his Notes, the giving an Evidence of many Hours long against him, before he was permitted to answer any part of it. And

the use of Pen, Ink, and Paper, was but of little advantage to him; for a Man that hath not been used to do it, cannot take Notes of any use. And in truth, he complain'd he had not taken Notes of half said, but relied on the Court to do him justice in summing up the Evidences; which they promised to do, but broke their Words,

It must likewise be consider'd, that the concern a Man hath upon him, when he is upon Trial for his Life, is so far from fortifying, that it weakens his Memory: Besides, the foul Practise, without any remorse, put upon him and his Witnesses; some of them imprison'd, that he could not have them at the Trial; others so threaten'd, that they durst not appear for him, and the Cry of the Auditory against him and his Witnesses, were mighty Discouragements. All these things being consider'd, how could any understanding Jury take it on their Oaths, *That the Evidence against the Prisoner, of a Design to seize the King, &c. was as clear as the Sun at Noon-Day?*

As for the Evidence which Mr. *Masters* gave, if it were true, it was no Evidence of Treason; an erroneous Opinion may make an *Heretick*, but not a Traitor: it is a very distant Consequence, that because he affirm'd that the Parliament in Forty had done nothing but what was just in respect of King *Charles* the First, therefore the Prisoner was guilty of a Design against King *Charles* the Second: Besides, that in all Probability, tho' Mr. *Masters* might inveigh against the Parliament, *Colledge* might only justify them, by throwing the ill things done in that time upon the *Papists*, as *Colledge* in his Defence says; and Mr. *Masters*, after much pumping, recollected himself, and said he thought the Prisoner said, the *Papists* had a hand in those things; which prov'd the Truth of *Colledge's* Assertion.

As for the Evidence of *Colledge's* saying he might be a Colonel in time; if he hoped for what he said, it was no Crime, or Proof of a Crime, 'tis no more than what every Soldier hopes for, and he himself had been one.

As for the Evidence of *Atterbury*, *Sawel*, and *Stevens*, of their seizing the Pictures; admit they swore true, it did not amount to the Proof of the Treason: And yet if *Colledge's* Maid said true, it looks as if the Finders or some other Person sent them to *Colledge's* House, in order to find them there.

Of all Sorts of Evidence, the finding Papers in a Person's possession is the weakest, because no Person can secure himself against Designs upon him in that kind. And after *Dangerfield's* Design upon Colonel *Mansel*, and the Evidence in *Fitzbarris's* Trial, that the Design of that Pamphlet was to convey Copies of it into some Members of Parliament's Pockets, and then seize them, that piece of Evidence ought to have been spar'd, till those and other Practices of like kind had been forgotten.

The last Witness was Sir *William Jennings*, of *Colledge's* saying he had lost the first Blood in the Cause, but it would not be long before more would be lost; what was that more, than that he thought more would be lost in the Cause, which he interpreted the Protestant Cause? Suppose he thought so without Reason, and was mistaken, where was the Crime? But if he thought so upon good Reason, and good Reason he had to think so, there was no pretence of a Crime in

it. I believe most Men thought as *Colledge* did, from the time of the Business of *Fitzbarris*; and what Imputation was it to him? Why were not all the Expressions he us'd in his Trial as good Evidence against him as that Saying? For he then said, it was an horrid Conspiracy to take away his Life, and would not stop at him, for it was against all the Protestants of England, and the like; which was his Opinion, and After-times shewed him a true Prophet.

One thing was very dishonestly insinuated, that the Prisoner was a *Papist*, which was only to incense the Jury against him, and it had its Effect; whereas it was very plain that he was a *Protestant*, tho' perhaps a Dissenter, and therefore had not lately come to the publick Church; and under that notion the *Papists* and some *Protestants* were contented that Dissenters should be punish'd as *Papists*; yet if they could have prov'd him a *Papist*, no doubt they would have done it, for the Destruction of the Man was the Design of the Prosecution, and it matter'd not for what Treason he was convicted, so he was convicted. And he himself gave a pretty sort of Evidence against himself, if they could have prov'd him a *Papist*: he prov'd, and confess'd, he was educated a *Protestant*; and if they could have prov'd him reconcil'd to the *Papish* Religion, which was Treason, he help'd them a great deal in their Proofs: It was therefore very disingenuous in the Chief Justice to reproach him at his Condemnation, that he had not made that Proof of his Religion as it was expected, when his Religion was not the Matter of which he was indicted; that was slyly insinuated to exasperate, and no Proof pretended to be made of his being a *Papist*. But he had more Reason to complain of the Injustice of the Court in summing up the Evidence, who did it in such a manner, that if they had been Counsel for the Prisoner, as they pretended, they would have been justly suspected to have taken a Fee of the other side to betray their Client.

For, as *Colledge* readily said, if the Chief Justice had looked on his Notes, he would have found more Evidence against *Turberville*, and *Dugdale*, than he had repeated. And it was a lame Excuse for the Chief Justice to say, he refer'd it to the Memory of the Jury, for he could not remember more; when, as I dare say, after about thirteen Hours Evidence, the Jury remember'd no more, than that they were to find him Guilty.

The truth is, upon the whole, what *Colledge* said was true; they took away all Helps from him for defending himself, and therefore they had as good have condemn'd him without a Trial. Notwithstanding all which, the Courage of the Man never faint'd, but after he was condemn'd, boldly ask'd, when he was to be executed? To which the Lord Chief Justice reply'd, it depended on the King's Pleasure; but smoothly said, in those Cases of High Treason they did not use to precipitate the Execution, it should not be so sudden but that he should have Notice to prepare himself. And in truth he had from the eighteenth, on which he was condemn'd, to prepare himself, to the one and thirtieth of August 1681, on which he was executed; a much longer time than was allow'd my Lord *Ruffel*, or Mr. *Cornish*, and many others. And the true Reason of so long a Reprieve, was to see how the Nation would digest the matter, and whether the Man by the Terror

of Death could be prevail'd upon to become a Tool to destroy other Innocents: But when it was found that the People were quiet, and that the Prisoner could not be prevail'd upon to do an ill thing to save his Life, his Execution was order'd; yet as a shew of Mercy, his Quarters were permitted to be bury'd; a Favour he slighted, with saying that he car'd not whether he was eaten up with Flies or Worms. The same Favour was likewise shewed *Fitzbarris*, but the true

Reason of both was, That they had a mind that the Trials and pretended Crimes, for which *Fitzbarris* and *Colledge* were condemned, should be forgotten; which would not be so soon done, if their Quarters were always expos'd to view. But tho' all People were quiet, yet there was great grumbling, and most honest Men were afraid; and the Constancy of *Colledge* at his Execution was such, that it made the most violent against him relent.

Remarks on the Earl of Shaftesbury's Grand Jury.

THE next Person question'd was the Earl of *Shaftesbury*, against whom a Bill of High-Treason was prefer'd to the *Grand-Jury*, at the *Sessions-House*, on the 24th Day of *November* 1681. The Evidence was publicly given in Court, and was this; Mr. *Blatwaite* swore he found the Papers then produc'd in a Velvet Bag in the great Trunk, which was taken by Mr. *Gwynne* in the Lord *Shaftesbury's* House. Mr. *Gwynne* swore all the Papers in the Velvet Bag, when he deliver'd them to Mr. *Blatwaite*, were taken by him in the Lord *Shaftesbury's* House: Sir *Leoline Jenkins* swore, the Paper produc'd was the Paper deliver'd him by Mr. *Blatwaite*, and it was unalter'd. Then the Paper was read, the Effect of which was a Project of an *Affociation* sign'd by no Person, and whose Hand-writing it was, none knew. *John Booth* swore, that he was engag'd to Captain *Wilkinson*, who pretended to have a Commission from the Lord *Shaftesbury* and several others to go for *Carolina*; he was about that time introduc'd into the Earl's Acquaintance by the Captain, where was a Discourse about *Carolina* Business; he was four or five times between *Christmas* and *March*, with the Earl and the Captain: that the Captain told him he was to command fifty Men to be the Earl's Guard at *Oxon*, and would have had him to be one: That if the King did not consent to several *Acts* of *Parliament* and other Things, they were to purge the *Guards* and *Court* of several Persons; and tho' the Captain told him that first, afterwards he heard the *Earl* say the same things, particularly about a Week or ten Days before the Parliament sat at *Oxon*, he gave some Intimation of this to *Walter Banes*, and then writ it down, and sent it to the Council sealed in a Cover. *Turberville* swore, that the Lord *Shaftesbury* said about *February*, there was but little good to be done which the King as long as his Guards were about him. *Smith* testify'd a great deal of Discourse between him and the Lord *Shaftesbury* of something said reflecting on the King; and that he should say, that if the King should offer any Violence to the *Parliament* at *Oxford*, he would meet with a strong Opposition, for that the Gentlemen, who came out of the Country, came well provided with Horse and Arms to oppose, and that they might lawfully do it, if he offer'd any Violence to them whilst they sat. *Haynes* swore, that the Earl said if the King did not give *Haynes* his Pardon, he and others would raise the Kingdom against him; that *Haynes* gave the Earl an

exact Account of Transactions since King *Charles* the First's coming to the Crown, and that the Earl said the Duke of *Buckingham* had as much Right to the Crown as any *Stuart* in *England*. *John Macnamarra* said, the Earl said, the King was *popishly affected*, and took the same Methods his Father did, which brought his Father's Head to the Block, and they would bring his thither; and this was said in the Presence of *Ivey*, and he thought of his Brother; and said, the King deserv'd to be depos'd as much as King *Richard* the II^d. *Dennis Macnamarra* likewise testify'd the last Words, and that it was the latter end of *March*, or beginning of *April*. *Ivey* said, the Earl said, if the King deny'd *Haynes* a Pardon, they would rise upon him and force him to give one, and that they design'd to depose him and set up another in his stead. *Bernard Dennis* said, he had a great deal of Discourse with the Earl, who bid him speak to his Friends in *Ireland* to be in a readiness to assist the Commonwealth of *England*, for they intended to have *England* under a Commonwealth, and extirpate the King and his Family

Then the Court told the Jury the Indictment was grounded on the Statute of King *Charles* the II^d, but they ought to consider of that Statute, as also the 25th of *Edward* III^d.

The Question is, whether the *Grand Jury* ought to have found the Bill on this Evidence. First it ought to be consider'd, what the Duty of a *Grand Jury* is; and I think it is not what the *Chief Justice* * said, to consider only whether there be probable ground for the King to call the Person accus'd to an account, much less do I think that the reason of finding a Bill by the *Grand Jury* was for the Honour of the King, or Decency of the Matter, lest Persons accus'd should be call'd to an account by the King, where there is no kind of Suspicion of the Crime committed by them, as the Court said, (which last Matter was never assign'd as a Reason of finding a Bill by the *Grand Jury* before) but I take the Reason of a *Grand Jury* to be this, that no Man for a capital Matter shall ever be question'd by the King, unless a *Grand Jury* take it on their Oaths that they believe the Matter of the Accusation true; I put an Emphasis on the Words question'd by the King.

It is true, it is generally said, that the Business of a *Grand Jury*, in capital Matters, is *in favorem vite*; but that taken simply is not true, for then

* Sir Francis Pemberton.

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what Reason can be assign'd, why a Man shall be arraign'd on an Appeal of Murder, Robbery or the like, which touches his Life, as much as an Indictment of those Crimes, without having the Matter of the Appeal first found to be true by a *Grand-Jury*? But the true Reason of a *Grand-Jury* is the vast Inequality of the *Plaintiff* and *Defendant*, which in an Indictment is always between the King and his Subjects; and that doth not hold in an Appeal, which is always between *Subject* and *Subject*: and therefore the Law in an Indictment hath given a Privilege to the Defendant, which it hath done in no other Prosecution, on purpose, if it were possible, to make them equal in the Prosecutions and Defence, that equal Justice may be done between both. It considers the *Judges*, *Witnesses* and *Jury* are more likely to be influenc'd by the King than the Defendant; the *Judges* as having been made by him, and as it is in his Power to turn them out, punish, to prefer or reward them higher; and tho' there are no just Causes for them to strain the Law, yet there are such Causes, which in all Ages have taken place, and probably always will. This was the Reason of running *Prerogative* so high in their Judgment of *High-Treason* before the *Stat. of Ed. III.* that no Man, as that Statute says, knew what was not *High-Treason*: This was the Reason of expounding that Statute oftentimes between the making of it, and the making of the Statute of Queen *Mary*, that People were at as great a loss, till the last Statute, as they were before the making of the first; and even since the Statute of Queen *Mary*, the Exposition on the Statute of *Ed. III.* has been so extravagant and various, that People are at this day as much at a loss to know what is not *High-Treason*, as they were before the Statute of *Ed. III.* Nor was it, nor is it possible, but that the great Power of enriching, honouring, rewarding and punishing lodg'd in the King, always had, and yet must have an Influence on the *Witnesses* and *Jury*; and therefore it is that the Law has order'd, that at the King's Prosecution, no Man shall be criminally question'd, unless a *Grand-Jury*, upon their own Knowledge, or upon the Evidence given them, shall give a Verdict, that they really believe the Accusation is true.

I own, of late Days, they have said the Duty of the *Grand-Jury* is to find, whether the Accusation be probable or no. But that Saying is warranted by no positive Law, or ancient Authority; and therefore the Duty of the *Grand-Jury* must be founded in the Oath administer'd to them, which is as strict as the Oath administer'd to the *Petit-Jury*: and to say truth, the Verdict of the *Petit-Jury* takes credit from the Verdict of the *Grand-Jury*; which is not only the Reason of the Difference in the Names of the two Juries, but is likewise the Reason why an Attainr for a false Verdict doth not lie against a *Petit-Jury*.

The Oath of the *Grand-Jury*, is, *To present the Truth, the whole Truth, and nothing but the Truth*: The Oath of the *Petit-Jury* is, *well and truly to try, and true Deliverance make, between the King and the Prisoner at the Bar, &c.* which signifies the same thing as to present the Truth, &c. It is true, some Reasons have been offer'd, which, if consider'd, are Words without Sense; as that the Presentment of the *Grand-Jury* is but in order to bring the Prisoner to his Trial, and he not before the *Grand-Jury* to make his Defence himself: but that can be no Reason why Probabilities should satisfy the Jury,

because it doth not answer the Design of the Law, which will have a Man convicted by the positive Oaths of two Juries, consisting of more than twenty-four, in all Indictments.

Next, why is a *Grand-Jury* compos'd of more substantial and understanding Men than a *Petit-Jury*, if their Business be mere Formality, or a Matter of less Weight than the Business of a *Petit-Jury*? In the last place, why is less Evidence requir'd to convict a Man in his absence, than is requir'd to convict him if present? It is far from an Argument, that less Evidence is requir'd to convict one if absent, than if present, that it seems to me that more Evidence should be requir'd to do it. Men may, and often do make very fair Stories in the absence of a Person accus'd, that when present, he easily answers; and there being no positive Law for the Direction of a *Grand-Jury* in that matter, a *Grand-Jury-man* is excusable, nay, it is his Duty to give a Verdict according to the plain understanding of the Words of his Oath, which is to present the Truth, as far as he is convinc'd of it; and that Truth must be found according to his Knowledge, or as it is represented to him by Witnesses.

And as for the Witnesses, they must be Persons of Credit; and all Persons are suppos'd to be so, unless the *Grand-Jury* know the contrary, or have been so credibly inform'd. 'Tis true, a *Grand-Jury* ought not to believe *Coffee-house* Stories, or light Stories; but common Fame by credible Persons, which is *Vox Populi*, ought to prejudice them against a Witness, so as to disbelieve him: and it is no Answer to say, as the *Chief Justice* in this Case said, that the Credibility of the Witnesses is not to be consider'd by the *Grand-Jury*, because the King is not present to defend the Credit of his Witnesses: tho' the Fact in that Case was not true, for the King's Attorney, Solicitor and Counsel were present, and I think the King is no otherwise present at any Criminal Prosecution; and the Jury knew by *Colledge's* Trial, and by *Wilkinson's* Depositions before the King, that the Evidence of all the Witnesses produc'd, except what were to the Paper, was question'd, but even that was afterwards quitted by the Court, when it would not be swallow'd by the *Grand-Jury*: for afterwards the Court told them, that if they of their own Knowledge knew any thing against the Witnesses, they might consider of it, but not of what they were credibly inform'd by others. And, besides the Credibility of the Witnesses, the Possibility or Probability of the thing sworn is to be consider'd by the *Grand-Jury*; an impossible thing they ought not to believe, though sworn by never so many credible Witnesses, and a very improbable thing they cannot positively on their Oaths swear they believe.

And not only the Fact, but what the Crime of the Fact alledg'd in the Bill of Indictment, the *Grand-Jury* as far as they are capable of judging Matter of Law, ought to consider; so they were told in the Charge given them. 'Tis true, if they were ignorant in the Law, and the Court in their Directions misled them, as if the Court should tell them stealing a Horse is High-Treason, and the *Grand-Jury* find it accordingly, it is excusable in the *Grand-Jury*, though punishable in the Court. But wrong Directions by the Court, in finding a Fact where there is no Evidence, do not excuse the *Jury*.

Now, to examine the Matter in hand by these Rules, could any Person who knew my Lord *Shaftesbury*, or that had heard of, or believ'd his Character

rafter to be what it was, believe that it was possible for him to discourse with the Witnesses at the rate they swore, to some of them at the first, to others of them the second time he saw them; to discourse of Matters of Policy, with *Booth* at one time, and afterwards with *Haynes*, and afterwards with *Macnamarra*, Fellows of so little Sense, that he would have been ashamed to have entertain'd them in the meanest Office about him; and yet as they pretended, he makes them his Privadoes in the Secret, of not so much what he would have had them, but of what he intended himself to do?

Who could believe any thing, *Turberville*, *Smith* or *Haynes* should say, where there was so much of their Falshood, and of their Designs to swear falshly, prov'd against them in *Colledge's* Trial? or of *Ivey* and the three *Macnamarra's* after that Trial, who, though they were not produc'd at it, because the King's Counsel by *Colledge's* Notes saw he was able to falsify them, yet some Witnesses in that Trial prov'd their Design of swearing falshly?

Who could believe *Booth's* Story of lifting so many Men under *Wilkinson*, to be at my Lord *Shaftesbury's* dispose at *Oxon*, after *Colledge's* Trial, and after what *Wilkinson* had testify'd to the King and Counsel, though not then prov'd to the *Grand Jury*?

A Judge indeed cannot take notice of any thing not prov'd (though he may and ought to be a Witness, if he knew any thing material of the Matter try'd before him and others) but a *Grand Jury* may take notice of any thing they know or believe. The Passages at *Colledge's* Trial were pretty notorious, being authentically publish'd by *Fra. North*, and the Examination of *Wilkinson* by as authentick a Paper.

It was unaccountable, that the Witnesses conceal'd what they heard the Earl speak so long, of which none of them pretended to give any Reason; nor was it any Excuse to those who sign'd a Petition to the City, in which they suggested they were tempted to swear against their Consciences, to say they knew not what was in the Petition: he that sets his Hand to a thing as if he assented to it, but doth not, is a Man of Falshood. Suppose one sets his Hand to a Bond, said to be seal'd and deliver'd, not having seen it seal'd and deliver'd, is not he guilty of little less than *Forgery*? But admitting those Witnesses had sworn Truth, yet the Jury ought not to have found the Bill; for they ought to find the Bill true according to all the material Circumstances of it, as well as the Substance of it, which was *High-Treason*. One material Circumstance of it was, that it was said to be High-Treason within the Statute of *Charles II.* And that made another Circumstance of the Indictment material, which was the time when that Treason was committed; because by that Statute the Prosecutions of Treason on that Statute ought to be within six Months after it is committed, and the Indictment ought to be within three Months after the Prosecution: and he being imprison'd in *July*, and the Bill suggesting that the suppos'd Treason was committed the 18th of *March* before, and divers other times, both before and after, which might be interpreted to have been after the Prisoner's Commitment; had the Jury found the Bill as laid, they had found the Treason

to have been committed, not only within the time the Prosecution by that Statute ought to be, but also within the time the Indictment ought to have been prefer'd; whereas in truth the Earl had been imprison'd above three Months before the Indictment prefer'd, and there was no Evidence of any Treason committed by him after his Imprisonment: and therefore the finding the Bill as laid had been injurious, to bring a Man in question for his Life on that Statute, whereas by Law he ought not to have been.

For it was resolv'd in *Colledge's* Case, that the Prosecution for Treason on that Statute ought to be within six Months, and the Indictment within three Months, though the Court was of another Opinion in the Lord *Ruffel's* Trial.

And that this Indictment was on that Statute, was expressly said to the *Grand Jury*, and upon good Reason; for the Court in their Charge said, that the Intention of levying War, or designing to imprison the King, was not Treason, till the Statute of *Charles the Second*; though in the Lord *Ruffel's* Trial it was held to be Treason by the Statute of *Edw. III.* and therefore the time of the Treason committed was material to be found by the *Jury*.

As for the Writing found in the Earl's Study, it was no manner of Evidence of Treason, admitting what the Witnesses swore as to the finding it to be true; because it was not prov'd that it was prosecuted or compos'd by the Earl of *Shaftesbury*, or by his Order, and that piece of Evidence was in that particular a meer Original.

In *Fitzbarri's* Case, it was prov'd the Libel was compos'd by his Direction; Colonel *Sidney's* Book was prov'd to be like his Hand; it was pretended that *Colledge* said he was the Author of the *Rarce-Show*, and no Example of this Evidence was ever made use of before.

Neither was it Evidence of Treason as to the Matter, for there was not one Word against the present King, but his Successor, if he should be such a Person.

It is true, one of the King's Counsel said that one Passage in it was, that they would join to destroy the Mercenary Forces about *London*, and thence infer'd it was downright levying War against the King and his Guards; whereas there is not any such word or thing in the Paper as he pretended to cite; and if it had been in the Paper, it would have been but Evidence of a Treason within the Statute of the late King. And then the time of Writing it, ought to have appear'd; and if that had been clear'd, yet for the above Reasons it was no Evidence: and the *Grand Jury*, tho' some of them afterwards smarted for it upon other Pretences, did like honest understanding Gentlemen; and had they done otherwise, to avoid the Ignominy of being call'd, though in truth it was an honour to be, an *Ignoramus Jury*, they had justly deserv'd the Reproach which since have lighted on other Juries, such as Mr. *Cornish's*, and the like. And having spoken of this *Ignoramus Jury*, for which, two of them, if not more, were afterwards upon other Pretences severely handled; I think fit to say something of the Sufferings of one, for being in a preceding *Ignoramus Jury*, because it was a meer Novelty, and that was Mr. *Wilmer*.



Remarks on Mr. Wilmer's Homine Replegiando.

HIS Prosecution, though it was but Criminal and not Capital, did as much Mischief, as it struck a Terror into all *Grand Juries*, as any the before mention'd Matters; and it was by the *Homine Replegiando* issued out against him. As for the Information against him, I shall say nothing, because the Injustice of both will appear in the Discourse of the first. Mr. *Wilmer* had sent a Boy beyond Sea by Agreement, as Mr. *Wilmer* said, whether true or not, as to this Matter is not material; a *Homine Replegiando* is granted against Mr. *Wilmer* for this, at whose Prosecution is not material: for any Person upon Suggestion, back'd by an *Affidavit*, may have it granted. The Sheriff would have return'd on the Writ, that the Boy was sent by his own Agreement and Consent with Mr. *Wilmer*; which Return was not allow'd, and the Sheriffs were told that they must either return they had replevied the Boy, and they must have him in Court, or else they would be laid by the heels; or else they must return that Mr. *Wilmer* had *Esloigned* him, which is carrying him away, where the Sheriff could not find him; and then a *Witbernem* would issue against Mr. *Wilmer*, upon which he would be taken and kept in Prison till he produc'd the Boy: and no other Return should be allow'd than one of those two, and if they did not make one of those two Returns, they should be committed. Now if the Law be so, the Court were innocent, but the Law ought then to be reform'd in that Particular; but if the Law was not so, as I think it is not, I think Mr. *Wilmer* and the Nation had great Injustice done them; for it was quickly seen what the Mischief of that Judgment was, and therefore it was endeavour'd to be reform'd by an Act of King and Council afterwards. First, I say, it is lawful for a Master to covenant with a Servant to serve him beyond Sea; in the next place it is lawful for a Master to send his Servant beyond Sea according to such Agreement. And if both these Propositions be true, as I think no Man will say they are not, it is a natural Consequence to say, that the Law hath provided a Return upon a Writ of *Homine Replegiando*, if it should be sued out against such Master for a Servant so sent beyond Sea, which may indemnify the Master in so doing; and that Return can be no other than the special Matter, which in this Case was refused to be accepted. 'Tis no Argument that no such Return is ever read of in any Book: For the Law hath determin'd, that some Returns are good, and others bad; yet it hath not said, what are all the good Returns, which may be made on a *Homine Replegiando*, and the Sheriff is no more confin'd to Returns, than a Man in the pleading of his Case, which my Lord *Coke* says may vary according to the Nature of his Case; and yet the Law hath said what is a good Plea, and what a bad one, but hath not express'd all the good or bad Pleas. And therefore it is no Argument against such a Return, that no Precedent of it can be found, 'tis enough that no Judgment can be produc'd against it; and the Reason of both may be, that the Case never happen'd before, that is to say, that never

any Person was so malicious before, as to sue out an *Homine Replegiando* against a Master for a Servant sent by Agreement beyond Sea: and Returns must be varied according to the Case. Perhaps no Precedent can be found of a Return on that Writ, that the Person sought for is Dead; yet all Persons will agree it is a good Return, it is so in Replevin of Cattel, and even that Example falsifies the Doctrine of the Court, that there are but two Returns on that Writ allowable by Law. It is not an Argument for disallowing the Return, that the Person sent beyond Sea was a Child, not capable of making such a Contract (though I believe, if the matter were look'd into, he was of age so to do) for nothing of that doth, or can appear in the Writ or Return: It stands therefore simply upon this, whether the Sheriff may on an *Homine Replegiando* return, that the Person suppos'd to be in custody, being of full Age, was by mutual agreement sent beyond Sea by the Person in whose custody by the Writ he is suppos'd to be, which I think is far from a doubt. But notwithstanding all these Hardships on *Juries*, it was seen to be plainly impossible to procure any Bills of Indictment for *High-Treason*, much less any Persons to be convicted on the like Evidence, except in *London*, where are some of the best, as well as the worst of Men in the Nation; and even there it was not to be done, as long as the *Juries* were sensible and honest Men, which would be as long as the Election of Sheriffs was in the Citizens; and, to the honour of the City, it was seen that they chose only honest Men to be their Sheriffs; and that when they saw the publick Safety depend on honest Officers, though at other times they had rather pay a Fine, than undergo the trouble and charges of that Office, yet at that time no Man, legally chosen, refus'd to stand, though they were reproach'd and punish'd for it: and if Mr. *Box* refus'd, it was because he would not join with *North*, who was impos'd on the City; for which reason it was resolv'd to take from the City the Right of chusing Sheriffs, but by what means was not presently resolv'd on.

That the City might forfeit their Right of electing, there was no great doubt; as if the Sheriffs were dead, and new ones were not chosen in a convenient time, so that there was a defect of Justice, or the like: but nothing of that kind could be laid to their charge, and therefore a new unheard-of matter was thought on, and set a-foot, which was, to make the City forfeit their being a Corporation; and being annihilated, the Grants made to them by the Crown, as the Right of electing Sheriffs was, would revert to the Crown again.

A *Quo Warranto* was therefore brought against the City in *Hilary Term*, 1681, to shew by what Warrant they pretended to be a Corporation, and to have the Privileges mention'd in the Writ; to which the City pleaded, and set forth their Right; and the King reply'd, and set forth several Matters done by them, contrary to the duty of a Corporation: upon which there was a *Demurrer*, of which Judgment was not given till *Trinity Term*,

1683. I will say nothing of the Right of the Proceeding, it having been largely and learnedly argu'd for the City; but if the Matter were so clear a Case, as the King's Counsel and Court would have it to be, how came it to pass that in *Henry* the Eighth's time, when the King was so earnestly bent to dissolve the Religious Corporations, in which the publick Inclination join'd with him, the doing it by *Quo Warranto* was not thought of? It was very plain, that those pretended Religious did not observe the Rules, nor perform the Ends for which they were incorporated; and certainly their Misdemeanors, against the intent of their being incorporated, were better Causes of Forfeiture, than was the City's petitioning for a Parliament, &c. Yet that King took other Methods, he had formal Conveyances of their Lands from most of those Corporations, and formal Surrenders of their Corporations, sign'd by every Individual of the Corporations, and those afterwards confirm'd by Act of Parliament. And sure the late King had as much Right to bring a *Quo Warranto* against *Magdalen* College, for refusing, contrary to their duty, to admit the President the King nominated, if the King had a Right to nominate the President (as some Judges asserted he had) as King *Charles* the Second had against the City: and it was once in Debate, whether the Proceeding against that College should be by *Quo Warranto*, or before the *Ecclesiastical Commissioners*; the last was resolv'd on, not as more legal or effectual, but as more expeditious; in the one, the Proceedings being *de Die in Diem*, in the other from Term to Term. This only I will observe, that when the Judgment against the City was given, which was of the greatest Concern to the Nation ever contested in any Court of *Westminster-Hall*, it was done by two Judges only, and no Reason of that Judgment rendred; whereof *Wibbins*, who was one, I think, heard but one Argument in the Case. It is true, they said *Raymond*, when alive, was of the same Opinion; and said *Saunders*, who was then past his Senes, was of the same Opinion; though I was told by one who was present, when the two Justices came to ask his Opi-

nion in the matter, he had only Sense enough to reproach them for troubling him about the matter, when they were sensible he had lost his Memory. And to say truth, the delivering the Sense of an absent Judge, though it hath been sometimes practis'd, is not allowable; for sometimes they deliver another Opinion than what the absent Judge is of. Judge *Wibbins* did so in several Cases, when he delivered the Opinion of Sir *Edward Herbert*, which Sir *Edward Herbert* afterwards, in open Court, disown'd: Judge *Holloway* serv'd Judge *Powel* the same Trick, if the last said true. The long depending of the *Quo Warranto* had alarm'd all the Nation, who yet were quiet, hoping that Judgment would be given for the City, as some of the Judges, and of the King's Counsel, had given out it would; but the contrary was resolv'd on, and therefore the Nation, at the time of the giving the Judgment, must be amus'd with somewhat else, and nothing so proper as a Plot: but there was difficulty in that also; for if the pretended Plotters should be acquitted, it would make the matter worse; and nothing would secure that, but imposing what Sheriffs they pleas'd on the City, and accordingly *North* and *Rieb* being pitch'd on, the one by a shameless Trick, and the other by open Force, were impos'd on the City.

Having gain'd that Point, the Proceedings in the *Quo Warranto* were much quicker than before, and two Arguments were only permitted in it of each side, the one in *Hilary* Term, the other in *Easter* Term; and so the Case was ripe for Judgment in *Trinity* Term following, but must be, and was usher'd in, with the discovery of a pretended Plot: which so amaz'd the Nation, that though Judgment in the *Quo Warranto* was given two Days after the pretended Discovery, no body took any notice of it for several Months after it was given. The truth was, no body durst mutter against it, or question the Legality of it; it was enough to have brought any Person into the Plot to have done it, it would have been call'd *flying in the Face of the Government, questioning the Justice of the Nation*, and such like *Cant*.

Remarks on the Lord Ruffel's Trial.

THE Plot being nois'd abroad, the Persons before-hand resolv'd on were seiz'd on, and the Lord *Ruffel*, and others were clapp'd up close Prisoners.

The Lord *Ruffel* having been for some few Weeks a close Prisoner in the *Tower*, was, the 13th of *July*, 1683, brought to the *Old-Bailey*, and arraign'd for High-Treason, in designing to raise a Rebellion, &c. and the same Morning was try'd. He desir'd he might not be try'd that Day, for he had some Witnesses which would not be in Town till Night: Which being deny'd, then he desir'd that the Trial might be put off till the Afternoon; which was likewise deny'd. He ask'd whether he might not make use of any Papers he had; which was allow'd. He desir'd he might have a Copy of the Pannel of the Jury that was to pass on him; he was told he had a Copy deliver'd to his Servant some Days before.

The Jury being call'd, he challeng'd the Foreman for being no Freeholder in *London*. To argue which, Counsel were assign'd him; who presently came into the Court, and having excus'd their not speaking more to the matter, for want of time to consider of it, argu'd, That it was a good Challenge, because at common Law every Juryman ought to be a Freeholder; that the Statute of 2 *Hen. 5.* provides none shall be a Juryman in capital Matters, but a Freeholder of Forty Shillings yearly: That there is no difference between a City and County, and a County at large, at common Law; nor by that Statute 7 *Hen. 7.* which takes away the Challenge of no Freehold in the Ward in *London*, and shews it was a good Challenge in *London* before that time: the 4th of *Hen. 8.* which likewise takes away the Challenge of no Freehold in *London*, shews it was a good Challenge before that time; and the same was infer'd from the 23d of *Henry* the 8th: But though none of those Statutes

tutes extended to Treason, yet if it was a good Challenge in Treason in London before those Statutes, it was so still.

The King's Counsel said, at common Law it was not necessary that a Juryman, in Treason, should be a Freeholder; and though Treason is within the 2d of Henry the 5th, yet by the Statute of Queen Mary, the Statute of the 2d of Henry the 5th, as to Treason, was repeal'd; that it was a Point they would not have lost to the City of London; that if the Prisoner should peremptorily challenge Thirty-five, as by Law he might, there would scarce be found Thirty-five more Freeholders in the City, the Inheritance of the City being mostly in the Nobility and Corporations, and consequently Treasons may be committed in the City, and there would not be enough to try it; and in the Case of the City of Worcester, in a *Quo Warranto* brought against them, that Challenge was taken and over-ruled by the King's Bench, by Advice of the Judges of the *Common-Pleas*; that the *Venire* mentions no Freehold, but only *Probos & Legales Homines de Vicineto*.

Then the * Chief Justice ask'd Mr. Pollexfen, Whether he did find any Judgment in Treason at common Law, that *no Freehold* was a Challenge? who answer'd, he did not. Whereupon the Chief Justice reply'd, That then he did not speak *ad idem*; for he took it, in case of Treason and Felony, at common Law it was no Challenge; and the Statute of Henry the Fifth, in that point, was introductive of a new Law; and that Statute, as to Treason, was repeal'd by that of Queen Mary; and that a Case cannot be found of such a Challenge in Treason since the Statute of Queen Mary, but it was a Business of great importance.

The * Chief Baron was of the same Opinion; for the same Reason, Justice Windham and Justice Jones were of the same Opinion; the last added, the rather because the Prisoner is allow'd to challenge Thirty-five peremptorily: and Justice Charlton was of the same Opinion, and the rather, because no Precedent had been offer'd of such a Challenge before: Justice Levinz was of the same Opinion, for the same Reason: Justice Street was of the same Opinion, for the same Reasons; and thought they had been very nice, when the Life of the King lay at stake, and all the Customs and Privileges of the City of London seem'd to be level'd at in that point: Justice Wilbins was of the same Opinion.

Then the Chief Justice told the Prisoner, the Court over-ruled his Challenge; but that he had no Hardship put upon him, for the Reason of Law for Freeholders was, that no slight Persons should be put upon the Jury; but in his Case there were Persons of Quality and Substance put upon the Jury, which was the same in substance with a Jury of Freeholders.

These being the Reasons of over-ruling that Challenge, they may be ranked under these Heads: There was no such Challenge at common Law; if there were, yet not in Treason. And if it were a Challenge in Treason, where the Trial is in a County at large, yet not where it is in a City and County; and if in a City and County, yet not in London.

The assigning many Reasons for one and the same thing, makes the Judgment justly suspected: for if when two Witnesses to one Fact, varying in

the Circumstances of it, are justly suspected in point of truth, several Reasons for the same Judgment make the Knowledge or Integrity of the Judges justly suspected; every Case in Law, as my Lords Coke and Hales say, standing upon its own particular Reason: and therefore when many Reasons are given, it looks as if the Judges were hunting about for Reasons to make good what beforehand they are resolv'd to vent for Law, rather than that their Judgment is the Result of those Reasons.

But to consider them singly, I do indeed think there is no express Resolution, that at common Law in any Case of any capital Matter, it was a good Challenge (except the Case of *Fitzbarris*, already taken notice of) but in civil Matters my Lord Coke is express, that at common Law it was a good Challenge; and with him Sir John Fortescue seems to concur, who, in his Exposition on the Statute of Henry the 5th, says, if the Debts or Damages be under Forty Marks, the Juryman shall have Land to a competent Value, according to the Discretion of the Justices. My Lord Coke saith, in such Case any Freehold sufficeth; now how can that be true, if it were not necessary at common Law to have some Freehold? for the Statute makes no Provision for Debt or Damages under Forty Marks. It must therefore be by common Law, that some Freehold was necessary, and that any Freehold shall suffice. And surely, if in civil Matters it was necessary for a Juror to have a Freehold, much more in capital Matters, and mostly in Treason. It is very plain, that at common Law no Man was thought to be a sufficient Man, but a Freeholder; and tho' now, and for some time past, the Value of Trade is equal to that of Land, yet heretofore it was not so, and by what was heretofore, the common Law is to be known.

The matter of Trade was heretofore so inconsiderable, and the Traders themselves for that reason so vile, that it was a disparagement for a Freeholder to marry with a Tradesman, as is to be seen by the Statute of † *Merton*: and therefore mere Tradesmen, and not Freeholders, were not to be trusted with the concern of a Trial in a civil Matter, and much less in a capital, and least of all in a Trial of High-Treason.

The Chief Justice Pemberton says, that the reason of Freeholders was, that no slight Persons should be put upon a Jury where the Life of a Man, or his Estate, is in question; it is plain therefore, the Concern of the thing to be tried, is the measure of the substance of the Juryman. If that be true, the Trial in Treason is of the highest concern: How then is it true, as some of the Judges concluded, that tho' Freehold might be requisite in some Cases at common Law, yet in Treason certainly not? it is indeed a Paradox to me.

And the peremptory Challenge of Thirty-five allowed the Prisoner, is no Reason against the Challenge of no Freehold; for that is only a Privilege allowed the Prisoner *in favorem Vitæ*; and it might as well be argued, that no Challenge at all to the Petty-Jury shall be allow'd the Prisoner, because he had a Grand-Jury past upon him before, which is also *in favorem Vitæ*; that no Man, at the King's Suit, shall be so much as question'd for his Life, till above the Number of Twelve substantial Men have on their Oaths said they think the Accusation true; and after that, he is allow'd to challenge

† See Stat. of Merton, cap. 7. 2 Inst. 92. Cok. Lit. 80.

peremptorily Thirty-five, and with Cause without number. To affirm therefore that no Freehold is not a cause of Challenge, because he may challenge peremptorily Thirty-five, is a *non sequitur*: and though Non-usage, that is to say, that this Challenge was never taken in Treason, was then us'd as an Argument, yet it is the weakest of Arguments which is to be found in *Littleton*; tho' even that Fact was not true, for the Challenge was taken and allow'd before; unless you will distinguish and say, that in that Case it was taken by the King, and therefore good, and in this by the Prisoner, and therefore bad. I'm sure that difference cannot be warranted, either by Authority or Reason; and what though *Cook*, and the other Regicides, and other Persons, did not take that Challenge, is it an Argument that they could not, or that they thought they could not? perhaps they had forgotten to do it, as much as the Judges in this Case had forgotten their Resolution in *Fitzbarris's* Case; or perhaps they could not take it, their Jury being Freeholders; or perhaps it was to no purpose, they being tried in *Middlesex*, where a Jury of Freeholders would quickly be found. Nor is it an Argument that no Case of this Challenge at common Law is to be found in the Books; for since the Statute of *Henry* the Fifth, to the time of *Queen Mary*, it could never be a Case; and from that time to this it could never be a Case in Felony: and the Law being so very plain, that if the Fact were with the Prisoner, it was always allowed; if against the Prisoner, it was disallowed, not as not good in point of Law, but as not true in point of Fact; therefore the Challenge perhaps was not taken notice of in the Books, which only report Difficulties.

It is true of late, and it is but of late Practice, the whole Transactions of a Trial are published for the Benefit of the Publisher, rather than for the common Good; and that indeed was the Motive of publishing *Fitzbarris's* Trial signed by *Fra. Pemberton*, and of *Colledge's* Trial signed by *Fra. North*, and of my Lord *Ruffel's* signed by *William Pritchard*, Mayor, and *Col. Sidney's* Trial signed by *George Jefferies*, and *Mr. Cornish's* Trial signed by *Thomas Jones*. And that is the Reason why, since that Statute, we find no Case of such a Challenge in capital Matters, and before that Statute the Year-Books go but a little way.

It is enough there was no Resolution that it was not a good Challenge, for it will be of the King's side to shew why that should not be a good Challenge in Treason, which was in most, if not in all other Cases.

It is pretty to observe what steps were made in over-ruling this Challenge: some were of Opinion that it was no Challenge in any Case at common Law; so said the Attorney and Solicitor-General, the Chief Baron, Justice *Windbam*, and Baron *Street*. The Chief Justice thought it no Challenge at common Law in Treason or Felony only, but that the Statute of *Henry* the Fifth made it a Challenge in Treason and Felony; but whether the Statute of *Henry* the Fifth made it a Challenge in Treason, the Chief Baron and Justice *Windbam* doubted. Justice *Jones* thought it no Challenge at common Law in Treason; Justice *Levinz* would not determine whether it was a good Challenge in any Case at common Law, but he and Baron *Street* were clearly of Opinion it was not a good Challenge in *London*. The Chief Justice thought it a Business of great Consequence, not only for the Prisoner,

but for all other Persons: Baron *Street* thought the Judges had been very nice in the matter, which, in the Phrase of the Law, is giving themselves a great deal of trouble in a matter very clear, or of no moment.

But though they differ'd in their Reasons, yet all agreed in this, and in this only, that tried he should be, and that presently.

Then as for the Custom of the City of *London*, to try without Freeholders, how did it appear to the Judges that there was any such Custom? Did they ever read of any such Custom in the City of *London*? Nay, were not the Statutes which were cited, where no Freehold was made no Challenge in *London* in particular Cases, as so many express Resolutions, that there was no such Custom in the City? for if there had been such Custom, what need those Statutes? To which the Judges never vouchsafed any Answer, because in truth they could make none.

But it was objected, there was the Resolution in the City of *Worcester's* Case, which I agree was of as good Authority, and of no better, than the Judgment in the principal Matter of the *Zyo Warranto*. And it was likewise objected, there would be a failure of Justice in Cities, if the Challenge were good for want of Freeholders.

I ask, Would it have been a failure of Justice at common Law, or by reason of somewhat which hath happened of late Times? There is none who pretends to know any thing of the History of *England*, that will say, that heretofore the Cities were not inhabited mostly by the Gentry, and especially the City of *London*; partly for Luxury, partly for their Security, and then there was no want of Freeholders in the Cities; but when matters became more quiet, and Trade increased, and made Houses in the Cities more valuable, then were Houses of equal Convenience, and less Price, situate in the Suburbs, or in the Country; the Gentry by degrees parted with their Houses in the Cities to Trademen for Profit, and remov'd themselves to other Places. And I believe it may be remembered, that even the *Strand*, in the memory of Man, could have furnish'd the County of *Middlesex* with a sufficient number of Freeholders; and yet now, for the above Reasons, you can hardly find a Jury of Freeholders there.

Besides, it must be remembered, that *London* heretofore had many of the King's Palaces in it; and the Country Gentlemen did not then, as now, take up with Lodgings, but were Inhabitants of Houses: and if the failure of Justice happen by the above means, I am sure it is against the Oath of the Judges to supply that Defect with their Resolution; but it ought to have been supplied by an Act of the Legislative Power.

If the necessity of the thing warrants the Judgment, how unlearned were the Judges in *Henry* the Seventh and *Henry* the Eighth's Times, that they did not supply the Defect in Law in the City of *London*, and other Cities, by their Resolutions? How vain were the Parliaments in those Times, who supplied those Defects in Law, mentioned in the Acts cited by those Statutes, which were Works of time and trouble, if they had thought the Judges, by their Resolutions, had power to do it? for if they had power to do it, they could have done it *extempore*, as in this Case.

For the last Objection, that the Writ mentions only *Probes & Legales Homines*, and speaks nothing of Freeholders; *Legales* may be very well interpreted,

preted, to imply Men qualify'd by Law ; but I take it, that *Homines* implies it: for by *Homines de Comitatu* are meant Freeholders of that County ; and all others, in point of Truſt, are not conſider'd in Law. My Lord *Coke*, in his Comment upon the 28th of *Eliz. 1. cap. 8.* which gives the Election of Sheriffs to the People of the County where the Sheriffwick is not in Fee, ſays, People there, means Freeholders of the County ; and the ſame is underſtood by Writs to the Counties to chooſe *Coroners, Verderers,* and the like, though the Writ ſays, *per communitatem Comitatus, & de aſſenſu Comitatus.*

And tho' the Writs of *Venire* in civil Matters, of late days, mention what Freehold each Juror ſhall have, yet that is by the Statute of the 35th of *Hen. 8. cap. 6.* which expreſly commands the Writ ſhall ſo expreſs it, in all Iſſues join'd in *Weſtminſter*, to be tried between Party and Party ; before which time it is plain, the *Venire*, even in civil Matters, did not expreſs any Freehold, and that Statute doth not extend to Iſſues join'd on Indiſtments.

Now if upon all which hath been ſaid, it is not plain, that the Challenge ought to have been allow'd, yet ſure it was doubtful ; and if ſo, and a matter of great Conſequence, as the Chief Juſtice ſaid it was, why might not the Couſel for the Priſoner have had a little more time to have conſider'd of the Challenge before they had argu'd it, or the Judges have taken a little time to conſider the matter before they had given their Judgment ? I dare ſay, none of them could remember any poſitive Reſolutions one way or other, nor upon a ſudden was it expected they ſhould ; and therefore, for their own ſakes, if not for the Priſoner's, they might have taken the Morning, if not the Day. The Priſoner deſir'd his Trial to be put off, for to have conſider'd of it ; in that time, perhaps, ſome of them might have remembered, or others might have put them in mind of their Reſolutions in *Fitzbarris's* Caſe ; they might have conſider'd how to diſtinguiſh between that Caſe and this, and not run away with it, that that Challenge was never made in Treafon, as all the Judges affirm'd. But my Lord *Ruffel* was told by the Court, that they always tried the Priſoner, in Treafon, the Day he was arraign'd, and could not put off the Trial for a Morning, without the Attorney-General's Conſent ; but ſurely that is not true, *Plunket* and *Fitzbarris* were try'd the Term after they were arraign'd, though the Attorney-General oppoſ'd it. It is true, he ſubmitted to the Rule, as it was as much his Duty to do, as the Priſoner's ; but if there be a difference between an Arraignment at *Weſtminſter* and the *Old-Bailey*, as to the ſpedding the Trial, the Place will not vary the Reaſon of the thing, if there be not any Law for it, as there is not ; but even at the *Old-Bailey*, the Trial in Treafon hath been put off to another Seſſions, it was done in *Whitebread's* Caſe, and in many other Cafes. If it be ſaid that was by the Attorney-General's Conſent, I ſay that makes no difference ; for the Judge is to be indifferent between the Attorney-General and the Priſoner. If the Court muſt order nothing but what the Attorney aſſents to, why is not the Priſoner try'd and judg'd by the Attorney alone ? or what needs all the Formality of a Trial ? If it be ſaid, that that Trial was put off, becauſe the King's Witneſſes were not ready ; I ſay, there is the ſame Reaſon to put off a Trial, becauſe the Priſoner's Witneſſes are not ready, and

that was the pretended, though not the true Reaſon of putting off *Fitzbarris's* Trial to another Term, and there is no Law to the contrary.

It is totally in the Diſcretion of the Judges to put off a Trial ; which Diſcretion ought to be govern'd by Reaſon.

But indeed this was extraordinary, and without any Precedent : it can never be ſhewn in the Caſe of the greateſt or meaneſt Perſons, being accus'd of the greateſt or leaſt Crime, that ever the delay of a Day, much leſs of a Morning, for his Trial, was deny'd, where he ſhew'd but any colour for what he ſaid, when the Seſſions were to continue after the time he deſir'd, as in this Caſe it did. *Fitzbarris* ſaid his Witneſſes were in *Holland*, and though he nam'd no Perſons, yet his Trial was put off to the next Term ; my Lord *Ruffel* ſaid his Witneſſes could not be in Town till that Night, yet the reſpite till next Day was deny'd : all Perſons agreed, that there was ſome extraordinary Reaſon for it, and before the Trial was over, the Riddle was out.

My Lord of *Effex* was kill'd, or to be kill'd that Morning ; as to this Matter, it is not material whether by his own or another's Hand : they were ſenſible the Evidence againſt my Lord *Ruffel* was very defective, and that Accident was to help it out ; but that would not avail, unleſs it were a ſurprizing matter upon the Jury : ſhould the Jury have had a Day's, or but a Morning's time to conſider of it, People might have been talking with the Jury. It was very material to aſk, what Influence that Accident would have on my Lord *Ruffel's* Trial, whether it was any Evidence againſt him : they might have been told what was true, that no Perſon kill'd, was in Law ſuppos'd to have kill'd himſelf, till a Coroner's Inqueſt had ſat upon the view of his Body, and found it ſo ; and if it had been ſo found, yet even that had been no Evidence againſt another, becauſe the Coroner's Inqueſt never found the Reaſon why a Man kill'd himſelf ; and if they ſhould find the Reaſon, yet even that was no Evidence againſt another, becauſe that other was never call'd before the Coroner's Inqueſt to make his Defence. They might have been told a great many Circumſtances of the Improbability of the killing himſelf ; they might have obſerv'd that the King's Couſel were ſo far ſenſible, that it was no Evidence againſt my Lord *Ruffel*, that they never attempted to prove the Earl of *Effex* was dead, or kill'd himſelf : it was only ſilily inſinuated, together with the Reaſon of it, which had its Effect, if the Report be true of ſome of the Jurymen's ſaying *it went farther with them, than all the Evidence of the Witneſſes produc'd* ; and if that be true, there was a reaſon, tho' not a juſt one, for ſpedding that Trial beyond the ordinary Methods of Trials at the *Old-Bailey*.

But tho' my Lord *Ruffel* had ſeemingly leſs favour in that Matter than any other Perſon, even than *Colledge*, who had the reſpite of two or three hours between his Arraignment and Trial, (tho' that was not in favour to *Colledge*, but only to examine his Papers which they took from him, and inſtruct their Witneſſes accordingly) yet in other things he had more Favour or Juſtice done him : his Papers were not taken from him ; it was agreed to be his Right to uſe them without queſtioning from whom he had them, what they were, or the like, as in *Colledge's* Caſe was done ; he had a Copy of the Pannel of the Jury, even before his Arraignment, given him ; and the Chief Juſtice ſaid it was never denied in Caſe

of Life that he knew of, which was denied *Colledge* before he pleaded; because then 'twas pretended there was no Issue join'd, till *Plea pleaded*, after which the *Venire* is awarded; tho' all Men know, that the Sheriff summons the Jury before the Arraignment, and even after Issue join'd. *Colledge* was denied a Copy of the Pannel, only he was told, he should look every Juryman in the Face before he was sworn; and as far as the Looks of a Man betray him, he should be satisfi'd whether he was honest or not, which is an ill way of judging; for I think the Person * that gave that Rule, would have deceiv'd any Man by his Countenance, who had known his Practices.

* Lord Ch. Justice North.

But says the Attorney General †, in my Lord *Russel's* Case it was matter of Favour, and not of Right, therefore no Injustice to *Colledge*. I confess of all Men who ever came to the Bar, he hath laid down the most Rules, which depend totally upon the Authority of his own saying: in *Colledge's* Case he affirm'd, that the King's Witnessess ought not to be kept out of the hearing of each other, when they gave their Evidence (a method us'd in civil Matters, the Reason of which is well known, and none can show any Law or Reason why it should not be us'd in capital Matters) with as much Reason and Authority, as what is now said.

First, I do affirm there is no Authority in Law, which says a Prisoner shall not have a Copy of the Pannel; in the next place I affirm, that after a Jury struck in a civil Matter, each Party ought to have a Copy of the Pannel, in order to provide himself of a Challenge, if there be any Cause. In the last place, I affirm, that by Law, more Favour is allow'd a Defendant in a Capital Matter, to defend himself, than in a Civil. And if these Propositions be true, let any Person, if he can, make out the Law or Reason of the above Assertions.

Of a like stamp was the Saying of the Attorney, when my Lord desir'd a Copy of the Matter of Fact laid against him, that he had notice of it; for Questions were put to him about it, and he was with his Lordship himself, and examin'd him upon those Questions, which was a Favour to him, that he might know what the Matter was he was accus'd of.

I do not affirm that ever it was practis'd, to give the Prisoner a Note of the Fact, to be given in Evidence against him, proving Treason, or that it was ever denied till then, nor do I know of any Law *pro* or *con* in the Case; but if one would judge by Reason or Practice in parallel Cases, I think it ought not to be deny'd.

I know not at present of more than two sorts of general Indictments, and those are of Treason and Barretry; the last is a general Indictment, for stirring up Suits without Reason, and without mentioning any Suit in particular: and therefore if by the Rule of the Court the Defendant was not help'd, which obliges the Prosecutor to give the Defendant, some reasonable time before the Trial, a Note of what Suits he intends to give in Evidence against him, it was impossible for the Defendant to escape, if it had been his Misfortune to have had five or six Suits.

For I never yet saw a Witness produc'd against the Indicted, but he would swear the Indicted brought an Action against him without Reason; and yet I have often seen, that the Indicted having had notice, that that was one of the Suits he

was intended to be charg'd with, hath been able to prove that he had good, or at least probable Cause of Suit, which he could not have done if he had not notice. And in Treason, for designing to kill the King, there have been so many Interpretations of Facts tending that way that it is almost impossible for an Innocent to defend himself, unless he had notice of the Fact intended to be insisted on at the Trial.

There are yet some Expressions which mightily puzzle me: the King's Council said in the Argument of the Challenge, that they would not have the Point of being a *Juryman*, tho' not a Freeholder, lost to the City of *London*; and one of the Judges said, 'twas the Privileges of the City were struck at in that Point. If by those Expressions be meant, that it is for the benefit of the Publick that there should be no failure of Justice, I agree to it; but if it be meant that it is for the benefit of the Citizens to be *Jurymen*, I deny it: and I think nothing shews it plainer, than that it is a Privilege that a Citizen shall not be drawn out of the City to be a *Juryman*; that a Nobleman shall not be on a *Jury*; that it is a Matter of Prerogative in the King, and Favour to a particular Person, to grant a Charter of Exemption from being on a *Jury*. So that if I consider the Law, I know what is meant by those Expressions; if I consider allow'd Practice, it is true, a *Juryman* may earn his Eightpence for a Trial; but that is too inconsiderable Pay for Persons of Substance, as the *Jurymen* in this Case were said to be, to be fond of the Employ, or to account it a Privilege. Yet even that was but in civil Matters; in criminal Matters not Capital, the *Jury* were heretofore paid if they acquitted the Defendant, but not if they found him guilty, tho' of late it hath been practis'd to give them more, and treat them higher if they convicted the Defendant, than if they acquitted him: But in capital Matters, as the Case in question was, it was never allow'd, or at least own'd, to pay the *Jury*, be the Verdict which way it would.

Having spoken to the *Preliminaries*, I proceed to the Trial, wherein Colonel *Rumsey* was first produc'd: he said, he was sent by my Lord *Shaftesbury* about the end of *October*, or beginning of *November*; who told him, he should meet at one *Sheppard's* the Duke of *Monmouth*, Lord *Russel*, Lord *Gray*, Sir *Thomas Armstrong*, and Mr. *Ferguson*, to know of them what Resolution they were come to about the Rising of *Taunton*. *Sheppard* carry'd him where they were, and answer was made, Mr. *Trenchard* had fail'd them, and there would be no more done in the matter at that time; thereupon the Lord *Shaftesbury* took a Resolution to be gone. Mr. *Ferguson* spoke most of the Meisage, and he thought the Lord *Gray* spoke something to the same purpose; he did not know how often he had been at that House, he was there more than once, or else he heard Mr. *Ferguson* make a Report of another Meeting to the Lord *Shaftesbury*, my Lord *Russel* was in the Room, and that was all they said at that time that he remembered, he was not there above a quarter of an hour. There was some Discourse about seeing in what posture the Guards at the *Mews* and *Savoy* were in by all the Company, to know how to surprize them if the Rising had gone on; Sir *Thomas Armstrong* and Mr. *Ferguson* began, all debated it; he thought the Duke of *Monmouth*, the Lord *Gray*, and Sir *Thomas Armstrong* were sent to view them;

the Riving was appointed to be the 19th of November; he was spoke to by the Lord Shaftesbury to go to Bristol if the Riving had gone on, but in what Quality was not determin'd. The Lord Ruffel agreed to the Debate. Being ask'd if my Lord Ruffel said any thing there, and what; he answer'd, My Lord Ruffel spoke about the Riving at Taunton. Being ask'd what my Lord Ruffel said, he answer'd, My Lord Ruffel discours'd of the Riving. Being ask'd if my Lord gave his Consent to the Riving, he said he did.

The next Witness was Mr. Sheppard, who said, In October last, Mr. Ferguson came to him in the Duke of Monmouth's Name, and desir'd the Conveniency of his Houfe for himself and some Persons of Quality, which he granted. In the Evening the Duke of Monmouth, Lord Gray, Lord Ruffel, Sir Thomas Armstrong, Colonel Rumfey, and Mr. Ferguson came, not all together, but the one after the other. Sir Thomas Armstrong desir'd, that none of his Servants might come up, and that they might be private; so what they wanted he went down for, a Bottle of Wine, or so: the Substance of the Discourse was, to surprize the King's Guards; and in order to it, the Duke of Monmouth, the Lord Gray, and Sir Thomas Armstrong, went one Night, as he remembered, to the Mews, or thereabouts, to see the Guards; and the next time they came to his Houfe, he heard Sir Thomas Armstrong say, the Guards were very remiss in their places, and not like Soldiers, and the thing was feasible if they had but strength to do it. He remembered but two Meetings there; they came in the Evening; he neither heard nor saw any Coaches at his Door: When they came in, as he remembered, the Lord Ruffel was both times there; he had no business with the Lord Ruffel, nor the Lord Ruffel with him at that time, but since he had. He did not remember Colonel Rumfey discours'd the Lord Ruffel about any private Business, nor remember'd any farther Discourse; he remember'd no Writings nor Papers read at that time: upon recollection, he remember'd one Paper read by Mr. Ferguson, in the Nature of a Declaration, setting forth the Grievances of the Nation, the Particulars he could not tell; it was a pretty large Paper, it was shew'd for Approbation, as he suppos'd, when to be set out was not discours'd; 'twas shew'd to Sir Thomas Armstrong, and as he remember'd, the Duke of Monmouth was present, and he thought Colonel Rumfey was present. Colonel Rumfey said, he was not present, it was done before he came. Mr. Sheppard went on and said, the Design of the Paper was in order to a Riving, as he suppos'd by the Purport of it; he would not say the Lord Ruffel was there when that Paper was read, but he was there when the talk was about seizing the Guards; he could not be positive as to the times of those Meetings, but it was when the Lord Shaftesbury was absent from his Houfe, he absented about Michaelmas-Day; he could not be positive that my Lord Ruffel was at both Meetings; he thought he was at both, he was sure he was at one.

The last Witness was the Lord Howard. He said he brought Captain Walcot acquainted with the Lord Shaftesbury; and upon his account Captain Walcot soon gain'd a confidence with the Lord Shaftesbury. Walcot told him, the People were sensible all their Interests were going to be lost by the Violence offer'd to the City in the Election of Sheriffs, and that they were resolv'd to take some Course to put a stop to it: that there were several Meetings about it, and some Persons began to prepare to act; that

some had good Horses, and kept them in private Stables, and he resolv'd to be one in it: He having an Estate in Ireland, he dispatch'd his Son thither, and order'd his Son to turn his Stock into Money; the Son went about August: That the 30th of September, Walcot din'd with him; told him, that the Lord Shaftesbury was secreted, and desir'd to speak with him: Walcot brought him to the Lord Shaftesbury, who complain'd of the Duke of Monmouth and the Lord Ruffel for deserting him; but there was such preparation made in London, that now he was able to do it of himself, and intended to do it suddenly; he had above 10000 brisk Boys ready to follow him when he held up his Finger, they would possess themselves of the Gates, and in twenty-four Hours they would multiply to five times the Number, and would be able to possess Whitehall by beating the Guards. The Lord Howard went to the Duke of Monmouth, told him the Lord Shaftesbury's Complaint, who said, the Lord Ruffel and he told the Lord Shaftesbury from the beginning, that there was nothing to be done by them in the Country at that time. The Matter of the Discourse between him and the Duke of Monmouth, him and the Lord Shaftesbury, and him and Walcot, is too tedious to relate, and as little to the purpose, if the Jury had understood Matter of Law, which they did not; in it he takes care to shew what Confidence my Lord Shaftesbury had in him, more than in the Duke of Monmouth or the Lord Ruffel; how very cautious he was, and how precipitate the Lord Shaftesbury was, and that what he told the Duke of Monmouth, the Duke told the Lord Ruffel; and he heard the Lord Ruffel had been with the Lord Shaftesbury, and put off the intended Riving. At which the Lord Ruffel interrupted him, and said, he thought he had very hard measure, there was a great deal of Evidence given by hear-say only. Whereupon the Chief Justice said, it was nothing against the Prisoner; he declar'd it to the Jury, but the Attorney-General bid the Lord Howard go on in the Method of Time, and that it was nothing against the Prisoner, but the Witnesses were coming to it if his Lordship would have patience, he assur'd him so. The Lord Howard went on where he left off, with a story between him and Walcot of an intended Riving, and of some dark Sayings let fall by Walcot and the Lord Gray, importing a Design upon the King's Person; but the Lord Howard was very careful to put all off, but at last it was resolv'd to rise on the 17th of November: But the Lord Howard fearing it had been discover'd, because he saw a Proclamation a little before, forbidding Bonfires without the Lord Mayor's leave, that of the 17th of November was also disappointed, and the Lord Shaftesbury went away and died. But considering they had gone so far that it was not safe to retreat, and likewise that so great an Affair as that, consisting of such infinite Particulars, was to be manag'd with so much Finesse, they erected a Cabal of six Persons, the Duke of Monmouth, Lord of Essex, Lord Ruffel, Mr. Hampden, Algernon Sidney, and himself, about the middle of January last; and about that time they met at Mr. Hampden's House, where it was consider'd whether the Insurrection should be in London, or in a place distant; what Countries and Towns were fittest and most dispos'd to Action; what Arms necessary to be provided; how to raise twenty-five or thirty thousand Pounds, and how they might so order it as to draw Scotland into a Consent with them.

About ten days after they met at the Lord Ruffel's House, and resolv'd to send some Persons into Scotland

land to the Lord *Argyle*, to invite some Persons hither to give an Account of that Kingdom; the Persons to be invited were Sir *John Cockram*, Lord *Melvil*, Sir *Campbel*; that Matter was refer'd to Col. *Sidney*, who told him he had sent *Aaron Smith*; they agreed not to meet again till the return of the Messenger. The Messenger was gone about a Month, it was six Weeks or more before he return'd, and then his Lordship was forc'd to go into *Ëssex*, where he had a small Concern; there he staid three Weeks, and when he return'd, he was inform'd Sir *John Cockram* was come to Town, and afterwards he was forced to go to the *Baib*, where he spent five Weeks; and from that time to this was five Weeks, all which time was a Parenthesis to him; and that he and the five mention'd erected themselves by mutual Agreement into that Society.

Aterbury swore *Campbel* was in his Custody: then Colonel *Rumsey* was ask'd, whether my Lord *Ruffel* heard him when he deliver'd his Message to the Company, and in what place of the Room the Company were: who answer'd, that when he came in, they were standing by the Fire-side, but all came from thence to hear him; and when my Lord *Ruffel* said, Colonel *Rumsey* was there when he came in, *Rumsey* said, No, the Duke of *Monmouth* and Lord *Ruffel* went away together.

Then in behalf of my Lord *Ruffel*, the Earl of *Anglesey* was examin'd, who said, that visiting the Earl of *Bedford*, the Lord *Howard* came in, and told the Earl of *Bedford*, that his Son could not be in such a Plot, or suspected of it; and that he knew nothing against the Lord *Ruffel*, or any body else, of such a barbarous Design: And he was going on again with what the Lady *Chaworth* had told him, but was interrupted by the King's Counsel, telling him, as the Court would not permit them to give Hear-say in Evidence against the Prisoner, so they must not permit his Lordship to give Hear-say in Evidence for the Prisoner.

Mr. *Howard* said, that the Lord *Howard* took it upon his Honour, and his Faith, he knew nothing of any Person concern'd in that Business, and not only thought my Lord *Ruffel* unjustly suffer'd, but he took God and Man to witness, he thought my Lord *Ruffel* the worst Man in the World.

Dr. *Burnet* said, the Lord *Howard* was with him, and he did then, as he had done before, with Hands and Eyes lift up to Heaven, declare, he knew nothing of any Plot, nor believ'd any, and treated it with great Scorn and Contempt.

The Lord *Cavendish* testify'd as to the Life and Conversation of the Lord *Ruffel*, and thence concluded, it was not likely he should be guilty of any such Matter, and heard the Lord *Ruffel* speak of *Rumsey*, as if he had an ill Opinion of him, and therefore it was not likely he should trust him. Dr. *Tillotson* spoke of his Conversation; Dr. *Burnet* and Dr. *Cox* spoke of his Conversation, and of his Averseness to all Risings. Dr. *Cox* testify'd, that my Lord *Ruffel* said the Lord *Howard* was a Man of luxuriant Parts, but he had the luck not to be trusted by any Party. The Duke of *Somerset* spoke of the Lord *Ruffel*'s Conversation. The Lord *Clifford*, Mr. *Leveson Gower*, Mr. *Spencer*, and Dr. *Fitzwilliams* spoke of the Lord *Ruffel*'s Conversation. The Lord *Howard* being ask'd by the Jury what he said to the Earl of *Anglesey*'s Evidence, own'd what the Earl said, but he did it to outface the Matter; and if he said untrue, he ought not to be believ'd on his Oath, and insinuated, that he meant what he

said to be meant of a Design of murdering the King, which he did not believe the Duke of *Monmouth* or the Lord *Ruffel* guilty of.

This being the Sum of the Evidence given against, or for my Lord *Ruffel*, let us consider how far it will justify the Verdict given against him: first, consider the Improbability of *Rumsey*'s Evidence, if my Lord *Cavendish* said true, that he should trust *Rumsey* to hear the Debate about seizing the Guards, when the Lord *Ruffel* had an ill Opinion of *Rumsey*. As for *Rumsey*'s delivering the Message, there was no great matter in that, it is impossible to hinder Peoples speaking, and it is not Treason to conceal what's said; besides it was well known, it was *Rumsey*'s way to talk extravagantly, in order to accuse those that heard him, if they did not discover it. But besides the Improbability of the Evidence in respect of the Person, the manner of delivering the Evidence, and the Evidence it self was such as carry'd no Colour of Truth with it: he said he deliver'd his Message, and had an Answer to it, and being ask'd what the Company said further, answer'd, that was all that was said at that time, that he remember'd, and gives a very good Reason for it, for he staid not above a quarter of an Hour; and added, that he was not certain whether he then heard something of a Declaration there, or whether Mr. *Ferguson* reported it to my Lord *Sbastesbury*, that they had debated it: and yet when *Sheppard* said *Rumsey* was there when the Declaration was read, he deny'd it, and said it was read before he came in. Being ask'd to what the Declaration tended, he answer'd to another matter, viz. that there was some Discourse about seeing what posture the Guards were in, and said, that all the Company debated it; and being drawn on by Questions, said, it was in order to seize the Guards, if the Rising had gone on. Now how doth that part of the Evidence agree with what he said before, that there was nothing more said than the delivering his Message, and the Answer to it? And how doth it agree with the time he said he staid, which was not above a quarter of an Hour? whereas that Debate, if all the Persons present (being six) debated it, as he said they did, would certainly have taken up a larger time. How does the first and last part of his Evidence agree, when he said, my Lord *Ruffel* agreed to the Answer of his Message? And being ask'd whether and what he spoke to it, said, he spoke about the Rising at *Taunton*, but doth not say what; and yet in the first part of his Evidence, he said, when ask'd who sent the Message back, Mr. *Ferguson* deliver'd the Answer, the Duke of *Monmouth* and the Lord *Ruffel* were present, and he thought the Lord *Grey* said something to the same purpose. But what Credit could be given to any part of a Man's Evidence, whose Memory was so shallow, that he could not remember whether he was at two Meetings, or whether Mr. *Ferguson* related one of them to the Lord *Sbastesbury*? Yet both were suppos'd to be within the Compass of a Year, whereas a Man of Sense is suppos'd to remember all his own Acts for seven years past, which is the Reason why the Chancery obliges a Man to answer as to his own Acts positively for seven Years, without saying, *as he believeth*, or *as he remembrath*, or the like. What Credit is to be given to a Witness who testifieth what was said in Company, and by whom, when his Memory doth not serve to answer positively, whether he was in the Company, or whether another told him what was there said? He might as

well have said he was there, or dreamt he was there, or that he heard the Discourse or dreamt of it, which had carried equal Credit with it.

It was plain, the Man was not of sane Memory enough to make a Will, much less to be a Witness in the Trial of a Man's Life; and nothing can be said for him, but that he was a Witness for the King, that is to say, a mad Man may be a Witness to take away a Man's Life, which is as good Law as a great deal of other *Cant* vented as a part of the Prerogative.

It is true, one of the King's Counsel recommends *Rumsey* to the Jury, as a very credible Witness under the Notion of an unwilling Witness: but had the same Person been a Counsel for the Prisoner, he would have call'd *Rumsey* a dancing Witness, for he said backwards and forwards; and an amaz'd Witness, for being ask'd one thing, he answer'd another; being ask'd as to the *Declaration*, he answer'd to the seizing of the *Guards*; being ask'd whether my Lord *Ruffel* assented to the Answer of the Messager, he reply'd, yes, because he talk'd of the Raising, &c. which might be as well against as for it.

Sheppard's Evidence was to the Design of seizing the *Guards*; and as to the *Declaration*, he remember'd but two Meetings, at both which he said, as he remember'd, my Lord *Ruffel* was present, but he could not be positive in that, and the times of the *Meetings* he did not remember: he said, the substance of the Discourse was, how to surprize the King's *Guards*; and that the Duke of *Monmouth*, the Lord *Grey*, and Sir *Thomas Armstrong* went to see the *Guards*, as he remember'd; and the next time they came to the House, Sir *Thomas Armstrong* said the *Guards* were very remiss, &c. Taking this Evidence by itself, without tacking *Rumsey's* Evidence to it, it was so far from being Evidence of Treason, that it was no Crime; for he doth not say, it was intended to be put in practice, notwithstanding all said by him: both the Discourses and the Persons viewing the *Guards*, (which last was not Evidence, nor ought to have been given in Evidence) might be a Matter to try each other's Judgments, as well as an Evidence of a thing design'd: and if it be capable of two Interpretations, the Law hath said, it shall be taken in *mitiore sensu*, in favour of *Life*. That distinction was taken by the Chief Justice in *Blague's* Case, the day after this Trial, where the Evidence against him was a Discourse about taking the Tower, as high a Crime as seizing the *Guards*; and upon that *Blague* was acquitted. It is true, *Rumsey* said it was in order to be put in practice, when the Raising should be in the Country, but that he did not say at first; but was afterwards led to it by Questions: nor did he speak it as a thing at that or any other time determin'd, but as his own surmise or guess, because he knew of an intended Raising; yet how foolishly did he contradict himself? for, says *Rumsey*, it was to have been put in practice, if the intended Raising had gone on; and yet at the same Meeting he had said before, the Raising was put off; how contradictory therefore is it to say they made Preparations for a thing they had laid aside before? And it is plain *Sheppard* speaks of the same time; for both agree *Rumsey* was at that Meeting, though they do not agree how soon he came: besides, how could *Sheppard* speak positively of the Discourse, or of the Design of it, when he owns he did not hear all their Discourse, and gives a very good Reason for

it? for he said he went several times down to fetch Wine, Sugar, and Nutmeg, and did not know what was said in his Absence; he said he heard nothing about a Raising, nor heard any further Discourse; but on recollection, he heard something about a Declaration of Grievances in order to a Raising, as he suppos'd; the Particulars he could not tell. Now what sort of Evidence was that? In all civil Matters, a Witness shall not be permitted to give Evidence of the Content of a Deed or Writing, without producing the Deed or Writing itself, or a true Copy of it, and upon very good reason; for he may make an untrue Construction of it. I remember a Witness who swore to the Content of a Deed of Intail; and being ask'd, whether he knew a Deed of Intail, and by what he knew the Deed he spoke of to be a Deed of Intail, answer'd, he knew a tailed Deed very well, and he knew the Deed to be a tailed Deed, because it had a Tail half as long as his Arm, meaning the Label of the Deed. And if this be the Practice, and the Reason of the Practice in civil Matters, shew me any Authority or Reason any thing should be permitted to be given in Evidence in Treason, which is not permitted to be given in Evidence in the Trial of any civil Matter.

If you say, as Justice *Levinz* said in a like Case in *Colledge's* Trial, that it would be the difficultest thing in the World to prove Treason against a Man, if the Law were not so, and the King would in no sort be safe; on the other hand, I say as *Colledge* there said, if the Law should be so, no private Person is safe: and if there be Mischief of either hand, the Law is and must be Judge, which hath taken care (though to no purpose, because it hath not been observed) that there should be a stricter Proof in Treason than in any civil Matter, or in any other Crime: and how the Judges came to permit that loose Evidence in Treason to be given, which of late Years they have done, no just or honest Account can be given.

The last material Witness against my Lord *Ruffel*, was my Lord *Howard*, (as for *Atterbury's* Evidence, it ought not to have been permitted to be given, as shall be shewn, nor was it material) to no part of whose Evidence any Credit ought to be given, even by his own Confession: he was surely in the right, when he said that the Religion of an Oath is not tied to a Place; and I'll add, not to a Form, but receives its Obligation from the Appeal therein made to God: and therefore if he said (though I own he was not bound to say it) to the Earl of *Bedford*, Mr. *Howard*, and Dr. *Burnet*, what was testify'd against him, he ought not to be believ'd in any part of his Evidence. Did he say true to my Lord *Bedford*, when unsent for and unask'd, (for ought appears after my Lord *Ruffel* was clapt into the Tower) that sure his Son could never be in any such Plot as that, or suspected for it, and that he knew nothing against him, or any body else, of such a barbarous Design; and yet he knew, if he swore true, that my Lord *Ruffel* was guilty of such a barbarous Design, that nothing but the Lord *Howard's* Duty to God, the King, and the Country, could prevail with him to give it in Evidence against a Person for whom he had so great an Affection as he had for my Lord *Ruffel*. How was it consistent with the truth of his Evidence, what he said to Mr. *Howard*, that he knew nothing of any Man's being concern'd in that business, and particularly of my Lord *Ruffel*, whom

whom he highly commended, and said, he thought the Lord *Ruffel* unjustly suffer'd; or with what he said to Dr. *Burnet* with Hands and Eyes lift up to Heaven, which is as much an Appeal to God as may be, that he knew nothing of any Plot, nor believ'd any? It was an idle Evasion to say, when he spoke of my Lord *Ruffel*, he meant my Lord *Ruffel* was not guilty of the Design of murdering the King, (for which that Man, as he said, was committed, meaning *Walcot*, the Lord *Ruffel*, or any other Person) for he is still at liberty to explain himself, and I am apt to think they were all committed by Warrants of the same Form. I know not how dextrous he is at paring an Apple, but he must be an excellent *Logician* that can reconcile the truth of his Evidence and Sayings. The truth is, a Man that has those Niceties in his Head ought to have no Credit; for no Man knows whether he understands what he says aright, and I am apt to think his Lordship could shew, that he did not intend what he said at my Lord *Ruffel's* Trial in the Sense it was understood by the Court or Jury. To say, that he was to out-face the thing for himself and his Party, was as vain; (for besides that I think he was of no Party, because, as my Lord *Ruffel* said, he had the luck to be trusted by none) where was the Sense of making those Proteftations to Persons who could do him no good, and would do him no harm, both which my Lord *Pemberton* could; and therefore 'twas not alike? It is true, the Attorney-General commends the Lord *Howard* as a Person of great Credit amongst the Party, and insinuates the Lord *Grey* was left out of the Cabal for his Immorality, and the Lord *Howard* was taken in his place. But to pass from the General of his Evidence to the Particulars of it, for about two Leaves in the Print of it; it is a discourse between my Lord *Sbafesbury* and him, wherein he makes my Lord *Sbafesbury* have a wondrous Confidence in him, and discovers all the Design to him, and what number of Men he had at command; but who they were, or what they were, was never yet discover'd, and yet the Lord *Howard* had not at that time been concern'd in the Matter, nor did then assent: he very prudently was resolv'd to see whether it was likely to take effect or not, before he would enter on it. It was indeed a Matter of great wonder to those who knew my Lord *Sbafesbury*, and knew what Opinion he had of the Lord *Howard*, from the time he discover'd that the Lord *Howard* frequented the Dutchels of *Portsmouth*, which was before *Fitzbarris's* Trial, (though after that Trial the Matter was publicly own'd, which was before suspected by most, known to the Lord *Sbafesbury*) that he should so readily trust the Lord *Howard* with the Secret, who was unconcern'd in the Management before, as he says himself, and yet secreted himself from the Duke of *Monmouth*, and my Lord *Ruffel*, who were equally guilty, if what was sworn was true. I cannot but observe, that in all the time of the Lord *Sbafesbury*, the Lord *Howard* was no otherwise concern'd in the pretended Design, but in raising Difficulties, and being in great fear lest there should be a Rising or an Attempt upon the King's Person: and if he said true, he was the Man that put off the intended Rifings, and likewise the intended Design on the King's Person; insomuch, that I think he was so far from standing in need of a Pardon for Treason, that he deserv'd a considerable Reward, if it were for nothing else than for his fearing the Design

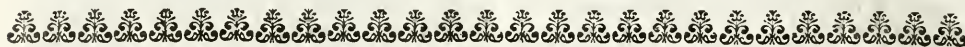
was discover'd by the Proclamation against Bonfires, which, as he said, put off the Rising intended to be the 17th of *November*; and yet he and others being afraid, the middle of *January* they erected themselves into a Cabal of six Persons, of which there is but one Person in all his Narrative he pretends to have spoken to about that Matter before, which is the Duke of *Monmouth*, and but one more he pretends even by hearsay to be concern'd in it before, which is my Lord *Ruffel*. How improbable therefore was it, that those six Persons should, as it were on sight, put themselves upon such a dangerous Design, especially considering the Reason he gives for it, which was their Fears, that what had been transacted was, or might be discover'd? This likewise is observable, that from the 30th of *September*, the time the Sheriffs entred upon their Office, to the 17th of *November* following, he is very exact as to the time of each Matter, when there was no Person could contradict him; for my Lord *Sbafesbury* was dead, *Walcot* was convicted, and the Duke of *Monmouth* was gone, who are all the Persons mention'd to be concern'd in that time: yet when he comes to speak of the Matter in which my Lord *Ruffel* was concern'd, then he says it was about the middle of *January*, about ten Days after, about six Weeks after, about three Weeks, and five Weeks; for had he been precise in the times, he might have been disprov'd in the Meetings he gave Evidence of: and it is much his Memory was so very good as to the former times, to be so very precise in them as he was, and so very defective in the latter times; and yet those times do not make up the space between the middle of *January*, and the time of the Trial; by many Weeks, unless you will give large Allowances to the Word *about*; an Exception which was taken to *Mowbray's* Evidence, though he rectify'd it by his Account in his *Almanack*; but it would not be admitted, though *Colledge* very sensibly desired of the Court, for Justice sake to look on the *Almanack*, to see whether it was newly writ, as if done for that purpose.

Besides the Improbability, if such a thing was in hand, as the Lord *Howard* pretended, for him to run into the Country, and then to the *Bath*, when the Matter was just come to a *Crisis*, as it were, shews him, if he swore true, rather a Madman than a Traitor.

But the Usage of the King's Counsel and the Court towards the Prisoner, was very unjust and unfair; they permitted the Lord *Howard* to go on with a long Story of him and my Lord *Sbafesbury*, at which, when my Lord *Ruffel* took Exceptions, the *Chief Justice*, it is true, said it was no Evidence; yet the *Attorney-General* bidding him go on in the Method of time, he went on where he left off, intermixing Stories of Designs, and of Attempts by other Persons upon the King's Person, to exasperate the Jury, as my Lord *Ruffel* said rightly against him; a thing which no Counsel durst have done, and no Court would have suffer'd in any other Case, nor even in that would the Court or Counsel suffer it for the Prisoner. How was my Lord *Anglesey* check'd when he began to tell what my Lady *Chaworth* said, and Mr. *Edward Howard* when he did not speak of his own Knowledge! How unjust was it for the King's Counsel to repeat all the Evidence the Lord *Howard* gave, when they summ'd it up, even that which the Court told them before was not Evidence! How unjust was the insinuating of the

Death of my Lord of *Essex*, as Evidence against my Lord *Ruffel*! And why did not the Court in summing up the Evidence take notice of the Liberty the *Witnesses* and *Counsel* had taken, and have told them what was not *Evidence*? No

other Reason can be given than what *Colledge* said at his Trial, upon his Observation of *Fitzbarris's* business and his own, That the Matter was not to stop at him.



Remarks on Colonel Sidney's Trial.

THE Lord *Ruffel* being executed, and the same day, what was called his Speech being published, than which, nothing in Print was so eagerly accepted or sought after, which shewed the Inclination of the People, there was some respite for quieting the Minds of the People; but it was not to stop there, as *Colledge* said, and therefore Colonel *Sidney* (who was talk'd to death under the Notion of a Commonwealth's-man) was the 17th of *November*, 1683, brought to *Westminster* to be arraign'd on an Indictment of High-Treason. The Indictment at the time he came to the Hall, was so far from being found by the Grand Jury, that it was not so much as presented to them; but the King's Counsel, who had pack'd the Jury, knew well enough that it would be accepted, that is, found upon sight by the Jury, without any Consideration, which was accordingly done, and Colonel *Sidney* thereupon arraign'd. The Indictment was for designing to depose the King, and to persuade the King's Subjects to rebel; and that he did write a certain Libel wherein it was contain'd, that he (meaning King *Charles* the Second) is subject to the Law of God, as he is a Man; to the People who made him such, as a King, &c. To which Indictment he would have put in some Exceptions, express'd in a Parchment in his hand, but was told by the Court, he must either plead or demur, and upon no other terms Exceptions could or ought to be admitted; after which he pleaded Not Guilty.

The 21st of *November* he was try'd, at which time he insisted to have a Copy of his Indictment, as he had done when he was arraign'd; but was both times denied. The first Witness against the Prisoner was Mr. *West*, against whom Col. *Sidney* objected, because he was not pardon'd; but it was answer'd by the Court, that he was a good Witness in my Lord *Ruffel's* Trial, and therefore should be in that. Then Colonel *Sidney* desired Mr. *West* might speak nothing but what he knew of Colonel *Sidney*; but was answer'd by the Court, he might give Evidence of a Plot in general, tho' Colonel *Sidney* was not concern'd in it; and it was call'd Sir *William Jones's* Law. Then Mr. *West* went on, and gave Evidence of what Colonel *Rumsfey*, Mr. *Nelborp*, and Mr. *Ferguson* told him of Colonel *Sidney*; but of his own Knowledge he could not say any thing of the Prisoner. *Rumsfey* gave a like Evidence he had done in my Lord *Ruffel's* Trial, with an addition of what Mr. *West* and Mr. *Goodenough* told him. *Keeling* gave Evidence of what *Goodenough* told him, all which the Court agreed was no Evidence against the Prisoner. Then the Lord *Howard* gave the like Evidence, from the middle of *January* to that time, as he had done in the Lord *Ruffel's* Trial, saying that he said the Earl of *Salisbury* was brought into the Cabal, who was not mention'd before; and save that he said the meeting at my Lord *Ruffel's* was about a Fort-

night or three Weeks after the meeting at Mr. *Hampden's*; whereas in my Lord *Ruffel's* Trial, he says it was about ten days after the meeting at Mr. *Hampden's* House: and here he makes two notable Speeches for Mr. *Hampden* at the opening of the Consult, both which he had forgotten at my Lord *Ruffel's* Trial, nor could remember at Mr. *Hampden's* Trial, tho' in the last he was led by a great many Questions to put him in mind of them. After his Evidence given, Colonel *Sidney* was ask'd whether he would ask the Witness any Questions, who answer'd, he had no Questions to ask him; whereupon the Attorney-General said, *Silence*— You know the Proverb.

The Record of the Lord *Ruffel's* Conviction and Attainder was given in Evidence. Sir *Andrew Foster* swore Sir *John Cockram*, and the two *Campbells* came to *London*. Sir *Philip Floyd* proved the seizing of some Papers in the Prisoner's House, and he did believe the Papers shewn in Court to be some of them. *Sheppard*, *Cary*, and *Cook* swore the Writing produced was like the Prisoner's Hand-writing. The Attorney-General desired some part of the Writing should be read; the Prisoner desired all of it might be read, but was answer'd by the Court, that the Attorney must have what part of it he would to be read, and afterwards the Prisoner should have what part of it he would to be read; but he persisted to desire all of it should be read. Then the Writing was read (which was plainly an Answer to a Book, but what Book, was not mention'd) in which the Right of the People was asserted. The Earl of *Anglesea* gave the same Evidence of the Prisoner, of the Lord *Howard's* speaking of my Lord *Ruffel*, and the Plot, as he had done in my Lord *Ruffel's* Trial. The Earl of *Clare* said that the Lord *Howard*, after Colonel *Sidney's* Imprisonment, said, if he was question'd again, he would never plead; the quickest dispatch was the best, he was sure they would have his Life; and speaking of the Primate of *Armagh's* Prophecy, he said, the Persecution was begun, and he believed it would be very sharp, but hoped it would be short; and said, he thought Colonel *Sidney* as innocent as any Man breathing, gave him great Encomiums, and bemoaned his Misfortune; and as for Col. *Sidney's* Papers, he said, he was sure they could make nothing of them. Mr. *Philip Howard* said, the Lord *Howard* said it was a Sham-plot; Dr. *Burnet* gave the same Evidence as he did in my Lord *Ruffel's* Trial. Mr. *Ducas* gave Evidence, that the Lord *Howard* said he knew nothing of Col. *Sidney's* being in any Plot. The Lord *Paget* gave Evidence to the same purpose. Mr. *Edward Howard* gave Evidence to the same purpose. *Tracy* and *Penwick* gave Evidence to the same purpose. Mr. *Blake* testified, that the Lord *Howard* said he had not his Pardon, and could not ascribe it to any other Reason, than that he must not have it till the Drudgery of swearing was over. Now to review what

what hath been said, it is strange to see what a Progress was made in the Resolutions of Points of Law, to take away a Man's Life; to say it in Col. Sidney's Words, as if the Court and Counsel thought it their duty to take away a Man's Life any how. Mr. West, and several others, are admitted to give Evidence by hear-say against the Prisoner, and their Evidence summed up, and urged as Evidence to the Jury; and the Reason given for it was, that he was admitted a good Witness of a like matter, in the Lord Russell's Trial; which, besides that it was not true, for it was rejected in that Trial, as it appears it was in the print, yet if he had been admitted, of no Authority, as Colonel Sidney said, because perhaps he was not excepted to. Of a like stamp is the Evidence of the Conviction of the Lord Russell; tho' I agree the Lord Russell's Conviction was as good Evidence against Colonel Sidney, as the Earl of Essex's Murder was against my Lord Russell, and no better. The fame may be said of Rumsey, Keeling, Foster, and Atterbury's Evidence. Against the Lord Howard's Evidence there were the same Objections as in the Lord Russell's Trial, with the addition of several other Persons testifying he said he knew not, nor believed any thing of the matter; and that he could not have his Pardon, till he swore others out of their Lives, which in truth was the Sense of his Expressions.

The King's Counsel indeed had thought of something since the Trial of my Lord Russell, to palliate the matter of the Lord Howard's Sayings, (for they lean'd hard upon his Reputation, and look'd as if he would perjure himself at the expence of some Persons Lives, as his Words are in the Lord Russell's Trial) Would you, say they, have had him confess'd the matter to those Persons to whom he had deny'd it?

I think there is a difference between confessing and denying: Who ask'd him the Question? What did it avail him to deny it to the Persons testifying against him? and therefore when he voluntarily said a thing untrue, unasked, not provoked or compelled to do it, and which could do him no good, it was good Evidence of his untruth, and that no credit ought to be given to what he swore.

As for the last part of the Evidence, which was about the Writing, both the Indictment and the Evidence was defective.

As for the Evidence, if the Subject-Matter of the Writing had been Evidence of Treason, the Indictment ought to have express'd that he publish'd it, which the Indictment in this case did not; and upon good Reason, which was, that the Jury might be put in mind, that the publishing of it was necessary to make it known; whereas they very well knew that the Evidence would not, nor did come up to it. This was the first Indictment of High-Treason, upon which any Man lost his Life, for writing any thing without publishing it; for in Fitzbarris's Indictment, he was charged with publishing his Libel; and so in all other Indictments for Writing, and upon good reason: for this being made an Overt-Act of Treason, it must be an Evidence of a Design to kill or depose the King, or the like; and as the Consequence of what the Writing contain'd, which was, that the Power was in the People, &c. being in its nature no other, nor urged by the King's Counsel to any other intent than to corrupt the Subjects Minds, could not be Evidence of such matter, unless proved he had writ and published it, whereof the last was not pretended to be proved.

That it was necessary to be express'd in the Indictment, and proved at the Trial, appears by the Resolution of all the Judges of England in *Hugh Pine's Case*, reported in *Cro. Car. Fol. 89.* at a time when Prerogative run pretty high; wherein, besides the Resolution that no Words charging the King with any personal Vice, was Treason, there is the Case of one *Peacham*, in the 33d of *Henry* the Eighth, cited, who was indicted for Treason, for treasonable Passages in a Sermon never preached, nor intended to be preached, but found in Writing in his Study; he was found guilty, but never executed; for many Judges at that time were of Opinion it was not Treason, as the Book says: which I think, according to the Evidence here given, was the express Case of Colonel Sidney, admitting he writ the Book produced, and that the Passages in it were treasonable.

And as this Indictment was an Original in the particular before mentioned, so it was a second of an *Innuendo* Indictment of Treason; *Fitzbarris* was the first. The Prosecution against *Car*, as I remember, was an Information, and Judgment arrested after a Verdict, because it was by *Innuendo*, of which no Precedent could be produc'd; and although in Actions for Words it was permitted, yet in Criminal Matters, being penal, it was resolv'd it ought not to be permitted, and certainly much less in Treason: and as this Indictment was an Original in one part, and a second in another, the Evidence on it was an Original in another part, which was proving the Book produc'd to be Col. Sidney's Writing, because the Hand was like what some of the Witnesses had seen him write; an Evidence never permitted in a criminal matter before. The Case of the Lady *Carre* was well cited by Colonel Sidney, against whom there was an Indictment or Information of Perjury; in which it was resolv'd, that comparison of Hands was no Evidence in any criminal Prosecution: And it must be own'd, that at that time, besides *Keeling* and *Twisden*, there then sat in that Court Sir *Wadham Windbam*, whom all will own to have been the second best Judge which sat in *Westminster-Hall* since the King's Restoration: and if it be not Evidence in a Prosecution of Misdemeanor, much less in Treason, as Col. Sidney said; which Inference, besides the reason of the thing, is back'd by the Authority of my Lord *Coke*.

But admitting Colonel Sidney wrote that Book, and published it; yet if it were not done with a Design to stir the Subjects up into a Rebellion, but was writ and published only *disputandi gratia*, as the Import of the Book shews plainly it was, it was no more Treason, than the Discourse between *Blague* and *Mate Lee* about taking the *Tower* was. And suppose it was wrote with that Design, yet it not appearing when it was writ, how could a Jury, upon their Oaths, say it was done with a design to raise Rebellion against King *Charles* the Second, when, for ought appeared, it was writ before he was King, or thought of? It might, for ought appeared, be writ in King *Charles* the First's time, or *Cromwell's* time, and design'd against either of them, or any foreign Prince, and therefore could not be Treason against King *Charles* the Second.

The Evidence was an Original in this particular; also it was the first time that ever a particular Expression in a Writing was given in Evidence against a Man in Treason, without reading the whole Writing, and for a very good Reason given by the Jury in *Fitzbarris's Case*, which was, That there might be something

something in the Writing not, expressed in the Indictment, which may explain the Clauses in the Indictment, so that they may bear another construction: and in that Trial it was agreed the whole Writing ought to be read, and was read accordingly; and it was the duty of the Court to have ordered it, whether the Prisoner or Jury had desired it or not, as they are upon their Oaths to do right: but in Colonel *Sidney's* Case; when pressed by him, it was denied; only some particular Passages he might have read if he would, which he did not accept, upon a very good Reason which he gave, which was, that he knew not the Passages of the Book, or at least he did not remember them, and therefore could not call for them. 'Tis true, that Practice in civil Matters is allowed to save time, where the Mischief is not very great; because of a Passage in a Deed or Writing, material for either Party, omitted in reading, the Matter may be brought about again; but in Criminal, much less in Capital Prosecutions, they cannot be, unless a way can be found to bring a Man to Life again.

Almost all the Circumstances of this Trial are Originals; the summing up of the Evidence against him was barbarous, being Invectives, and no Consequences. It was said he was not only guilty of the Practices he was accused of, but that he could not have been otherwise, because his Principles led him to it; and it might with as good reason have been urged, that he not only was become, but was born a Traitor. The last matter remarkable in the Trial, was that of an Overt-Act, of which the Court said it was resolved by all the Judges of *England*, that if I buy a Knife of 7. s. to kill the King, and one Witness prove I bought a Knife, and another prove I bought it for that purpose, it is two Witnesses of an Overt-Act within the Statute of *Edward* the Sixth.

It were fit to know who the Judges were who gave that Resolution, if it were but for the Authority of the Case; for I doubt the Reason of it will convince no Man: They might as well have resolved, that eating or drinking, or the most ordinary Acts of a Man's Life, is an Overt-Act of High-Treason.

The Law hath taken that care for the Evidence of High-Treason, which it hath not done in any other Case, that it must be proved by an Overt-Act, proved by two Witnesses. One would think at the first sight of the Statute, that there should be two Witnesses to the same Fact; but that hath been adjudged otherwise, yet still it was resolved

there must be two Witnesses: but if this Resolution be Law, it is plain there needs but one. 'Tis true, if a Man does an Act for which he can give no Reason, as placing a Mine of Powder in a Place the King usually passeth over, or planting a piece of Cannon to shoot at a Place the King usually passeth by, if he cannot give a credible Reason why he did it, and another swears the Purpose of the thing, it is two good Witnesses within the Act.

It hath been said, if a Man be bound to his good Behaviour, and wears a Sword, it is a breach of the good Behaviour; and perhaps, heretofore, when Swords were not usually worn but by Soldiers, it might be so, because it struck a Terror in other People as much as a Blunderbuss, or the like unusual Weapon; or the going armed in a Coat of Mail, for any Person but a Soldier, doth at this day. Yet no Man will say that, now Swords are usually worn by all sorts of People, it is a breach of the good Behaviour; and so that which heretofore was a Crime, by Custom now is become none. It is therefore the unusualness and the unaccountableness of the Circumstance make it an Evidence, which cannot be assigned as a Reason in the Overt-Act mentioned.

The last thing I take notice of, is, that Colonel *Sidney* refused to ask the Lord *Howard* any Questions; from whence was inferred, that he assented to the Truth of the Matter sworn: but it is well known, 'tis no prudence to ask a thorough-paced Witness a Question; in Mr. *Hampden's* Trial, his Counsel refused to do for that Reason.

The next who fell a Sacrifice, according to *Colledge's* Prophecy, was *James Holloway*; he was outlawed, and taken beyond Sea; and being induced with Promises of Life, to accuse himself of things (whether guilty or not) enough to make good an Indictment of High-Treason against him, it was indeed generously offered him that his Outlawry should be set aside, and he have the liberty to be tried, and defend himself as well as he could: but knowing that what he had said since he was taken would be brought in Evidence against him, he refused his Trial; and because he would not purchase his Pardon at the expence of innocent Men's Blood, by accusing others, of what he did not know they were guilty (if his dying Speech is to be believed) he was executed.

I should not have mention'd this, but for the sake of the next Person's Case, which was Sir *Thomas Armstrong's*, who was outlawed for High-Treason, when he was beyond Sea; he was taken and brought to the *King's Bench* Bar.

Remarks upon the AWARD of Execution against Sir Thomas Armstrong.

AT Common Law, if a Person was beyond Sea when an Outlawry was pronounc'd against him, it was an Error in Fact, for which the Outlawry was to be revers'd; and it is an Error in all Outlawrys but for High-Treason to this day. By the 6th of *Edward VI.* that Error is taken away in High-Treason, but there is a *Proviso* in that Statute, that if the Person outlaw'd shall within a Year after the Outlawry pronounc'd,

yield himself to the Chief Justice of the *King's Bench*, and offer to traverse his Indictment, and on his Trial shall be acquitted, he shall be discharged of the Outlawry. Upon the Construction of this Statute, no Judgment was ever given that I know of; and the reason is, no Man outlaw'd was ever deny'd a Trial till this time, if he was taken within a competent Time. The reason of making that Statute was this; Men would commit Treason, and

and presently fly beyond Sea, and stay there till the Witnesses who should prove the Treason were dead; then return, and reverse the Outlawry for the Error of their being beyond Sea; and the Witnesses being dead, they were safe: and therefore this Statute takes away that Error in part, tho not in the whole, and doth in effect say, that the Person outlaw'd shall not have advantage of that Error, unless he comes and takes his Trial within a competent time, which that Statute limits to a Year after the Outlawry pronounc'd.

This being plainly the Sense of the Statute, it was Injustice to deny the Favour or Right of a Trial to Sir *Thomas Armstrong*, which was never deny'd any Person before nor since, where it was agreed that all the Witnesses against the Person accus'd were alive, as in Sir *Thomas Armstrong's* Case they were, barely upon the quibble of the word *render*, which in no Case that ever I read was differenc'd from taken, but in one Case, which is *Smith and Afoe's* Case in *Cro. Car. 42.* in an Outlawry for Debt against Husband and Wife, which

will not extend to, or warrant the Judgment in this Case: and if there were but a Doubt in the Case, as it cannot be deny'd there was, the Outlawry ought to have been wav'd, or at least Counsel for the Prisoner heard as to the Point.

It was a vain and unjust Reason (and only tending to incense the thing) assign'd by the Attorney, that the Prisoner was one who actually engag'd to go, upon the King's hafty coming to Town, to destroy him by the way; whereas the Prisoner offer'd to prove his Innocence in that and other Matters of which he was accus'd: and even that Objection against him was an Invention of the Attorney's for any thing appears; but then it was resolv'd to stop at nothing, and Succes had made them fearless. *Fitzbarris* and *Colledge* 'twas own'd had hard measure, and that their Cases might be forgotten, their Quarters were buried; but Sir *Thomas Armstrong's* were expos'd, tho the Proceedings against him were equally as unjustifiable as in the other two Cases.



Remarks on the Trial of Count Conningmark.

I Think fit to remember in the same Reign, tho before this time, one Case, to shew how the Courts of Justice were remis or violent, according to the subject Matter.

All will agree, that the Murder of Mr. *Tbynne* was one of the most barbarous and impudent Murders that ever was committed; and of that Murder Count *Conningmark*, tho he escap'd Punishment, was the most guilty.

I do not complain that in that Trial the Chief Justice directed the Prisoner the way to make the King's Counsel shew the Cause of Challenge against the Persons call'd on the Jury, and challeng'd for the King, without any Reason. It was his Duty so to do; and he ought to have directed *Fitzbarris* the same Method, which he did not: but he was blameable that he did not ask the *Lieutenant* and *Polander* what they had to say for themselves, which was always done before and since that time, and ought to be, which was an Injustice; and therefore two of the Prisoners at the time of their Sentences said, they were never try'd, tho I believe no great Injury to them, because they had little or nothing to have said for themselves.

But if they had been ask'd, they would have said as they did before their Trials to the Justice of Peace who committed them, and as they did after their Condemnations, that Count *Conningmark* put them upon doing what they did, which might have influenc'd the Jury to have found the Count guilty, which was contrary to the Design of the Court; and it was for the same Reason the Chief Justice would not permit the Justice of Peace to read the Examination of *Stern* and *Borosky*.

I do agree, that what they said before the Justice of Peace was not Evidence against the Count; I agree that the Count being indict'd and try'd as Accessory, at the same time the Principals were indict'd and try'd, the Principals could not be good Witnesses against the Count, because properly a Principal ought to be convicted before the Ac-

cessory be try'd; and therefore tho for Expedition both are try'd together, yet the Verdict always is and ought to be given against the Principal, before that of the Accessory.

But I deny what was in that Trial laid down for Law, that the Accessory being in the same Indictment with the Principal must be try'd at the same time. It is true, the Count desir'd his Trial might be put off for two or three days, which the Court knowing what is best for the Count deny'd, and not for the above pretended Reasons; for an Indictment against many may be joint, and yet the Trials may be several: the truth is, in such Cases the Indictment is joint and several.

Suppose the Accessory, at the Trials of the Principals, had not been in custody; will any Person say, that if afterwards he was taken, he can't be try'd upon that Indictment in which he was join'd with the Principals?

But besides a hundred Precedents not printed, there is the Case of *George Salisbury & al. in Ploverden, Fol. 100.* where it was resolv'd, that tho an Indictment against many is joint, yet the *Venire* may be several against each Person, and consequently the Trials may be several; and if so, then the times of the Trials may be several, but that which is to be complain'd of is, that the Count in the Opinion of all Mankind at that time and since was the most guilty Man, yet the care taken to punish the less guilty, as *Stern* and *Borosky*, was in order to let the most guilty escape; for I think both *Stern* and *Borosky* might, and would have been good Witnesses against the Count, if the Court would have permitted it. The Count might have been indict'd as Accessory to *Wratts* only; for the Accessory to all the Principals is Accessory to every of them severally: and when the Court in their private Consciences were satisfy'd the Count was most guilty, they ought to have been cunning, *astuti*, as my *Ld Hobart* calls it, to have brought him to Punishment. But 'twas said, *Stern* and *Borosky* being indict'd

dicted of the same Crime with the Count, they could not be good Witnesses against him, which I think is no more Law than Truth: Truth it was not, for the Count was indicted as Accessory, the rest as Principals. But taking it that all were indicted and try'd as Principals for the same Fact at the same time, why is not the Evidence of the one good against the other? First, I think there is no express Resolution for that Point of Law, but a late Rule given at *Kingston* Assizes upon the Trial of a Maid and one *Saterwaite* for burning of an House; and therefore there is a Liberty to examine by Reason how the Law is. I agree if a Man is indicted and try'd for killing another, he shall not be admitted to say, *B.* did it by himself; but I think he may be a good Witness to prove that he and *B.* did it: that is to say, he shall not give any Evidence against another, which tends to acquit himself as well as accuse another; and I think he may give Evidence which accuses another of the same Crime whereof he is indicted, if it doth not tend to acquit himself.

For it is agreed on all hands, that being guilty of the same Crime, doth not disable a Witness: for then *Rumsey* and several Persons in the Lord *Russel's* Plot, as it was call'd, had not been good Witnesses. In the next place, the Circumstances of an Indictment against the Witnesses for the same thing he testifies against another, do not disable him; *Widdrington* was indicted for the same things, of which he gave Evidence against several others as his Complices in Robberies. Nay, the Law hath given somewhat more credit to the Evidence of a Person indicted, as a Witness of the same things against others, than it does to a Person not indicted; as in the Case of an Approver, which, as *Stamford* * says, was a Person in

* S. P. C. Lib.
2. c. 53.

Prison (not at large) for the Fact for

which he was indicted, arraign'd upon an Indictment, or an Appeal of Felony, who before a Coroner assign'd by the Court, confesses himself guilty of the Felony of which he is indicted, and not of any other, and confesses other Persons naming them as Coadjutors with him in committing the Crime of which he is indicted, and not of any other Crime; so much Credit shall be given to that Confession, that Process shall be made out against the Person peach'd, who, if taken, shall be arraign'd on that Approvement, as if an Indictment by a Grand Jury had been found against him: and if the Law gives so much Credit to an Approver, I think no Person can shew me a Reason why a Person indicted is not a good Witness against another for the same Crime.

It is true, *Stamford* * says, if a King gives an Approver a Pardon, he is a good Witness; which implies, that otherwise he is not: But it must be consider'd, that the reason of that is, that an Approver being indicted, as he always is, and confessing the Indictment, is convicted; and a Person convicted of Felony cannot be a Witness till pardon'd. But it will be no Argument why *Stern* and *Borosky* had not been good Witnesses against the Count before they were convicted; and it was a like piece of Justice, that whereas the Count was the most guilty, he was acquitted.

Wratts being the next greatest Offender, was honourably interr'd, and *Stern* and the *Polander*, who were the least Offenders in that matter, were hang'd in Chains.

It was somewhat like the *New-England* Law, remember'd by *Hudibras* *, of hanging an useless innocent *Weaver* for an useful guilty *Cobler*.

* Part. 2.
Canto. 2.



Remarks upon Mr. Cornish's Trial.

THERE yet remain two Persons Prosecutions to speak of; the one is Mr. *Cornish*, who was taken the— of *October*, 1685, and was arraign'd on an Indictment of High-Treason the *Monday* after, for conspiring to kill the late King *Charles* the Second; and knowing *James* Duke of *Monmouth*, *William Russel* Esq; and Sir *Thomas Armstrong*, to be Rebels and Traitors, promis'd to be assisting to them in their Treasons: To which he pleaded Not Guilty. He desir'd to put off his Trial, because he had no notice till the *Saturday* before at twelve a-clock, and he could get no Friend to come to him till eight a-clock at Night; and then he was permitted to speak with no body but in the presence of the Goaler: he had been allow'd no Pen, Ink, or Paper. He was told by the Court he ought not to have it, without leave given on a Petition prefer'd by him, and that he was taken *Tuesday* before, which to that time was almost a Week. He said, his Children had petition'd the King the Night before to put off his Trial, and it was refer'd to the Judges: he did not know whether he was committed for High-Treason against the present, or the former King, and he had a material Witness an hundred

and forty Miles off; but was told by the Court, they had no power to put off his Trial. It is true, they said the Lord *Russel's* Trial was put off till the Afternoon, (which was not true) but that was a Favour which could not be challeng'd by another as a Right. He complain'd he had not a Copy of the Pannel, but was answer'd, it was not his Right to have it. Then the Attorney said, he had not deserv'd so well of the Government as to have his Trial delay'd, and therefore he was presently try'd.

Rumsey swore, that about the latter end of *October*, or beginning of *November*, the Earl of *Sbastefbury* desir'd him to go to Mr. *Sheppard's* House, where was a Meeting of the Duke of *Monmouth*, Lord *Russel*, Lord *Grey*, Sir *Thomas Armstrong*, Mr. *Ferguson*, and Mr. *Sheppard*; he came late, and they were just on going away; he deliver'd his Message, and they told him that Mr. *Trenchard* had disappointed them. He had not been there above a quarter of an hour, but Mr. *Sheppard* was call'd down, and brought up Mr. *Cornish*, and told them Mr. *Cornish* was come; who came into the Room, and excus'd his not coming sooner, and that he could not stay, for he was to meet about

the Charter; whereupon Mr. *Ferguson* open'd his *Bosom*, and under his Stomacher pull'd out a Paper: they told Mr. *Cornish* they had had it read, and desir'd to read it to him: Mr. *Ferguson* read it, Mr. *Sheppard* held the Candle while it was reading, and afterwards they ask'd Mr. *Cornish* how he lik'd it; who said, he lik'd it very well. He remember'd two Points in it very well, the one was for Liberty of Conscience, the other was, that all who would assist in that Insurrection, who had Church or King's-Lands in the late War, should have them restor'd to them. He did not hear all the Paper, and observ'd only these two Points; it was a Declaration on a Rising, and when the Rising was to have been, it was to have been dispersed abroad: there was a Rising intended at that time, and Mr. *Cornish* said, he lik'd the Declaration, and what poor Interest he had he would join with it. He had great dealings with Mr. *Cornish*, and Mr. *Cornish* was a very honest Man, it was out of Compassion he had not accus'd Mr. *Cornish* before.

Mr. *Goodenough* said, there was a Design to rise in *London*, and for that purpose to divide the City into twenty Parts, and to raise five hundred Men out of each Part, to take the *Tower*, and to drive the *Guards* out of Town. Before that was agreed on, he being by chance at Mr. *Cornish's* House, said, the Law will not defend us; some other way was to be thought on. Mr. *Cornish* said, he wonder'd the City was so unready, and the Country so ready. Mr. *Goodenough* reply'd, there is something thought of to be done here; but in the first place the *Tower* must be seiz'd, where the Magazine is. Mr. *Cornish* paus'd a little, and said, I will do what good I can, or what I can, or to that purpose, he said.

He afterwards met Mr. *Cornish* on the *Exchange*, who ask'd him how Affairs went; and this was in *Easter-Term* 1683. He had some matters with Mr. *Cornish* about managing the Riot, which was brought against him, Mr. *Cornish*, and others: He came to Mr. *Cornish's* House about the business of the Riot, and no Person was by at the discourse. Mr. *Gosfright* testify'd for Mr. *Cornish*, that he oppos'd Mr. *Goodenough's* being Under-Sheriff, and said, he would not trust an Hair of his Head with him, he was an ill Man, obnoxious to the Government, and had done ill things, and he would not trust his Estate and Reputation in the hands of such an Under-Sheriff; and he believ'd Mr. *Goodenough* and Mr. *Cornish* were never reconcil'd. Mr. *Love*, Mr. *Jekil*, and Sir *William Turner* testify'd to the same purpose: Mr. *Lane* spoke out of the printed Trial of my Lord *Russel*, and said, *Rumsey* in that Trial said he did not hear the Declaration read, for it was read before he came. Dr. *Calamy* said, Mr. *Cornish* did often come to Church, and receive the Sacrament. Mr. *Sheppard* said, he was *subpana'd* by the King, and by Mr. *Cornish* the Night before; and that Mr. *Cornish's* Son was with him the Afternoon of the Day before, who prest him to be at the Trial the next Day; that there were Accounts depending between him and Mr. *Cornish*, whereon there was about one or two hundred Pounds due to Mr. *Cornish*, and Mr. *Cornish's* *Subpana* was serv'd first upon him. At one of those Meetings at his House, Mr. *Cornish* came to speak a few Words with the Duke of *Monmouth*, or some other, he could not be positive in that, it was many Years ago: he did not stay above half a quarter of an hour in the House;

Sheppard came up stairs, and went out with Mr. *Cornish*, and there was not one Word read, nor no Paper seen while Mr. *Cornish* was there: he remembered there was a Declaration read, *Ferguson* pull'd it out of his Shoe: he could not tell whether Mr. *Cornish* was at his House the Night the Declaration was read, but he was positive no Paper was read while Mr. *Cornish* was there, for Mr. *Cornish* was not look'd on to be one of the Company: he did not know who Mr. *Cornish* came to speak with, when he came to his House; Mr. *Cornish* was but once at his House when the Duke of *Monmouth* was there: he did not remember that Mr. *Cornish* was in the Company when Mr. *Rumsey* was there; he said, he had attended the Court from eleven a-clock till half an hour past three.

This being the Sum of the Evidence given in the Trial for and against the Prisoner, let us see whether those Inferences could be made from it as were made by the Court and Counsel: and whether on the whole an honest Jury, tho' but of little understanding, could have found him guilty of the Treason in the Indictment.

It is agreed on all hands, that a petty Jury may and must consider the Credibility of a Witness, (tho' in the Lord *Sbafestbury's* Case it was said a *Grand Jury* ought not so to do) and if so, surely *Rumsey* was not a credible, tho' he was not a disabled Witness; no more than a Man who owns himself to be a Man of Falshood, a profligate Wretch, and perjurd by his own Confession, tho' not convicted of it: he had notoriously confessed himself guilty of High-Treason, and of being in the Design of an intended barbarous Murder; he had sworn in the Lord *Russel's* Trial, he had nam'd all the Persons at the Meeting he spoke of, of which Mr. *Cornish* was none; and being tax'd in this Trial with it, he excuses his Perjury with Compassion to the Prisoner, which was mean, foolish and contradictory: he perjurd himself to save the Prisoner, and then swore Truth to hang him. He had not Presence of Mind enough to excuse himself in the manner a Witness in the Lord *Russel's* Trial did, that his God, his King, and his Country put him unwillingly to act that part. Besides that in the Lord *Russel's* Trial, *Rumsey* swore he was not at the reading the Declaration, and contradicted *Sheppard*, who swore he thought he was there.

But that passage was prov'd only by a Witness who had read it in the Trial, which I confess in strictness of Law is not Evidence; nor if the Witness had said, he heard *Rumsey* swear so at the Lord *Russel's* Trial, it had not been Evidence, unless a Record of that Trial had been produc'd in Court, which was not done. But all those things being but mere Circumstances, shew the Injustice of speeding his Trial, and denying him Counsel: Would not any Counsel have told him that in strictness of Law a passage in a printed Trial was not Evidence, and was it not easy for him to have got a Witness to have said that he had heard *Rumsey* swear so at that Trial? were not all the Judges who sat upon him, and all the King's Counsel who were against him, present at the Lord *Russel's* Trial, and perfectly remembered what *Rumsey* then swore as to the pretended Declaration, and might he not have *subpana'd* them to have testify'd that matter? Nay, was it not their Duty to have done it even without a *Subpana*?

To say it was against the King, and therefore they could not do it; or they were in the Commission to try him, and therefore they could not do it; is neither Law nor Reason. Every Man knows that a Judge in a civil Matter try'd before him, and a Counsel even against his Client, has been enforc'd to give Evidence, (provided it be not of a Secret communicated to him by his Client) for in that particular a Judge ceases to be a Judge, and is a Witness; of whose Evidence the Jury are the Judges, tho' he after re-assume his Authority, and is afterwards a Judge of the Jury's Verdict.

A Judge may sue, and must be sued in his Court, but in that Case he ceases to be a Judge and is a Suitor, tho' he re-assumes his Authority in all other Matters: and if it be so in civil Matters, let any Man shew me a Reason why the Law is not so in criminal Matters; there is no express Law against it, and it will be absurd in Reason to say the Law is not so: for at that rate the King may put any Witness, he knows the Prisoner intends to produce for himself, into the Commission for trying him, and so deprive the Prisoner of the Benefit of his Evidence; as in this Case *Sheppard*, whose Evidence ought to have been of great use (as shall be shewn) tho' it was not of any avail to the Prisoner, might have been put into the Commission to have try'd Mr. *Cornish*, for he was as much qualify'd for it, as Sir *James Smith* then Lord Mayor, or any Judge upon the Bench. And if they might have been Witnesses for the Prisoner, if *subpana'd*, they might have been Witnesses for him even without asking; and it was a Duty incumbent on them, tho' not as Judges, yet as christian Men, to be.

Humanity commands the Discovery of Truths, which prevent the shedding innocent Blood; and Christianity commands a Man to do as he would be done by. I think the Question need not be ask'd what they would have had done, if it had been their Case.

The Reason that all matters of Law are, or ought to be transacted publicly, is, That any Person, unconcerned as well as concern'd, may, as *amicus Curiae*, inform the Court better, if he thinks they are in an Error, that Justice may be done: and the reason that all Trials are publick, is, that any Person may inform in point of Fact, tho' not *subpana'd*, that Truth may be discover'd in civil as well as criminal Matters.

There is an Invitation to all Persons, who can inform the Court concerning the matter to be try'd, to come into the Court, and they shall be heard. It is true, if the Judges or any Person had testify'd what *Rumsey* said at my Lord *Russel's* Trial, it had not been Evidence without the Record of the Trial; and it is as true, that neither the Record, nor a true Copy of it could have been procur'd between Mr. *Cornish's* Commitment, if it were on *Friday* (as I have heard it was) tho' the Court said it was on *Tuesday*, much less between the notice of his Trial which was *Saturday-noon*, and the time of his Trial which was *Monday-morning*.

But then what Justice was there in speeding his Trial, so as to deprive him of the Circumstances of his Defence? for that was but a Circumstance, and not an essential Matter. And what Account can be given why the Court, when they were well satisfy'd that it was in the Prisoner's power to procure such a Witness, and such a Record, did

not stay till he did it? or if it would be too long in doing, why should they not have put off the Trial for that time, and given the Prisoner a convenient time to do it?

The first in civil Matters hath been frequently done, when a Deed or Witness hath been wanting, if it could be done in a convenient time, and a Trial has been put off before it came on; tho' after it came on they have not done it, because there is no great Mischief in that, for either Party hath power to bring it about again; but not so in capital Matters, and therefore Juries in capital Matters have been frequently discharg'd after sworn, where the Evidence hath been defective.

It is true, my Lord *Coke* saith, that a Jury once charg'd with a Prisoner, cannot be discharg'd but must give their Verdict; but it is as true that he says so in favour of the Prisoner, that when the Evidence against him appears defective, he shall not be continued a Prisoner till more Evidence can be found, or procur'd against him, tho' the Practice of late days hath been quite contrary, *viz.* to discharge the Jury where the Evidence against the Prisoner hath been defective, but enforce them to give a Verdict where the Prisoner's Defence hath been defective; tho' to their knowledge if he had longer time to do it, he had been able to produce the Witnesses who could clear him: but by what Law or Reason I am to seek. Yet I confess, if *Rumsey's* owning his Perjury in the Lord *Russel's* Trial, in the very point sworn against the Prisoner, and so frivolously excusing it, would not discredit him, I know not that any Record, Witness, or Evidence would have avail'd Mr. *Cornish*.

And add to *Rumsey's* contradicting himself, that *Sheppard*, who never contradicted himself, and had been a Witness in both Trials, agrees, that what *Rumsey* had sworn in my Lord *Russel's* Trial as to Mr. *Cornish's* not being there, was true.

But admitting *Rumsey* had never perjur'd himself, but was of equal Credit with *Sheppard*; yet when they contradicted each other in a point which carried no probability or improbability with it, in a capital Matter the Jury ought to believe *in favorem vitae*; for it makes the matter at least doubtful: and therefore the Jury ought to have acquitted the Prisoner, for a Reason in Law, and which was given in Colonel *Sidney's* Trial (tho' shewishly) by the Court, *viz.* that it is better that twenty Nocents should escape, than one Innocent suffer.

But to pass from the Credibility of the Witnesses to the Matter of his Evidence, this was the second time that this sort of Evidence in any Case criminal or civil was permitted to be given in Evidence; and there are the same Exceptions to it, as are above assign'd to the Evidence of *Sheppard*. As to the Declaration in my Lord *Russel's* Trial, if a true Copy of part of a Deed or Writing was never yet permitted to be given in Evidence, much less hath or ought the purport of part of a Writing be given in Evidence, especially when such a reason is given why the Witness remember'd but part of it, as is given by *Sheppard* in my Lord *Russel's* Trial, and by *Rumsey* in this Trial, *viz.* that he did not hear all the Paper read.

And surely *Goodenough* could no way fortify *Rumsey's* Evidence, being clearly of another matter, and that so very uncertain, that no heed ought to have been given to it. When *Goodenough* told

Mr. *Cornish* something ought to be done in the City, but in the first place the *Tower* ought to be seized; to which he answer'd, he would do what he could, or what good he could: these words may as well relate to *Goodenough's* present Discourse, where he complains that the Law would not defend them tho' innocent, as well as to the seizing the *Tower*; and if they should refer to the last, yet they may well enough be interpreted, that he would do what he could, or what good he could, to prevent the seizing the *Tower*. And if they are capable of two Senses, they ought to be interpreted in the best for the Prisoner.

Besides, the Words are spoken not as a thing designed, but as a Matter, without which all other Matters were in vain, and might be meer matter of Discourse, as was that between *Blague* and *Mate Lee* about taking the *Tower*: and if there was such a Design on foot, it doth not appear that Mr. *Cornish* was ever acquainted with it. The fame may be said as to what he asked *Goodenough*, when he ask'd how Matters went: may not those Words well enough be applied to the Business of the Riot, *Goodenough* managed for Mr. *Cornish* and others? And if what *Goodenough* said was Evidence of a Design of seizing the *Tower*, that, as well as the Treason against the Guards, was Treason by the Act of the late King, and not by the 25th of *Edward* the Third, if it be true Doctrine which was laid down in the Charge to the Earl of *Sbafiesbury's* Grand-Jury: and if so, he ought to have been prosecuted for it within six Months, and indicted within three Months, if the Doctrine in *Colledge's* Trial be true; and yet this Design, if true, was in *Easter-Term*, 1683, and the Prosecution not till *October* 1685.

There was yet one piece of Evidence urged against him, viz. of his own Witness *Sheppard*, who positively testify'd for him as to the main, yet in a Circumstance seem'd to testify against him, which was Mr. *Cornish's* being at his House when the Duke of *Monmouth* and the rest were there, when the Declaration was read; and upon that piece of Evidence, as if it had contradicted what Mr. *Cornish* said before, there was a mighty Triumph: whereas, the most that could have been made of it was, that Mr. *Cornish* in part of his Defence was guilty of an untruth. And even that was not so in Fact; for being charged to have been at *Sheppard's* the Night the Declaration was read, he answered he was never at a Consult in his Life, he never was at *Sheppard's* in any Consult, he never was there with my Lord *Ruffel*, as he remembred; he had been at *Sheppard's* several times, but never liked *Ferguson* for his Morals, and therefore never liked to be in his Company, and he did not know but that he might enquire for the Duke of *Monmouth* in other Places, and this is all Mr. *Cornish* says to that matter.

Sheppard says, Mr. *Cornish* came into his House at one of the Meetings to speak with the Duke of *Monmouth* or some other, he could not be positive in that, it was so many Years ago, and did not stay half a quarter of an Hour; he could not say it was the Night the Declaration was read; he did not know whether Mr. *Cornish* came to speak with the Duke of *Monmouth* or not; he could not remember whether Mr. *Cornish* was there in Company

when *Rumsey* was there; there were not above three Persons there when Mr. *Cornish* came, which was the Duke of *Monmouth*, Mr. *Ferguson*, and he could not tell whether the other was the Lord *Ruffel*, or the Lord *Gray*.

Now it would be hard to find out the Contradiction between Mr. *Cornish's* Sayings and *Sheppard's* Evidence; both agree that Mr. *Cornish* hath been often at *Sheppard's* House, and neither denies or affirms that he was or was not there the Night the Declaration was read, for a good reason; which was, that Mr. *Cornish* knew nothing of it, and *Sheppard* knew not which of the Nights he was there. Mr. *Cornish* said he was not there with my Lord *Ruffel* as he remembred, and *Sheppard* doth not affirm he was there with the Lord *Ruffel*. *Sheppard* says that he was there when the Duke of *Monmouth* was there, and Mr. *Cornish* doth not say that he was not there with the Duke of *Monmouth*. *Sheppard* said, he spoke to the Duke of *Monmouth*, or some other Person, but he thought it was the Duke of *Monmouth*, which is no direct Affirmation that he spoke to the Duke; and Mr. *Cornish* doth not say, he did not speak to the Duke of *Monmouth*. So that if the Account of the Trial, set out by the Authority of, and signed by *Thomas Jones*, be true, I cannot see any manner of Contradiction between Mr. *Cornish* and *Sheppard*: and therefore, as the Court and King's Counsel did infer, that *Sheppard's* Evidence, who positively denies the Truth of *Rumsey's* Evidence, was so far from invalidating, that it corroborated *Rumsey's* Evidence, and cleared the thing which was before somewhat dark, beyond all manner of Contradiction, is a piece of effrontery. So admitting *Sheppard* had said Mr. *Cornish* was at his House the Night the Declaration was read, and had contradicted Mr. *Cornish*, is it a necessary Consequence, that he heard the Declaration read, and promised his Assistance to it? which must be the Inference, if it must support *Rumsey's* Evidence.

If it be not a necessary Consequence, but a probable one, that ought not to weigh with a Jury, to convict a Person of a capital Crime, especially not of Treason. The Statute of *Edward* the Third says, probably Convict; that is, says my Lord *Coke*, convicted upon direct and manifest Proof, not upon probable conjectural Presumptions, or Inferences, or Strains of Wit: And to say truth, when Verdicts have been given on such Evidence, they have been often faulty.

To give some Instances of many, it is remembred in our time* where Persons were convicted of the Murder of a Person absent, but not dead, barely by Inferences upon the Evidence of foolish Words and Actions; but the Judge before whom it was tried, was so unsatisfy'd in the Matter, because the Body of the Person supposed to be murdered was not to be found, that he reprieved the Persons condemned; yet in a Circuit afterwards, a certain unwary Judge, without inquiring into the Reasons of the Reprieve, ordered Execution, and the Persons to be hanged in Chains, which was done accordingly; and afterwards, to his reproach, the Person supposed to be murdered appeared alive.

My Lord *Coke* relates a Story † in his Time, of an Uncle who beat his Niece, that had an Estate,

* He seems to mean the Case of *Joan Perry* and her two Sons, *John* and *Richard Perry*, who were Executed at *Glocester Lent-Assizes*, 1661, for the supposed Murder of *William Harrison*, who had been conveyed into *Turkey*, and made a Slave for two Years, and afterwards escap'd, and came back to England.

† This was at *Warwick-Assizes*, 8 Jac. 1. 3 Co. Inst. 232. By the Civil Law, unless there was direct and positive proof that the Person was kill'd, no Circumstances were admitted against the Person accused of the Murder. Digest. lib. 39. tit. 5. §. 24.

which on her Death would descend to him; the Girl was heard to cry, *Good Uncle do not kill me*; after which she run away, and conceal'd herself some few Miles from *London*. The Girl being missing, and the Neighbours remembering the Cry of the Girl, and racking it to the Probability that the Uncle might be induced, for his Advantage, to murder his Niece, apprehend him, and he was indicted for it at the Sessions; and the Judges being unsatisfy'd in the Evidence, by reason the Body of the supposed murdered Girl did not appear, the Uncle saying that she was run away, they gave him time to the next Sessions to find her out, which he being not able to do, thought to defend himself by producing another Girl very like his own Niece, which he did accordingly; and being detected, it increased the Suspicion, and by Inferences from all those Circumstances, he was convicted, and afterwards executed.

Some Years after which, the Girl appeared, and claimed her Estate: and therefore it is a most dangerous and unwarrantable thing for a Jury, in capital Matters, especially in Treason, to convict a Person upon the Evidence of Probabilities.

As the Evidence in this Case against the Prisoner was weaker than in any of the precedent Cases, so the Usage of the Prisoner was more rigorous than in any of them: in all the other Cases, the Prisoners had more Weeks allowed them to prepare for their Trials, than this Person had Days; all the other Persons, after notice of their Trial, were permitted to have Friends, nay, Counsel, freely to come to them, and confer with them in private, without the Presence of a Goaler, which was denied this Person: All the others, except Colonel *Sidney*, had soft Words given them on their Trials; but this Person was rudely handled.

How often was he stub'd and bid hold his tongue? How often did he beg the Patience of the Court, to hear him and his Witnesses? And when he was heard, how was all he said ridicul'd? And if he said he was innocent, he was bid remember

my Lord *Ruffel* said so to his Death; when he said he was as innocent as any Person in the Court, he was told for all his Confidence, few believed him. If he said the Matter sworn against him was improbable (which hath been taken for a pretty good Topick for the disbelief of a Matter testify'd) how is it ridicul'd by *Improbability, Improbability, Improbability*? If he go to prove he is an honest Man, he is told that is all Appearance. If he says he employed *Goodenough* about the Riot, he is told that is a Branch of the Plot. If he call Mr. *Gospight* as a Witness for him, the Witness is reproach'd with having help'd the Prisoner in packing Juries; if he call one to prove he received the Sacrament, he is told, that was in order to qualify himself to be a Sheriff; and as such his Usage before, and at the Trial, such was it afterwards: to order him to be ty'd when he was sentenc'd, was an Indignity not used to Persons of his Quality; a thing indeed permitted, not commanded to be used, on boisterous Criminals, who may be suspected to do a sudden Mischiefe, if their Arms were at liberty.

Of like kind was the Reproaching him with the Chearfulness of his Countenance at his Condemnation, and that it might be all of a strain, his Quarters were exposed, a Severity us'd to none above-mentioned, but Sir *Thomas Armstrong*; and in all these Trials, *Colledge* made the best Defence, and perhaps, Circumstances considered, the best Defence ever made upon an Indictment of a Capital Matter, and Mr. *Cornish's* was the weakest, though it signified nothing: for I believe that none who reads his Trial, but will plainly see he was so beset, that the Defence he, or any for him could make, would have availed him nothing, and no account can be given for the Proceedings against Mr. *Cornish*, in the above manner, but that some of the Judges, whereof three of them on the Bench, had newly come out of the *West*, where they had been so flush'd and hardned, that nothing seem'd to them rigorous or cruel, and the rest seem'd to vie with them in the Practice.



Remarks on the Trial of Charles Bateman.

THE last Person which concluded the Tragedy, was one *Charles Bateman*, a Chirurgion; his Demerits were, that he had been, or at least was reputed to have been, Chirurgion to the Earl of *Shaftesbury*, and one whom his Lordship had a Kindness for, and therefore according to the Cant of the Time, he was called a factious Fellow; and he had reviv'd the Memory of his Demerits, by attending when *Oates* came from his Whipping, and letting him Blood. Whether either of those Circumstances were true or not, I know not, but they were believed: And therefore the 9th of *December* 1685, he was indicted and try'd for High-Treason. On his Trial he seem'd to be distracted, and therefore out of abundance of Charity, the Court appointed his Son to make his Defence for him.

The Witnesses against him were *Keeling*, who only spoke of a Design in general, without mentioning *Bateman* to be concern'd in it. *Thomas Lee* and *Richard Goodenough* swore, at several times and pla-

ces, his Discourse to them severally, of seizing the *Tower, City and Savoy*. *Baker* for the Prisoner said, *Lee* in the Year 1683, would have had him insinuated himself into the Prisoner's Company, and discourse about State-Affairs, and by that he would find a way to make *Baker* a great Man: upon the Evidence the Prisoner was found guilty. Against *Goodenough's* Evidence, there is only this to be said, that he was pardon'd, but so far only, as to qualify him to be a Witness, though not a very credible one, not only the Guilt sticking to him, but even the Punishment of what he had then lately done, hanging over his Head; and what was said for some time, of all the Witnesses for the King, at that time, and for some time before, was true, they hunted like Cormorants, with Halters about their Necks, though even that matter by one of the King's Counsel was boasted to the Jury, as a Circumstance of more Credibility; for he assured them there was not a Witness which he produced had a Pardon, as the Witnesses in the Popish Plot had. 'Tis true, in

the Popish Plot, upon very good reason, the Witnesses having confessed what they pretended to know, of matters in which they had an hand, it was not thought proper to use them as Witnesses, though they had used them as Informers, till they were pardon'd, lest it might happen to be, or at least it would have been suspected, that the terror of the Punishment of the Crimes confess'd might influence them to swear falsely, to the jeopardy of other Men's Lives, to save their own; which, as the Lord *Howard* truly said, was the drudgery of swearing. But to *Lee's* Evidence, besides the Evidence of *Baker* against him, that he would have procured *Baker* to have been a Witness against the Prisoner, and enticed him with the promise of making him a great Man; and besides that, it appears in *Rouse's* Trial, that *Rouse* and he were upon the Trepan with each other, to bring each other into the pretence of a Plot, in order to make some advantageous discovery of it, of which *Lee* got the start of *Rouse*; the Objection which was made to his Evidence, why *Lee* had not accused the Prisoner sooner, there being near three Years between the pretended Design, and the discovery of it, was never satisfactorily answered. It was a foolish Story, to say *Goodenough* could not be had before, and a single Testimony in High-Treason was not sufficient; every one knows, that though a single Witness is not enough to convict a Man of High-Treason, yet a single Person's Testimony is enough to commit a Person accused, and upon Conviction, on the Testimony of a single Witness, to make him a Prisoner for his life, witness *Mr. Hampden*, and others; besides the subjecting him to other corporal Punishments, inflicted at discretion, witness *Mr. Johnson* and *Oates*. And in 1683, when the Words were pretended to be spoken, *Bateman* had not been spared, if accused; and though it be a good reason for the Court to have given, why they did not proceed against the Prisoner till that time, because there were not two Witnesses against him; yet it was no reason for *Lee*, why he did not accuse the Prisoner before that time, especially he having been several times before that time examined, not only of what he knew, but of what Persons he knew concerned: but to say truth, *Lee*, in the Trial, did not pretend to answer the Objection, but the Court, in the manner before, endeavoured to answer it for him.

The last Matter observable in this Trial, was the permitting *Bateman's* Son to make his Father's Defence, which was an extraordinary unparallel'd Favour; it was the first and last time that, or any thing like it, had been done: The Lord *Ruffel's* Lady indeed was permitted to take Notes at the Trial for her Lord, but he only was permitted to make use of them. *Fitzbarris's* Wife when she but whisper'd her Husband, or but told him what Jurors he should challenge, and what not, was severely corrected, and threatened to be thrust out of Court, for doing it in prejudice of the King. In *Colledge's* Trial, he was told, that Persons that advis'd a Prisoner in Treason, even before a Trial, were guilty of a high Misdemeanour; nay, a Solicitor had been indicted of High-Treason for it: and therefore nothing can excuse the allowing the Prisoner Counsel in matter of Fact, as was done in this Case, (it is not material, whether the Son was a Barrister at Law or not) but the Weakness of the Prisoner, who to all appearance was moped mad.

But the Court by excusing their Favour upon that account, incurred a worse Censure; for nothing is more certain in Law, than that a Person who falls mad after a Crime sup-^{3 Cok. Instit. p. 4.}pos'd to be committed, shall not be try'd for it; and if he fall mad after Judgment, he shall not be executed: though I do not think the reason given for the Law in that Point will maintain it, which is, that the End of Punishment is the striking a Terror into others, but the execution of a Madman hath not that effect; which is not true, for the Terror to the Living is equal, whether the Person be mad or in his Senses: and that is the reason of breaking the Person executed for Treason, and exposing his Quarters, which is done rather to deter the Living, than for punishing the Dead. But the true reason of the Law I think to be this, a Person of *non sana Memoria*, and a Lunatick during his Lunacy, is by an Act of God (for so it is call'd, though the means may be human, be it violent, as hard Imprisonment, terror of Death, or natural, as Sickness) disabled to make his just Defence. There may be Circumstances lying in his private Knowledge, which would prove his Innocency, of which he can have no advantage, because not known to the Persons who shall take upon them his Defence; and that is the reason many civil Actions die with the Persons against whom they lay in their Life-times; and that is the reason why in criminal Matters, Persons by ordinary course of Law cannot be convicted after their deaths.

For in all civil Actions there is as much reason for the Person injured, to have satisfaction out of the Estate of the Person who injur'd him, in the hands of his Heir or Executor after his death, as there was to have it out of the Estate of the Injurer, in his own hands in his Life-time: and there is as much reason that the Heir or Executor of a Person who hath committed a Crime, which by Law would have forfeited his Estate, if in his Life-time he had been attainted of the same, should forfeit the Estates they claim from him, as if he had been attainted in his Life-time, which had prevented the said Estates vesting in them. And it hath been sometimes practis'd, where the Crimes of the Persons deceas'd have been notorious, and without any doubt; as was the Case of several Persons mention'd in the Act of Pains and Penalties: which Act had example from many other Acts of Parliament in other Reigns, where the Persons were dead before Punishment overtook them.

And though of late Years it hath been pretended, that the King's Safety depends upon the speedy Trial and Execution of a Person guilty of High-Treason; yet this was never thought so heretofore, nor in truth in itself is so: for it is plain, in Reason as well as Experience, that what is said of Witches, is true of all Malefactors when once they are in Custody, their power of doing mischief ceases.

The King is therefore no otherwise benefited by the Destruction of his Subjects, than that the Example deters others from committing the like Crimes; and there being so many to be made examples of, besides those on whom the Misfortunes of Madnes fall, it is inconsistent with Humanity to make examples of them; it is inconsistent with Religion, as being against Christian Charity to send a great Offender quick, as it is stil'd, into another World, when he is not of a Capacity to fit him-
self

self for it. But whatever the Reason of the Law is, it is plain the Law is so; and for remedying it in High-Treason, was the 33d of *Henry* the Eighth made; whereby it is enacted, That if a Man fall mad after he hath committed High-Treason, he shall notwithstanding be try'd in his absence; and if a Man fall mad after he is attained of High-Treason, he shall notwithstanding be executed. Which Statute extending only to High-Treason, the Law continu'd, and yet is as it was at common

Law in all other capital Matters; and * Statute was call'd a cruel and inhumane Law, and therefore liv'd not long, for it was afterwards repeal'd: so that the Law, as to this matter, when this Man was tried and executed, was as it was at common Law; and therefore if he was of *non sanae Memoriae*, he ought not to have been try'd, much less executed.

I know it will be objected, that if this Matter of *non sana Memoria* should be permitted to put off a Trial or stay Execution, all Malefactors will pretend to be so: But I say there is a great difference between Pretences and Realities, and *sana* and *non sana Memoria* hath been often try'd in capital Matters, and the Prisoners have reap'd so little benefit by their Pretences, it being always discover'd, that we rarely hear of it. In this Case the Prisoner might have been try'd as well absent as present, according to that repeal'd Statute, for any advantage he did or could reap by being present: and it seems very probable the Court thought him distemper'd; for if he was of *sane* memory, his Son ought not to have been permitted to make his Father's Defence; if he was distemper'd, he ought not to have been try'd, much less executed. And this Person being the last Man, as far as I can remember, or can find by the printed Trials, who suffer'd for the Plot of High-Treason first set on foot by *Fitzharris*, and carry'd on against *Colledge*, and the other Persons herein mention'd; and the Design stopping here, I think fit to end my *Remarks* on the Proceedings of all Capital Matters with him. But I think it is fit for me to make some Apology for the thing, and for myself, for taking on me to censure the Opinions and Actions of Persons

whose Characters carry'd Authority with them. I confess I never thought that either the Great Seal or a Garment added to a Man's Sense, Learning, or Honesty; but he remain'd just such, as to those qualities, after his preferment, as he was before: and as to many of the Persons reflected on in these Remarks, the Censure of Colonel *Sidney* was true; and for the best of them, it is plain they not only vary'd from one another in their Opinions, but even from themselves in the Judgment of the same Case, but always tending to the destruction of the Person try'd for his Life; witness the Opinion of the Court in the Challenge of Jurors not having a Freehold, and the designing to levy War, not Treason within the Statute of *Edw. III.* and forty other matters. And that not only gives a liberty to enquire, but naturally puts one upon the Enquiry which of the two Opinions is right; tho' it is impossible for one not to think meanly of the Person, who in so great a Concern as a Man's Life, should be so rash as to give his Opinion without Consideration, or so unsteady as to give different Opinions in the same Case: for if the Truth of a Man who tells History backward and forward, is justly suspected in point of Truth, the knowledge and sincerity of a Man, who gives different Opinions in the same Case, is justly suspected in point of Law; which, together with the fulsome, but injurious Stuff vented for Crown-Law, was the first Matter which put me on considering and writing what I have done.

And for my self, if *Tully* thought it a Reproach to his Son if he did not abound with Philosophy, having heard *Cratippus* for the space of a whole Year, and that at *Athens*; surely one who hath had his Education at one of the three great Schools for some years, and afterwards at the University, and lastly twenty-five years constant residence in an *Inn of Court*, and twenty years attendance at *Westminster-Hall*, and not diverted by the usual Employments of a *Solicitor* or *Attorney*, may be allow'd without the imputation of Confidence to give his *Censure*, upon consideration, on the *extempore* Judgments or Opinions of *Persons*, tho' of greater Standing and Character than himself.





CXXXVI. *The Trial of John Hampden * Esq; at the Old-Bailey, for High-Treason, Decemb. 30, 1685. I Jac. II.*

THIS Day being appointed for the Trial of Mr. Hampden, after the Judges came to the Court, and the Court was called, the Officer was commanded to proceed to call over the Jury whilst Mr. Hampden was bringing down.

Cryer. O-Yes, you good Men of the County of *Middlesex*, summon'd to appear here this Day, to try the Issue which shall be between our Sovereign Lord the King, and the Prisoner that shall be call'd to the Bar, answer to your Names as they shall be call'd, every one at the first Call, upon pain and peril that shall fall thereon.

Clerk. Sir *Hugh Middleton* of *Twittenbam*, Bart.

Sir *Richard Duntton* of *Thistleworth*, Knt.

Sir *John Berry* of *Stepney*, Knt.

Sir *Robert Clark* of *Holborn*, Kt.

Sir *Thomas Roe* of the *Strand*, Knt.

Sir *John Friend* of *Hackney*, Knt.

Sir *Henry Johnson* of *Blackwall*, Knt.

Richard Morley of *Cbelsea*, Esq;

John Shales of the Parish of *St. Martin's* in the *Fields*, Esq;

Robert Fisset of *Marybone*, Esq;

Josias Clark of *Cbiswick*, Esq;

John Foster of *Kensington*, Esq;

Jeffery Nightingale of *Cripplegate*, Esq;

William Cleave of the same, Esq;

Charles Hinton of *Covent-Garden*, Esq;

John Stokes of *Hatton-Garden*, Esq;

Henry Hawly of *Brentford*, Esq;

Thomas Cash of *Bow*, Esq;

Andrew Lawrence of the Parish of *St. Martin's* in the *Fields*, Esq;

Nebemiab Arnold of *Westminster*, Esq;

Simon Smith of the same, Esq;

William Pressgrave of the same, Esq;

Nicholas Barter of the Parish of *St. Martin's* in the *Fields*, Esq;

Humphry Bradshaw of the *Savoy*, Esq;

Gilbert Herring of the Parish of *St. Martin's* in the *Fields*, Esq;

Walter Bridall of the same, Esq;

Thomas Eliot of *Stepney*, Esq;

Matthew Bateman of *White-Chappel*, Esq;

Thomas Curtis of the Parish of *St. Clement Danes*, Esq;

Peter Lugg of the Parish of *St. Giles* in the *Fields*, Esq;

John Meridale of *St. Giles* in the *Fields*, Gent.

James Supple of the Parish of *St. Martin's* in the *Fields*, Gent.

Thomas Whitfield of the same, Gent.

Richard Cook of the same, Gent.

George Clisby of the same, Gent.

John Hains of the same.

John Leeson of the same.

Richard Bromfield of *Holborn*, Gent.

Michael Dod of *Clerkenwel*, Gent.

James Fern of the Parish of *St. Martin's* in the *Fields*, Gent.

Robert Brook of the same, Gent.

John Vignures of *Westminster*, Gent.

Edmund Aubrey of the Parish of *St. Martin's* in the *Fields*, Gent.

John Cannon of the Parish of *St. Giles* in the *Fields*, Gent.

John Baily of the same.

Thomas Barnes of the same.

Francis Edmands of the same.

Robert Longland of the same.

Edward Hamstead of the same.

Thomas Hinton of the same, Gent.

Joseph Blisset of *White-Chappel*, Gent.

Zechariah Grant of the same.

Richard Fitzgerald of the Parish of *St. Martin's* in the *Fields*.

Benjamin Boliby of *St. Giles* in the *Fields*.

Richard Dorrel of the *Savoy*, Gent.

Anthony Hall of the same.

Stephen Phillips of the Parish of *St. Martin* in the *Fields*.

William Stephens of the same.

John Davis of the same.

Richard Hutchinson of the same.

Anthony Nurse of *Fulham*, Gent.

Robert Moon of the Parish of *St. Clement Danes*, Gent.

Samuel Peacock of *Westminster*, Gent.

Richard Boise of the same.

Samuel Birch of the same.

Peter Reeve of the same.

Thomas Hutchins of the same, Gent.

John Hewlet of *Westminster*, Gent.

John Towers of *Covent-Garden*, Gent.

Richard Aubrey of *White-Chappel*, Gent.

John Wells of *Marybone*, Gent.

William German of *St. Clement Danes*, Gent.

Thomas Harris of *Holborn*, Gent.

Bar. Parr of *East-Smithfield*, Gent.

John Cassels of the Parish of *St. Martin* in the *Fields*, Gent.

Samuel Bishop of *St. Clement Danes*, Gent.

William Wbeatly of the Parish of *St. Giles* in the *Fields*, Gent.

Christopher Chambers of the same.

Samuel Brown of the same.

Benjamin Dun of the *Savoy*.

Samuel Jewel of the same.

Hugh Hammershey of the same.

Abrabam Harrison of the *Strand*, Gent.

Thomas Nickols of *Pancras*, Gent.

William Dean of the Parish of *St. Martin* in the *Fields*, Gent.

Thomas Parnel of the same.

Matthias Cooper of the same, Gent.

William Merchant of the same, Gent.

* Burn. *Hist. own Times*, Vol. I. p. 646.

Richard Campion of the same, Gent.
Simon Smith of Woodstreet, Westminster, Gent.
Thomas Green of Westminster, Gent.

Clerk. Set *John Hampden* to the Bar.
 [Which was done.]
John Hampden hold up thy Hand.
 [Which he did.]

Middlesex. **T**HE Jurors for our Sovereign Lord the King, upon their Oaths present, that *John Hampden*, late of the Parish of *St. Giles* in the *Fields*, in the County of *Middlesex*, Gent. as a false Traitor against the most illustrious and excellent Prince, our Lord *Charles* the Second, late King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, thy natural Lord, the Fear of God in thy Heart not having, nor the Duty of thy Allegiance any ways weighing; but being moved and seduced by the Inflation of the Devil, the cordial Love, and true, due, and natural Obedience, which a true and faithful Subject of our said late Lord the King, towards him our said late Lord the King, of right ought to bear, wholly withdrawing; and imagining, practising, and with thy whole strength intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb, and War and Rebellion against our said late Lord the King, within this his Kingdom of *England*, to stir up, move, and procure; and the Government of our said late Lord the King, of this his Kingdom of *England* to subvert, change, and alter; and our said late Lord the King, of the Title, Honour, and Royal Name, of the Imperial Crown of this his Kingdom of *England* to depose and deprive: And him our said late Lord the King, to death, and final destruction to bring and put; the 20th day of *July*, in the Year of the Reign of our said late Lord the King, *Charles* the Second, of *England*, &c. the 35th, and divers other days and times, as well before as after, at the Parish of *St. Giles* in the *Fields*, in the County of *Middlesex*, falsely, maliciously, devilishly, and traitorously, with divers other false Rebels and Traitors unknown, didst conspire, compass, imagine, and intend our said late Lord the King, then thy supreme and natural Lord, not only of his Royal State, Title, Power, and Government of this his Kingdom of *England*, to deprive and cast down, but also our said late Lord the King to kill, and to death to bring and put, and the antient Government of this Kingdom of *England* to change, alter, and wholly to subvert; and a miserable slaughter amongst the Subjects of our said late Lord the King, through his whole Kingdom of *England*, to cause and procure, and Insurrection and Rebellion against our said late Lord the King, within his Kingdom of *England* to procure: And these thy wicked, abominable, and devilish Treasons and traitorous Conspiracies, Compassings, Imaginations, and Purposes aforesaid, to fulfil, perfect, and bring to pass, thou the said *John Hampden*, as a false Traitor, then and there, (to wit) the said 20th day of *July*, in the year of the Reign of our said late Lord the King, 35th aforesaid, and divers other days and times, as well before as after, at the Parish of *St. Giles* in the *Fields*, aforesaid, in the said County of *Middlesex*, falsely, unlawfully, wickedly, devilishly, and traitorously, with *James* late Duke of *Monmouth*, and divers other false Traitors unknown, did assemble your self, meet together, and consult, and consent to

move and procure divers great Sums of Money, and a great number of Men armed, and War and Rebellion against our said late Lord the King, within this Kingdom of *England*, traitorously to levy and make, against the Duty of thy Allegiance, and against the Peace of our said late Lord the King, and against our Lord the King that now is, their Crown and Dignity, and against the Form of the Statutes in that case made and provided, &c.

Mr. Hampden. My Lord, I perceive that I am here indicted for a Fact, for which I was indicted above two Years ago, and I was convicted of it, and did suffer Imprisonment, in Execution, upon the Judgment that was given against me, and am still under Execution for the Fine that was set upon me by way of Punishment for that Fact. I think, my Lord, I have as much to say in point of Law for my self, as any Prisoner that ever came before your Lordship upon such an account, twice tried, twice convicted, and twice punished for the same Fact, must be very extraordinary; but, my Lord, I do pass by all Pleas whatsoever, and cast my self wholly upon the King's Mercy; that is my Resolution, my Lord.

* *L. C. J.* Then you must plead Guilty or not Guilty. But you say you have been tried twice for the same Fact; Were you ever tried for High-Treason before? The very Punishment that you allege to be inflicted upon you for it, is a plain Proof that you were not tried for High-Treason, for that is not usually punished by Fine and Imprisonment.

Mr. Hampden. My Lord, I only insinuate that the Fact is the same.

L. C. J. You must plead Guilty or not Guilty.

Clerk. Are you Guilty or not Guilty of the High-Treason, whereof you stand indicted, *John Hampden*?

L. C. J. You must plead directly; say you are Guilty, or you are not Guilty.

Mr. Hampden. My Lord, I do plead Guilty to the Indictment.

Will your Lordship be pleased to hear me: My Lord, I do confess my Offence against the King is very great, I am very sorrowful for it. My Lord, I know the King is the Fountain of Mercy as well as Justice, an inexhaustible Fountain of Mercy; and if I may be so happy to obtain your Lordship's intercession to his Majesty on my behalf, I doubt not but that Grace and Goodness which hath been extended to others, may be bestowed upon me.

L. C. J. *Mr. Hampden*, as the King is the Fountain of Mercy, so it comes freely from him. I confess, as the Circumstances of your Case are, you have pleaded the best Plea to find Mercy; but how far the pleading guilty, when there is full Evidence to prove you so, may move the King to have mercy upon you, I don't know; you must apply your self to the King.

Mr. Hampden. I humbly beg your Lordship's Intercession, I know none can do it better than your Lordship.

L. C. J. You must record the Plea.

Mr. Hampden. My Lord, I humbly beg your Lordship that you would be pleased to represent to his Majesty what my past Sufferings have been, and how sorrowful I am for having offended his Majesty, and that your Lordship would be pleased to beg his Majesty's gracious pardon in my behalf; I humbly beseech your Lordship to do it, and it shall

shall be the endeavour of all my Life to behave my self as dutiful and loyal a Subject as any the King hath.

L. C. J. The King shall have an account of what you say.

Mr. Hampden. My Lord, there is one thing I would humbly beg the Liberty for; there are Words in the Indictment concerning the Death of the King: my Lord, what construction the Law may put upon such an Action, I am ignorant of; but for any direct Intention of taking away the Life of the King, no Man does abominate and abhor more than I have done.

L. C. J. *Mr. Hampden,* it is but a necessary construction that the Law puts upon it, it is a construction confirmed by woful Experience. We see that Rebellion, let the beginning be what it will, never stops, unless by God's great Mercy and the Justice of the King's Cause, but it will end in the Death of the King, it hath a natural Tendency that way: but however, you are understood that you had not any thoughts of killing the King, but only to raise Rebellion within the Kingdom, which must necessarily end in the Death of the King.

Mr. Hampden. My Lord, no Man doth abhor that more than I do.

L. C. J. You may ask *Mr. Hampden* if he hath any thing to say why Sentence of Death should not pass upon him.

Clerk. John Hampden, hold up thy Hand. Thou standest convicted of High-Treason by your own Confession, what can you say for your self why Sentence should not pass upon you?

Mr. Hampden. My Lord, I humbly cast my self upon the King's Mercy. My Lord, I would humbly move your Lordship in one thing, that I may have the Liberty of my Friends and Relations to come to me in Prison as they did before.

L. C. J. You must apply your self to the King.

Mr. Hampden. Will your Lordship be pleased to order it, my Lord? I had two or three of my own Relations the King was pleased to grant to come to me.

L. C. J. It is easy for you, *Mr. Hampden,* to make your Application to the King, it will be better for you: I direct it as the better way to apply your self to the King.

Mr. Hampden. I only beg it, my Lord.

L. C. J. In the presence of a Keeper I don't know why his Relations should not come to him; but I think it had been better to apply your self to the King.

Mr. Hampden. My Lord, I have two or three near Relations allowed to be without the Presence of a Keeper.

L. C. J. *Mr. Hampden,* that we cannot do, that was an extraordinary Favour, and as that came from the King, so you must apply your self to the King again; but in the Presence of a Keeper, we grant it; we cannot grant it without a Keeper, if you will apply your self to the King for that, you may.

Cryer. Gentlemen of *Middlesex,* that have been summon'd upon the King's Service this Day, the Court discharges you.

Then after the Judges did withdraw, the Clerk was commanded to proceed.

Cl. John Hampden, hold up thy Hand. You stand convicted of High-Treason by your own Confession, what can you say for your self, why the Court should not pronounce Sentence upon you?

Mr. Hampden. I only plead the King's Mercy. I rely upon no other thing.

Cryer. O-Yes, all manner of Persons are commanded to keep silence whilst Judgment is giving upon pain of Imprisonment.

*Mr. Recorder.** *Mr. Hampden,* you have been indicted for High-Treason, and the Indictment hath been read to you, and whereupon, according as the Law doth require, it hath been demanded of you, that you should plead to it, and thereupon you have pleaded Guilty to this Indictment, which is recorded accordingly; and therefore I need not say any thing for to let you know the heinousness of this Crime, for I perceive you are sensible enough of it your self, and I do verily believe you have taken a very wise and discreet Course to confess the Truth, for you were brought hither to be tried for this Crime in case you had pleaded not Guilty to this Indictment, which now you have prevented by this your candid Confession. However, it is the Duty of my place to pronounce the Judgment that the Law hath provided for such Crimes as these are, and that is this;

You must be had to the place from whence you came, and from thence you must be drawn to the Place of Execution, and there you are to be hang'd by the Neck, and whilst you are alive you must be cut down, and your Entrails be taken out, and burnt before you; and your Head must be cut off, and your Body quartered, and your Head and your Quarters to be disposed of at the King's pleasure, and the Lord have mercy upon your Soul.

Mr. Hampden. My Lord, I hope I shall have your Lordship's Intercession with his Majesty.

Mr. Recorder. I don't doubt, *Mr. Hampden,* but you have us'd the best means to obtain so great a Favour; and as it is the Duty of my place to give an account of this to his Majesty, so I shall truly and faithfully represent it with the advantages your Demeanour this day hath deserv'd.

Mr. Hampden. My Lord, I humbly beg the Favour that my Wife may come to me without the presence of a Keeper.

Mr. Recorder. *Mr. Hampden,* 'tis too late for us to give any directions in this Matter, because you ask'd this while the Judges were here; but I don't doubt upon your Application to his Majesty, but you will have all things that you can reasonably desire, if you please to apply your self to him for this and what else you shall be advis'd may be fitting and convenient for you to beg.

His abject Submission did indeed procure him a Pardon; but the Shame of such a mean Behaviour so sunk and disorder'd his Spirits, that he was never quite right after it, for about ten Years after he cut his own Throat.

CXXXVII. *The Trial of HENRY Lord DELAMERE* *, for
High-Treason, 1685. 1 Jac. II.

Cl. of Cr. Serjeant at Arms, make Proclamation.



Serj. at Arms. O-Yes, O-Yes, O-Yes. My Lord High Steward of England his Grace doth straitly charge and command all manner of Persons to keep silence, and to give ear to the King's Majesty's Commission to his Grace my Lord High Steward of England, upon pain of Imprisonment.

Then the Commission was read, his Grace, and all the Peers standing up bare-headed.

Then the Staff being carried between Garter King at Arms, and the Gentleman Usher of the Black Rod, was with three Reverences deliver'd upon the knee to his Grace, and by him redelivered to the Gentleman Usher of the Black Rod, to hold during the Service.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. at Arms. O-Yes! His Grace my Lord High-Steward of England doth straitly charge and command all manner of persons here present except Peers, Privy Counsellors, and the reverend Judges now assistant, to be uncovered.

Cl. of Cr. Make Proclamation.

Serj. at Arms. O-Yes! My Lord High Steward of England his Grace straitly chargeth and commandeth all Justices, Commissioners, and all and every other person and persons to whom any Writ or Precept has been directed for the certifying of any Indictment or Record before his Grace my Lord High Steward of England, that they do certify and bring in the same forthwith, according to the Tenor of the same Writ and Precept, to them or any of them directed, upon Pain and Peril shall fall thereon.

Then Sir Edward Lutwyche, one of his Majesty's Serjeants at Law, and Chief Justice of Chester, delivered in his Writ and Return at the Clerks Table.

The Writ of Certiorari and the Return thereof were read in hæc verba.

* George Lord Justice. * *L. H. Steward.* Call the Lieutenant of the Tower to return his Precept, and bring his Prisoner to the Bar.

Cl. of Cr. Make Proclamation.

Serj. at Arms. Lieutenant of the Tower of London, return thy Writ and Precept to thee directed, together with the Body of Henry Baron of Delamere, thy Prisoner, forthwith, upon Pain and Peril shall fall thereon.

The Prisoner was brought to the Bar by the Lieutenant of the Tower: the Writ and Return thereof, together with his Grace's Precept, and the Return thereof were read in hæc verba.

Cl. of Cr. Make Proclamation.

Serj. at Arms. Sir Roger Harfnet Knight, Serjeant at Arms to our Sovereign Lord the King, return the Precept to thee directed, together with the Names of all the Lords and Noblemen of this

Realm of England, Peers of Henry Baron of Delamere; by thee summoned, forthwith, upon Pain and Peril shall fall thereon.

The Serjeant at Arms delivered in his Precept and Return at the Clerks Table.

L. H. Steward. Read the Precept and the Return.

They were read in hæc verba.

Cl. of Cr. Make an O-Yes.

Serj. at Arms. O-Yes! All Dukes, Earls, Viscounts, and Barons of this Realm of England, Peers of Henry Baron of Delamere, who, by Commandment of my Lord High Steward of England his Grace, were summoned to appear here this Day, and are now present in Court, answer to your names, upon Pain and Peril will fall thereon.

The Peers summoned were called over, and those that appeared, standing up uncovered, answered to their Names, each making a Reverence to the Lord High-Steward.

Cl. of Cr. Laurence Earl of Rochester, Lord High Treasurer of England.

L. H. Treas. Here.

C. of Cr. Robert Earl of Sunderland, Lord President of his Majesty's Privy Council.

Lord Presid. Here.

Cl. of Cr. Henry Duke of Norfolk, Earl Marshal of England.

D. of Norf. Here.

Cl. of Cr. James Duke of Ormond, Lord Steward of his Majesty's Household.

He did not appear.

Cl. of Cr. Charles Duke of Somerset.

D. of Som. Here.

Cl. of Cr. Christopher Duke of Albemarle.

He did not appear.

Cl. of Cr. Henry Duke of Grafton.

D. of Graft. Here.

Cl. of Cr. Henry Duke of Beaufort, Lord President of Wales.

D. of Beauf. Here.

Cl. of Cr. John Earl of Mulgrave, Lord Chamberlain of his Majesty's Household.

E. of Mulg. Here.

Cl. of Cr. Aubery Earl of Oxford.

E. of Oxf. Here.

Cl. of Cr. Charles Earl of Shrewsbury.

E. of Shrewsf. Here.

Cl. of Cr. Theophilus Earl of Huntingdon.

E. of Hunt. Here.

Cl. of Cr. Thomas Earl of Pembroke.

E. of Pemb. Here.

Cl. of Cr. John Earl of Bridgewater.

E. of Bridg. Here.

Cl. of Cr. Henry Earl of Peterborow.

E. of Peterb. Here.

Cl. of Cr. Robert Earl of Scarsdale.

E. of Scarsfd. Here.

Cl. of Cr. William Earl of Craven.

E. of Craven. Here.

Cl. of Cr. Richard Earl of Burlington.

He did not appear.

Cl. of Cr. Louis Earl of Feversham.

E. of Feversh. Here.

Cl. of Cr. George Earl of Berkeley.

E. of Berk. Here.

Cl. of Cr. Daniel Earl of Nottingham.

E. of Notting. Here.

Cl. of Cr. Thomas Earl of Plymouth.

E. of Plim. Here.

Cl. of Cr. Thomas Viscount Falconberg.

L. Falconberg. Here.

Cl. of Cr. Francis Viscount Newport, Treasurer of

his Majesty's Household.

L. Newport. Here.

Cl. of Cr. Robert Lord Ferrers.

L. Ferrers. Here.

Cl. of Cr. Vere Essex Lord Cromwell.

L. Cromwell. Here.

Cl. of Cr. William Lord Maynard Comptroller of

his Majesty's Household.

L. Maynard. Here.

Cl. of Cr. George Lord Dartmouth, Master General of his Majesty's Ordnance.

L. Dartmouth. Here.

Cl. of Cr. Sidney Lord Godolphin.

L. Godolphin. Here.

Cl. of Cr. John Lord Churchill.

L. Churchill. Here.

Then his Grace the Lord High Steward addressed himself to the Lord Delamere the Prisoner at the Bar in this manner.

L. H. Steward. My Lord *Delamere*, the King being acquainted that you stand accused of High-Treason, not by common Report or Hearsay, but by a Bill of Indictment found against you by Gentlemen of great Quality, and known Integrity within the County Palatine of *Chester*, the place of your Residence; has thought it necessary in Tenderness to you, as well as Justice to himself, to order you a speedy Trial.

My Lord, if you know your self innocent, in the name of God do not despond, for you may be assured of a fair and patient hearing, and in your proper time a free Liberty to make your full Defence: and I am sure you cannot but be well convinced, that my Noble Lords that are here your Peers to try you, will be as desirous and ready to acquit you, if you appear to be innocent, as they will to convict you if you be guilty.

But, my Lord, if you are conscious to your self that you are guilty of this heinous Crime, give Glory to God, make amends to his Vicegerent the King by a plain and full discovery of your Guilt, and do not by an obstinate persisting in the Denial of it, provoke the just Indignation of your Prince, who has made it appear to the World, that his Inclinations are rather to shew Mercy than inflict Punishments. My Lord, attend with patience, and hear the Bill of Indictment that hath been found against you read. Read the Bill of Indictment to my Lord.

Cl. of Cr. Henry Baron of Delamere, hold up thy Hand.

L. Delamere. My Lord, I humbly beg your Grace would please to answer me one Question, Whether a Peer of *England* be obliged by the Laws of this Land to hold up his Hand at the Bar, as a Commoner must do; and I ask your Grace this question the rather, because in my Lord *Stafford's* Case it was allowed to be the Privilege of the Peers not to hold up their Hands.

V o l. IV.

L. H. Steward. My Lords, this being a matter of the Privilege of the Peerage, it is not fit for me to determine it one way or the other; but I think I may acquaint your Lordships, that in point of Law, if you are satisfied this is the Person indicted, the holding, or not holding up of the Hand is but a Formality, which does not signify much either way.

L. Delamere. I humbly pray your Grace's direction in one thing farther, whether I must address my self to your Grace when I would speak, or to your Grace with the rest of these noble Lords my Peers.

L. H. Steward. You must direct what you have to say to me, my Lord.

L. Delamere. I beg your Grace would please to satisfy me, whether your Grace be one of my Judges in concurrence with the rest of the Lords?

L. H. Steward. No, my Lord, I am Judge of the Court, but I am none of your Triers. Go on.

*Cl. of Cr. H*enry Baron of *Delamere*, thou standest indicted in the County Palatine of *Chester* by the Name of *Henry* Baron of *Delamere* of *Mere* in the said County of *Chester*, for that thou as a false Traitor against the most illustrious and most excellent Prince *James* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland*, King, thy natural Lord, not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience which a true and faithful Subject of our said late Lord the King, towards him our said Lord the King, should and of right ought to bear, wholly withdrawing; and contriving, practising, and with all thy might intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb; and War and Rebellion against our said Lord the King, within this Kingdom of *England*, to stir up, move, and procure, and the Government of our said Lord the King of this Kingdom of *England* to subvert, change and alter, and our said Lord the King from the Title, Honour, and Kingly Name of the Imperial Crown of his Kingdom of *England* to depose and deprive, and our said Lord the King to Death and final Destruction to bring and put; the fourteenth day of *April* in the first Year of the Reign of our said Lord *James* the Second now King of *England*, &c. and divers other Days and Times as well before as after, at *Mere* in the County of *Chester* aforesaid, falsely, maliciously, devilishly, and traitorously, with divers other false Traitors and Rebels, to the Jurors unknown, didst conspire, compass, imagine, and intend our said Lord the King, thy supreme, true and natural Lord, not only from the Kingly State, Title, Power, and Government of his Kingdom of *England* to deprive and cast down, but also the same our Lord the King to kill, and to death to bring and put, and the antient Government of this Kingdom of *England* to change, alter, and wholly to subvert, and a miserable Slaughter among the Subjects of our said Lord the King throughout his whole Kingdom of *England* to cause and procure, and Insurrection and Rebellion against our said Lord the King within this Kingdom of *England* to procure and assist; and the same thy most wicked, most impious, and devilish Treasons and traitorous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to effect, thou the said *Henry* Baron

Baron of *Delamere*, as a false Traitor, then and there, to wit, the said fourteenth day of *April* in the first Year above said, and divers other days and times as well before as after, at *Mere* afore said, in the County afore said, falsely, unlawfully, wickedly, and traitorously with *Charles Gerrard*, Esq; and other false Traitors to the Jurors unknown, didst assemble thy self, gather together, consult and agree to raise and procure divers great Sums of Money, and a great number of armed Men, War and Rebellion within this Kingdom of *England* to levy and make, and the City of *Chester* in the County of the same City, as also the Castle of our said Lord the King of *Chester*, at *Chester* in the County of *Chester* afore said, and all the Magazines in the same Castle then being, to enter, take, seize, and surprize, and into thy Possession and Power to obtain: And that thou the said *Henry Baron of Delamere* afterwards, to wit, the 27th day of *May*, in the first Year above said, falsely, unlawfully, wickedly, and traitorously didst take a Journey from the City of *London* unto *Mere* afore said, in the County of *Chester* afore said, thy traitorous Purposes afore said to fulfil and perfect: And that thou the said *Henry Baron of Delamere*, afterwards, to wit, the fourth day of *June*, in the first Year above said, at *Mere* afore said, in the County of *Chester* afore said, in further Prosecution of thy unlawful, most wicked and traitorous Purposes afore said, divers Liege People and Subjects of our said Lord the King, to the Jurors unknown, with thee the said *Henry Baron of Delamere*, and the afore said other false Traitors to the Jurors unknown, falsely, unlawfully, and traitorously, in the War and Rebellion afore said, and in thy traitorous purposes afore said, to join and adhere didst excite, animate, and persuade, against the Duty of thy Allegiance, against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that case made and provided. How say'st thou *Henry Baron of Delamere*, art thou Guilty of this High-Treason whereof thou standest indicted, and hast been now arraign'd, or not Guilty?

L. Delamere. My Lord, I humbly beg the Indictment may be read again.

L. H. Steward. Let it be read again.

[Which was done.]

L. Delamere. May it please your Grace, I humbly beg the favour to be heard a few Words before I plead to this Indictment.

L. H. Steward. My Lord *Delamere*, I am very unwilling to give your Lordship any Interruption, but according to the Methods of Law, which must be observed in your Case, as well as all others, you must plead to the Indictment before you be heard to any thing else.

L. Delamere. May it please your Grace, I have something to offer to your Grace's and their Lordships Consideration which is a matter of Law.

L. H. Steward. I know not what matter of Law you have to offer: If you have a mind to demur to the Indictment, you may.

L. Delamere. Will your Grace please to hear what I have to say? And then I shall submit it to your Grace's Judgment.

L. H. Steward. I would hear what you have to say, my Lord, with all my heart, if I could: But I must then pass by all the Forms and usual Methods of proceeding, and that without any advantage to you too, and that I suppose your Lordship will not desire of me. Ask my Lord, whether he be guilty, or not guilty?

Cl. of Cr. How sayst thou, *Henry Baron of Delamere*, art thou guilty of this High-Treason whereof thou hast been indicted, or not guilty?

L. Delamere. I beseech your Grace to hear me what I have to say; I shall not detain your Grace very long, but I beg your Grace to hear me.

L. H. Steward. My Lord *Delamere*, I must keep you to the known Rules and Methods of Law: This is not your time to speak, but to plead; in your proper time you shall be fully heard whatsoever you have to say.

L. Delamere. If your Grace please, I have something to say which concerns all the Peers of *England* in point of Right.

L. H. Steward. My Lord, you must either plead, or demur to this Indictment, that is the usual Practice before any thing else can be done.

L. Delamere. My Lord, I have a Plea to offer to your Grace and my Lords; and it is with reference to the Privilege and Right of the Peers of *England*.

L. H. Steward. If you have any Plea to offer, it must be received, my Lord.

L. Delamere. My Lord, amidst the Hardships I have laid under by my frequent Imprisonments and close Confinement—

L. H. Steward. My Lord *Delamere*, you must keep up to the Legal Method of Proceedings: In Cases of this nature I would, as far as is possible for me to do, indulge a Person of your Quality, and in your Condition; but withal I must do right to the Court, and not permit any Breach to be made upon the legal Course of Proceedings. You must plead, or demur to the Indictment, before you are heard to say any thing.

L. Delamere. Will your Grace be pleased to hear me tell you my Reasons why I offer you a Plea of this nature to the Indictment.

L. H. Steward. My Lord, if you have any Plea, put it in.

L. Delamere. Will your Grace be pleas'd to accept it as I have done it? It may be it is not so formal, because I have had no Counsel allowed me to peruse and sign it. But as it is, I here offer it to your Grace's Consideration.

L. H. Steward. Ay, put it in.

[Then it was delivered to the Clerk.]

L. H. Steward. Read it.

Cl. of Cr. *The humble Plea of Henry Lord Delamere, to the Indictment of High-Treason against him, now to be tried by the Lord High Steward and Peers here assembled.*

THE said Lord *Delamere*, saying to himself all benefit of Advantage of any further or other matter of Exception to the Generality, Incertainty or Insufficiency of the said Indictment, and all matters and things which do or may concern the same, for Plea hereunto saith,

That he was by His Majesty's Writ summoned to this present Parliament, which began the Nineteenth Day of *May* last, and attended his Duty there as a Peer of this Realm.

That for High-Treason supposed to be committed by him, during the Sitting of the same Parliament, he was the Twenty-sixth Day of *July* last, committed, by Warrant of the Earl of *Sunderland*, one of his Majesty's Principal Secretaries of State, to the *Tower of London*.

That the Peers in Parliament assembled, taking notice by his Petition of the Ninth of *November* last, of his being absent from his Attendance in Parliament, sent a Message to his Majesty to know the Reason

Reason why he the said *Henry Lord Delamere*, a Peer of that House, was absent from his Attendance there.

Upon the Tenth Day of *November* last, the Lord Treasurer reported his Majesty's Answer to the said Message, *viz.* That the said Lord *Delamere* was absent from his Attendance in Parliament, because he stood committed for High-Treason, for levying War against the King this last Summer, testified upon Oath, and that his Majesty had given Directions that he should be proceeded against with all speed according to Law.

The House of Peers not being satisfied with this Answer, the Debate thereof was adjourn'd till the Monday Morning following.

On which Day the Lords resuming the Debate concerning the Lord *Delamere* and the King's Message; after some Debate, the Lord Chancellor, by his Majesty's Command, gave the House an Account what Proceedings had been against the Lord *Delamere* since his Majesty's Answer to their Address concerning his absence from the House; which was to this Effect:

That the King had given Order for a speedy Prosecution of him: That the Treason whereof he was accused was committed in *Cheeshire*; and that being a County Palatine, the Prosecution ought to be there, and not in the King's-Bench; as it might be if the Treason had been committed in another County: and that therefore his Majesty had given Order for a Commission of *Oyer* and *Terminer* into *Cheeshire*, in order to the finding of an Indictment against him for the said Treason. And that accordingly a Commission of *Oyer* and *Terminer* was already sealed; and if the Indictment be not found before the End of the Term, the said Lord *Delamere's* Prayer being entered in the King's-Bench, he should be bailed.

All which Proceedings do more fully appear in the Journals of the said House of Peers; to which the said *Henry Lord Delamere* doth refer himself.

Afterwards, that is to say, upon the Day of the said Parliament was prorogued by his Majesty unto the Tenth Day of *February* next, as by the said Journals it doth appear.

Upon all which Matters the said *Henry Lord Delamere* doth humbly tender this his Plea to the Jurisdiction of your Lordships in this Cause, and doth humbly conceive your Lordships ought not to proceed in the Trial of him upon the Indictment of High-Treason now before you: And that for these following Reasons.

First, Inasmuch as it appears by the said Petition of the said *Henry Lord Delamere*, and the several Orders of the Lords, and the King's Answers to the Message of the Lords thereupon, That the said House are already possessed of his said Cause, which is the same supposed Treason for which he was at first committed, and which is the same Treason for which he now stands indicted before your Lordships. And for this Reason, your Lordships, as he humbly conceives, by the Law and Custom of Parliament, which is part of the Law and Custom of the Land, ought not to proceed against him upon the said Indictment; but his said Cause ought wholly to be determined and adjudged in the said House of Peers, and not elsewhere, as in like Cases has been formerly done.

Secondly, Whereas it is the Right and Privilege of the Peerage of this Realm, That no Peer thereof ought to be tried or proceeded against for High-Treason during the Continuance of the Parliament, except in the said House of Peers, and before the whole Body of the Peers there: And, whereas the

aforsaid Parliament is now continuing by Prorogation, until the Tenth Day of *February* next above-said, the said *Henry Lord Delamere* humbly conceives that by the Law and Custom of Parliament hitherto used, which is part of the Law and Custom of the Realm, he ought not, nor can be tried before your Lordships for the said Treasons, because the said Parliament is still continuing, and not dissolved.

And lastly, The said *Henry Lord Delamere* doth further say, That he is the same *Henry Lord Delamere* mentioned in the Commitment, Petitions, Messages, Answers and Indictment now read unto him, and the said Treason for which he was committed, is the same Treason mentioned in the Commitment, Petition, Messages, Answers, and Indictment, as aforesaid.

To which said Indictment he humbly conceives he is not bound by Law to make any further or other Answer.

L. Delamere. May it please your Grace, and you my Noble Lords, I do not offer this Plea out of any Diffidence or Distrust in my Cause, nor out of any Dislike I have to any of your Lordships that are here summoned to be my Triers; I cannot hope to stand before any more just and noble, nor can I wish to stand before any others: but your Grace, and my Lords will pardon me if I insist upon it, because I apprehend it a Right and Privilege due to all the Peerage of *England*; which, as it is against the Duty of every Peer to betray or forego, so it is not in the power of any one, or more, to wave it, or give it up without the Consent of the whole Body of the Peers, every one of them being equally interested.

This, my Lord, I humbly demand as my Right and Privilege as a Peer of *England*, and submit to the Direction of your Grace and my Noble Lords.

L. H. Steward. What say you to it, Mr. *Attorney*?

Mr. *Attorney* *. May it please your Grace, This Plea that is here offered by this Noble Lord, is a Plea to the Jurisdiction; but, with submission, it needs very little Answer, for it has very little in it: The Force of the Plea is, That he ought to be tried by the whole Body of the House of Peers in Parliament, because the Parliament is still continuing, being under a Prorogation, and not dissolved; and because there was some agitation of the Matter concerning this Prosecution, upon his Petition, in the House of Lords; and therefore it concludes, That he ought not to be tried by your Grace and these Noble Lords upon this Commission, but by all the Lords in Parliament. With submission, my Lord, this is contrary to all the ancient Precedents, and against the known Rules of Law; for the Law is, if the King pleases to try a Peer in Parliament, then the Record may be brought into the House, and there they proceed as in other Cases, and all the Peers are Judges. Thus it is in the time of a Session of Parliament; but if the Parliament be prorogued, there are many Instances (and indeed none to the contrary) that after a Prorogation, the Proceedings are before the High Steward by Commission. And as to the other Part of the Case, I have this to say to it, that there is nothing at all depending in the House of Lords that can oust this Court of the Jurisdiction; for there was not so much as any Indictment return'd there, no, nor so much as found during the Session of Parliament. All the Agitation was only upon my Lord's Petition, and the King's Answer; that he intended as speedy a Prosecution as could be: Besides, my Lord, your Grace sees it is a Plea in Paper and in *English*, with-

* Sir *Robert Sawyer*.

out any Counsel's Hand, and therefore I hope your Grace does not expect that I should formally demur to a Plea in this Form, and that contains no more of Substance in it. But I must desire your Grace to over-rule it, and that the Prisoner may plead in chief.

L. Delamere. My Lord, I humbly pray that I may have Counsel assign'd me, to put my Plea into Form, and to argue the matter of it.

L. H. Steward. My Lord *Delamere*, I am sure I ought, and ever shall be as tender of the Privileges of the Peers of *England*, as any other Person whatsoever: For I am concerned, as well in Interest as Inclination so to be, having the Honour to be one myself: But I know your Lordship will not think the Privilege of the Peers is concern'd in this matter; nor will your Lordship, I dare say, insist upon matters that are purely dilatory, if your Lordship be satisfied that they are so: And therefore give me leave, my Lord, to mind you of a few things, whereby your Lordship will easily see, that the chief things on which you insist, are grounded upon Mistakes. First, you say, the House of Peers was possess'd of the Cause; which could not be, and I will tell you why; because there was no Indictment ever removed thither, or lodg'd there: which plainly proves that the Lords were never possess'd of the Cause. Nor indeed was the Bill found, upon which you are now arraigned, till after the Prorogation of the Parliament. So that they could never come to be possess'd of this matter. These are Mistakes in point of Fact, and your Lordship cannot but well know them to be so.

And there is as great a Mistake in the Law, that during the continuance of a Parliament (tho' it were prorogued, yet if not dissolved) a Peer cannot be tried but by the House of Lords. This certainly is a very strange Doctrine, and is not only against the reason and methods of Law, but contrary even to your Lordship's own Experience: For your Lordship cannot but very well remember, that during the continuance of the Parliament, and after a Prorogation, the Lord *Cornwallis* * was

* *Trial* 77. tried before the High Steward, and such a number of Peers as were then summoned, upon such a Commission as I now sit here by. But indeed during the Sitting of the Parliament, then all the Peers are both Triers and Judges, as was in the Cases of my Lord *Stafford* *, and

* *Trial* 101. my Lord of *Pembroke* †; they being

† *Trial* 73. a Court of Judicature, then actually sitting: and therefore this Plea is grounded as upon mistake in Fact, so upon a mistake in point of Law. So that though, as I said at first, it is both my Duty and Interest to preserve the Privileges of the Peers, yet I must take care that no Injury be done to the Law, and truly I take this Plea to be altogether dilatory, and I suppose your Lordship is satisfied of it, and will not insist upon it.

L. Delamere. If your Grace please, it was alledg'd and agreed in the Case of my Lord of *Bristol*, that the Cause of a Peer in time of Parliament properly belong'd only to the House of Lords; and that which possess'd the House of Lords of his Cause, was, as I apprehend, no more than is in my Case, a Petition upon the account of being absent; and there the Lords claim the Cognizance of the whole Cause, and nothing was done but in the House of Lords. And as to the Instances your Grace has

mention'd of my Lord *Cornwallis* (and there was another of them, my Lord *Morley* †) this Question was never under Debate in those Cases; therefore I suppose they cannot be admitted as Precedents.

L. H. Steward. But, my Lord, it would have been an Error in the whole Proceedings, if this Court had not Jurisdiction: And sure the Judges, who are always call'd to assist in such Cases; and who, in Matters of Life, even in the Cases of common Persons, are so tender and careful, that there be no Irregularity in the Proceedings, would not have let things pass in that manner, had they been erroneous.

L. Delamere. My Lord, I think no other Precedents are produced but those two, and there the Question was never debated.

L. H. Steward. I only put you in mind of those that were lately within Memory; but no question of it there are a great many more Instances to be given.

Mr. At. Gen. I pray your Grace's Judgment to over-rule the Plea, and that my Lord may plead in chief.

L. Delamere. I hope your Grace will be pleas'd to assign me Counsel to put my Plea in Form; and that I may have time for it, that they may be heard to make a solemn Argument in Law.

L. H. Steward. My Lord, if you insist upon it, and think it worth the while to have Counsel heard, we will hear them.

L. Delamere. I submit it to your Grace, I only offer it that I may not be wanting to the support of the Peers Privileges; I assure your Grace, I speak not to put off the Cause, for I am willing to come to my Trial, and I have reason so to be, for I question not but to make my Innocence appear.

L. H. Steward. My Lord, I tell you what my opinion of the Plea is, but if you insist upon it to have your Counsel heard, I will hear them.

L. Delamere. I have no Counsel here, if your Grace please to give me time to send for them, and that they may prepare to argue it.

Mr. At. Gen. No, my Lord, if your Grace will hear Counsel, I for the King must pray that it may be done presently; for a Plea to the Jurisdiction is never favoured, nor is the Party to be allow'd time to maintain it, but he must be ready at the time it is offer'd.

L. Delamere. Pray, my Lord, how was it done in the Case of *Fitzbarris* *? His Plea * *Trial* 102. was a Plea to the Jurisdiction, and he had four Days allow'd him to put his Plea in form, and to instruct his Counsel.

L. H. Steward. I am not able at present to remember what was done in such or such a particular Case: But according to the general Method and Course of Law, the Plea to the Jurisdiction is not favoured, nor time allowed to it, but the Party must be ready to maintain it presently.

Mr. At. Gen. But, with Submission, my Lord, that Case of *Fitzbarris* is nothing to this noble Lord's Case neither: There was a formal Plea put in Writing, and drawn up in *Latin*, and a formal Demurrer joined; and thereupon I did take time to speak to it. But, with your Grace's favour, by the Law, the Prisoner must be always ready to make good his Plea, if he will out the Court of their Jurisdiction.

L. H. Steward. *Mr. Attorney*, if my Lord *Delamere* does insist upon having his Counsel heard, it

† He was tried by his Peers for Murder, April 30, 1666. *Kelyng's Reports* 53.

is not fit for me to refuse hearing what they can say.

Mr. At. Gen. But that must be presently then, my Lord.

L. Delamere. It is my Duty, my Lord, to submit to what your Grace and my noble Lords shall determine : I would insist upon nothing that should offend your Grace or them.

Mr. At. Gen. If your Grace pleases, you are the only Judge in this Case in Matters of Law : For these noble Lords, the Peers, are only Triers of the Fact. Therefore I appeal to your Grace's Judgment, and pray for the King, that this Plea may be over-ruled ; it being vitious and naught, both in Form and Substance.

L. H. Steward. My Lord *Delamere*, I must acquaint you, that according to the Constitution of this Court, Matters of Law are determined by me, as the sole Judge, while I have the Honour to act under this Commission : But if your Lordship insist upon it, to have your Counsel heard, God forbid that I should deny it you. I will hear what your Counsel will say ; and afterwards I will, according to the best of my Understanding, deliver my Judgment.

L. Delamere. My Lord, I have never had any Counsel assigned me.

L. H. Steward. My Lord, if you have any Counsel ready, we will hear them.

L. Delamere. If your Grace please to assign me Counsel, and give me time to tend for them, and them time to prepare, I will obey your Grace's Directions ; but I could have none here ready, because none were assigned me.

L. H. Steward. My Lord, you cannot, by the Course of Law, have Counsel allowed you in the Case of a Capital Crime, till such time as the Court, where you are called to answer, is apprized, that there is some matter of Law in your Case, that may need Counsel to be heard, to inform their Judgment, and which they may think convenient to hear Counsel to : For if in case any Prisoner at the Bar shall before-hand be allowed to have Counsel to start frivolous Objections, such as this (and we all know, that there are some, who will be easily prevailed with to endeavour to pick holes where there are none,) and to offer Matters foreign from the things whereof the Party stands accused ; and upon the Prisoner's bare Request, Counsel must be heard to every trivial Point, the Courts of Law would never be at an end in any Trial ; but some dilatory Matter or other would be found to retard the Proceedings : But it does not consist with the Grandeur of the Court, nor your Lordship's Interest, to let such a frivolous Plea interrupt your Lordship's Trial. However, if your Lordship has Counsel ready, I will not refuse to hear them.

L. Delamere. My Lord, I hope the Privilege of the Peers of England, is not frivolous. I assure your Grace, I do not offer this Matter, as if I thought it more conducing to my Interest, than my Trial now. No, my Lord, it is not for my self, but for the whole Body of Peers, of which I have the Honour to be a Member : And if my Lords here are satisfied it is not the Right and Privilege of the Peers. I acquiesce.

L. H. Steward. Pray, good my Lord, do not think that I should say any such thing, that the Privilege of the Peers is frivolous ; for you do not hear me say, That this is one of their Privileges. As I would not willingly mistake you, so I desire your Lordship would not misapprehend or misre-

present me. I spoke not at all of the Peers Privilege, but of your Plea : I tell your Lordship, I think your Plea is not a good Plea, to oust this Court of the Jurisdiction of your Cause. But if your Lordship have a mind to have your Counsel heard to it, in God's Name let them come ; they shall be heard : And when that is done, to satisfy you the more, I will advise with my Lords the Judges, that are there to assist, what they take to be the Law in the Case ; and, upon the whole, I will deliver my Judgment as well as I can.

L. Delamere. I hope your Grace will be pleas'd to advise with my Lords the Peers here present ; it being upon a Point of Privilege.

L. H. Steward. Good my Lord, I hope you that are a Prisoner at the Bar, are not to give me Direction, who I should advise with, or how I should demean my self here.

L. Delamere. I beg your Grace's Pardon ; I did not intend to give your Grace any Direction.

L. H. Steward. My Lord, I shall take care to perform that Duty that is incumbent upon me, and that with all Tenderness to your Lordship : And, I assure your Lordship. I will have as much care that I do not injure you, as I will that I do not wrong my own Conscience ; and I will endeavour to discharge my Duty to both, with the utmost Fidelity.

L. Delamere. I humbly thank your Grace ; I question it not : But if your Grace please—

L. H. Steward. My Lord, you must pardon me ; I can enter into no further Interlocutions with your Lordship. If your Lordship have any mind to have Counsel heard, and your Counsel be ready, we will hear them.

L. Delamere. If your Grace require of me to produce Counsel presently, and they to argue it immediately, I must acquaint your Grace, I cannot do it : For I have none here.

L. H. Steward. My Lord, I cannot tell how to help it : the Plea must then be over-ruled and rejected.

Clerk of the Crown. *Henry* Baron of *Delamere*, art thou Guilty of the High-Treason whereof thou standest indicted, and hast been now arraign'd, or not Guilty ?

L. Delamere. Not Guilty.

Clerk of the Crown. *Culprit*, how wilt thou be tried ?

L. Delamere. By God, and my Peers.

Clerk of the Crown. God send thee a good Deliverance. *Serjeant at Arms*, make Proclamation.

Serjeant at Arms. O-Yes ! If any one will give Evidence on behalf of our Sovereign Lord the King, against *Henry* Baron of *Delamere*, the Prisoner at the Bar, concerning the High-Treason whereof he stands indicted, let them come forth, and they shall be heard : for now he stands at the Bar, upon his Deliverance.

Then his Grace gave the Charge to the Peers Triers in this manner :

L. H. Steward. My Lords, I know you cannot but well remember, what unjust and insolent Attempts weremade upon the rightful and unalterable Succession to the Imperial Crown of these Realms, under the pretence of that which has been so often found to be the Occasion of Rebellion, I mean, the specious Pretence of Religion, by the fierce, froward, and phanatical Zeal of some Members of the *House of Commons*, in the last *Parliaments* under the late King *Charles* the Second, of ever-blessed Memory.

Which, by the wonderful Providence of Almighty God, not prevailing, the chief Contrivers

of that horrid Villany, consulted together how to gain that Advantage upon the *Monarchy* by open Force, which they could not obtain by a pretended Course of Law.

And in order thereto, it is too well known, how they had several treasonable Meetings, made bold and riotous Progresses into several Parts of the King's Dominions; thereby endeavouring to debauch the Minds of the well-meaning, though unwary and ignorant, Part of the King's Subjects.

But these their evil Purposes, it pleased God also to frustrate, by bringing to light that cursed Conspiracy against the Life of his sacred Majesty, King *Charles the Second*; as also, against that of our dread Sovereign, that now is, whom God long preserve.

These hellish and damnable Plots, one would have thought, could not have survived the just Condemnation and Execution of some of the chief Contrivers of them; especially considering, that after it had pleased Almighty God to take to himself our late merciful and dread Sovereign, no sooner was his sacred Majesty, that now is, seated in the Royal Throne of his Ancestors, but he made it his utmost Endeavours, not only to convince the World, that he had quite forgot those impudent and abominable Indignities that had been put upon him, only for being the best of Subjects, and the best of Brothers; but did also give forth the most Benign Assurances imaginable to all his loving People, that he would approve himself to be the best of Kings.

And further to evince the Reality of these his Gracious and Heroick Resolutions, he immediately called a Parliament; and therein repeated, and solemnly confirmed his former Royal Declarations of having a particular Care of maintaining our established Laws and Religion: With which that Wise, Great, and Loyal Assembly, were so fully and perfectly satisfied, that they thought they could not make sufficient Returns of Gratitude for such Gracious and Princely Condescensions.

And yet, my Lords, while the King and the Parliament were thus, as I may say, endeavouring to outdo each other in Expressions of Kindness, that wicked and unnatural Rebellion broke out; and thereupon the Arch-Traitor, *Monmouth*, was, by a Bill brought into the Lower House, and pass'd by the general Consent of both Houses, (and I could wish, my Lords, for the sake of that Noble Lord at the Bar, that I could say, it had pass'd the Consent of every particular Member of each House) justly attainted of *Higb-Treason*.

My Lords, what share my Lord at the Bar had in those other matters, I must acquaint you, is not within the compass of this Indictment, for which you are to try him, as his Peers; for that is for a Treason alledged to have been committed by him, in his Majesty's Reign that now is.

Give me leave, my Lords, to detain you but with a Word or two more on this occasion; and that is, to let you know, that as my Lord at the Bar may, with great safety and security to himself, rely upon your Lordships Candor and Integrity, that you will be tenderly careful, and ready to acquit him of the Treason whereof he is accused, if, upon the Evidence that shall be given you, you shall find him innocent: So I must tell you, the King has an entire confidence in your Resolution, Fidelity, and good Affections to him, that you will not, by reason of the Prisoner's quality, and nearness to you, as being a Peer of this Realm, acquit him if he shall appear to be guilty.

My Lords, I have one thing further to mind your Lordships of, that, according to the usual Forms of Proceedings in these Cases, if your Lordships have any Questions to propound, wherein you would be satisfied as to any Matter, either of Fact or Law, your Lordships will be pleased to put those Questions to me, and I shall take care to give your Lordships the best Satisfaction I can.

L. Delamere. My Lord High Steward, I beg the favour of your Grace, I may have one to write for me.

L. H. Steward. Ay, by all means. Let my Lord have whom he pleases to write for him.

Mr. *Recorder. May it please your Grace, my Lord High Steward of England, and you my noble Lords, the Peers of the Prisoner at the Bar: *Henry Baron of Delamere*, the Prisoner at the Bar, stands indicted, for that he, as a false Traitor against the most illustrious and most excellent Prince, our Sovereign Lord the King that now is, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, the 14th day of *April* last, at *Mere*, in the County of *Chester*, did maliciously conspire, with other false Traitors, to the Jurors unknown, the death and deposing of the King: And for the better and more effectual fulfilling of those his Treasons, the said 14th day of *April*, at *Mere* aforesaid, did maliciously and traitorously assemble, consult, and agree with *Charles Gerrard Esq;* and other false Traitors, to raise great Sums of Money, and procure Numbers of armed Men, to make a Rebellion against the King, and the City and Castle of *Chester* to seize, with the Magazines there; and that afterwards, the 27th day of *May* last, he took a Journey from *London* to *Mere* aforesaid, to accomplish his treasonable Intentions. And further, that upon the 4th day of *June*, in further prosecution of his traitorous Purposes, at *Mere* aforesaid, he did incite divers Subjects of our Lord the King, to join with him, and other false Traitors, in his Treason. And this is laid to be against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that case made and provided. To this Indictment, may it please your Grace, and the rest of these noble Lords, my Lord *Delamere*, the Prisoner at the Bar, has pleaded *Not Guilty*; and for his Trial, has put himself upon his Peers. We shall therefore call our Witnesses for the King; and if we prove him guilty, we do not question but your Lordships will find him so.

Mr. *Att. Gen.* May it please your Grace, my Lord High Steward of England, and you my noble Lords the Peers: My Lord *Delamere*, the Prisoner at the Bar, stands indicted for conspiring the Death of his Majesty, and in order thereunto to raise a Rebellion in the Kingdom.

My Lords, in proving this Charge upon him, we crave leave to give your Grace, and your Lordships some short Account, by Witnesses that we have here, of a former Design that was previous to this matter, for which this noble Lord stands here accused: And we shall not trouble your Grace, and your Lordships, with any long Evidence, because it has received many solemn and repeated Trials; and, as to the proof of it, has been confirmed by as many Verdicts. But we do it, rather to give some account, as an Introduction to a material Evidence, by shewing, that *Cheeshire*, which was the

the Province of this noble Lord, was one of the Stages where that Rebellion was principally to be acted; and that, preparatory to it, great riotous Assemblies, and tumultuous Gatherings of the People, were set on foot by the Conspirators.

We shall then shew, my Lords, that after the late Duke of *Monmouth*, (the Head of the Conspiracy) went beyond Sea, (especially after the death of the late King) frequent Messages, and Inter-course of Correspondency, were sent and held between him, and the rest of his Accomplices abroad, and their Fellow-Conspirators here at home.

And particularly, we shall prove, that a little before the Rebels came over last Summer into the *West*, the Duke of *Monmouth* did dispatch one *Jones*, (who was one of the most considerable Agents in this Contrivance) to come from *Holland* into *England*, to let his Friends know, that tho' he had intended to go into *Scotland*, and begin his Work there, yet now his Resolutions were for *England*; where, he hoped, his Friends would be prepared for him. And with this Message and Resolution of his, *Jones* was to acquaint some Lords, (who they were, the Witnesses will tell your Lordships, but) among others, this noble Lord, the Prisoner, was one: And to acquaint them, beside, that he would immediately set sail for *England*, whither he would come so soon as he could get. That he had a Design to have landed in *Cheshire*, where he expected to be most readily receiv'd; but finding that inconvenient, they should have notice four or five Days before-hand, of the Place of his landing, which he intended should be in the *West*. And, among the Directions that *Jones* had to give to those Lords, one was, that they should immediately repair into *Cheshire*, there to wait for the News.

These Instructions *Jones* had given him in Writing, but sealed up, with an injunction not to open them till he came to Sea; and then he was to peruse that Writing, and deliver his Message according to his Instructions: And in that Writing was the Name of this noble Lord, as one that was principally relied on, to carry on the Rebellion in *Cheshire*. And we shall give you an account, that the late Duke of *Monmouth* did look upon *Cheshire* as one of his main Supports, and upon my Lord *Delamere* as a principal Assistant there.

My Lord, this Message was *Jones* to communicate to Captain *Matthews*, and Captain *Matthews* was to transmit it to this noble Lord, and the other Persons that were concern'd with him. *Jones* arrived with this Message here in *England* upon the 27th of *May*: [And I must beg your Lordships to observe the Time particularly.] But Captain *Matthews*, to whom he was directed, was not to be found; nor Major *Wildman*, to whom, in the absence of Captain *Matthews*, he was to apply himself, as you will hear more fully from the Witness's own Mouth: Thereupon he sends for one *Difney*, (a Name which your Lordships cannot but know, he being since executed for Treason) and one *Brand*, whom your Lordships will likewise hear of; and they meet with the same *Jones*, who communicates his Message to them, and they undertake to deliver it to the Persons concern'd; Captain *Matthews* being out of Town, and Major *Wildman* not to be found.

That very Night, my Lords, this same *Brand* and *Difney* they meet this Noble Lord, my Lord *Delamere*, at the Coffee-House, and give

him an Account of the Messages: And as soon as ever he had received the Message, upon that Twenty-Seventh of *May*, at ten of the clock at Night, does my Lord *Delamere* dispatch out of Town, with only one Servant to attend him, and two other Friends that he had pick'd up, or appointed to meet him, and go with him. |

With all these Badges of Plot and Design, does my Lord *Delamere* set out that Night. It was the same Night that *Jones* came to Town: It was late at Night. He changed his Name, and went by the Name of *Brown*. He chose to go all the By-Roads, and would not keep the high common Road; and went with great speed, as we cannot but presume according to the Message delivered by *Jones*, on purpose to repair into *Cheshire*.

And if your Lordships please to observe, you will find several remarkable Instances of Plot and Contrivance in the matter: First, That a Nobleman, and one of so considerable a Character in his Country, as my Lord *Delamere*, should make such haste out of Town with so small an Equipage, as but one Servant. Then, that he should go so late at Night: Again, that he should change his Name; and that should prove to be a Name not casually taken up, as the first Name he could think of next his own; but a Name of distinction, that he was known by among all his own Party: For all the Communications between the Confederates and him, were managed, as to him, under the Name of *Brown*. By that Name, several of the late Duke of *Monmouth's* Traitorous Declarations were sent for; which were to be sent to him, or by him, into *Cheshire*: And that alone, with Submission, my Lords, would be a shrewd Circumstance of Suspicion, that a Noble Lord, such an one as my Lord *Delamere*, should assume the Name of a Commoner, and posit out of Town so ill accompanied in a Disguise at that time of Night; especially the Parliament being then sitting, as really it was.

But besides all this Circumstantial Evidence, we shall prove, by Positive Testimony, what the hasty Business was, that made my Lord undertake this Journey in this manner: For, having notice of the Duke of *Monmouth's* Intention to land speedily in *England*, when he comes into *Cheshire*, he actually sets about the Work to put that County in a forwardness to assist in the Rebellion, endeavours to stir up the People to join with him; and acquaints one that he employed in that Affair, with the whole Design, that he was engaged to raise so many Thousand Men, and so much Money, to be ready by such a Day.

Nor does my Lord rest here: But, after the Duke of *Monmouth* was landed in the *West*, to corrupt the Minds of the People, we shall prove what Discourses he had, (and these will testify his Inclinations to the Cause) concerning the great Victories he had obtained over the King's Forces, and how he applauded his Conquests.

My Lords, we shall plainly shew you all this that I have opened in plain Proof: And then, we shall submit it to your Lordships Judgments, whether this noble Peer be Not Guilty, as he has pleaded to his Indictment.

L. H. Steward. Call your Witnessess, Mr. *Attorney*: Who do you begin with?

Mr. *At. Gen.* My Lord *Howard* of *Esrick*: We desire he may be first sworn. *[Which was done.]*

L. H. Steward. Well, what do you ask my Lord *Howard*?

Mr. *At. Gen.* My Lord, I call you to give an Account what you know of a Design of an Infurrection that was to have been; and in what Parts; and what share *Cheeshire* was to have had in it, in the late King's Time.

L. H. Steward. You hear the Question; what say you to it, my Lord?

L. Howard. My Lord, I am to direct my self to speak to what was done in the late King's Time: For as to that Noble Lord at the Bar, I have nothing to say against him.

L. H. Steward. My Lord *Howard*, if I apprehend Mr. *Attorney* aright, you are not called as a particular Witness against my Lord *Delamere*; but only to give an Account, what was agreed upon in any Consultations, where you were present, in the late King's Time, about a Conspiracy for an Infurrection?

L. Howard. If so, my Lord, then I am called, not to be an Evidence against my Lord *Delamere*, but against my Self; that is, to repeat what I have often delivered at several Trials, in the Courts of Justice; and which I must always repeat, with Shame and Confusion for my Guilt, as I cannot but always reflect upon it with Sorrow and Horror. But if it be for the Service of his Majesty, and this Honourable Court, for me so to do, I shall endeavour to comply with it, and repeat it as well as I can, by the Assistance of a broken Memory; it being an Account of things done several Years past, and from a Memory interrupted by such Accidents as are very well known, and as have disabled me to make a more distinct and particular Relation before so great an Auditory.

My Lords, I suppose, it will be expected, I should begin my Account with the Occasion and Ground, and the Time when those Things happened.

L. H. Steward. Take your own Method, my Lord.

L. Howard. Truly, my Lord, I am not able to fix the particular Time, unless you will give me leave to reckon the Years by the Sheriffs of *London*, as the *Romans* used to do theirs by their Consuls; for I have no other means of computing the exact Time.

L. H. Steward. Pray, my Lord, tell the Times as near as you can, and use what helps for your Memory you think best.

L. Howard. My Lords, it was in that Year, when Mr. *Shute* and Mr. *Pilkington* were Sheriffs, for the City of *London*: And at that time, it is well known how great Heats did arise upon the Contests that were in the City, about Election of Officers for the Year ensuing—

Mr. *At. Gen.* May it please your Grace, my Lord *Delamere* seems to be faint with standing: If your Grace please, a Chair may be provided for my Lord to sit in.

L. H. Steward. Ay, by all means: Let a Chair be provided for my Lord to sit down. Go on, my Lord.

Lord *Howard.* My Lord, I was saying, that the Contest about the disputed Election of Sheriffs, had occasioned such Heats in the City of *London*, and other Places, that it was even beyond the

common expressions of discontent. I knew nothing of any particular Design there was in hand till about six Weeks after, when Captain *Walcot* came to me, a Person I had known some time before, and upon discourse, acquainted me, that he had found out that there were some Persons engaged in a considerable Action that was near its Execution; and that in order to it, he had had notice given him to make preparation, and thereupon he had thought fit, for that reason, to withdraw from the place where he did at that time lodge, (which was in *Red-Lion* Court in *Fleet-street*, as I remember) and betake himself to a private Lodging, that he might be the readier for Action; and to put himself into a better Equipage for joining in the Enterprize, he had bought himself a Horse, and sent his Son into *Ireland* to turn all he could into ready Money, and return it, that he might be the better able to go through with the Undertaking. My Lords, this was a great surprize to me; for though I knew, as all the rest of the World did, that there were great discontents, yet, till then, I never had any intimation of any particular design. I told him I was going into the Country, but should be glad to know how things went, and desired him to write to me, and gave him a little *Cabala* or *Cypher* to disguise the matter he was to write about. And when I was in the Country, I did receive several Letters which intimated something of a Design that was going on, and at last he writ with some warmth to me, of a necessity we were under to enter into Action, and of the readiness of my Correspondents; (for the Style of the Letters was that of Merchants, for so was the Cant that I had given him:) But truly I was not over-hasty in my return to *London*, because I rather chose to see what would be the Issue of what was then projected, before I did intermeddle in such an Affair, and so made use of all the delays I could to retard my return, and came not to Town till that Week which determined the long continued Controversy in *London*. Nay, and then also avoided meeting with any body in any set-way, till I could better see how things were managed, and what event they would probably come to: thereupon I would not go to my own House, but took up my Lodging at *Mile-end*, and lay there three or four Days, till the Day came for confirming the new-elected Sheriffs, and the Election of a new Lord Mayor, which as I take it, is on the day before *Michaelmas-day*, and *Michaelmas-day*. When that day was over, I could not find there was any Intention of entering into any sort of Action; I found indeed there were great Murmurings in the mouths of all sorts of People, and very angry warm Speeches, and nothing else: So I thought the business was over for that time, and thereupon away I went to my own House. This, my Lords, was upon the Saturday, as I remember: Upon the Monday Morning Captain *Walcot* came to me, and desired that he might have some private discourse with me in my Garden; and there he told me, my Lord *Shaftesbury* had withdrawn himself, and that he did believe things were in a great Preparation for Action. I desired him to tell me what it was; he answered me, That he desired to be excused in that, for I must go to my Lord *Shaftesbury*, who would give me an account of the whole: and withal he told me, my Lord *Shaftesbury* had been much deserted and ill used by those Lords upon whose concurrence he had rely'd, and

and that was the reason why he had withdrawn himself, and kept himself so private. I told him, I did not know my Lord *Shaftesbury* had any desire to speak with me. Yes, he said he had, for he had sent him to me on purpose, and he was to bring back my answer, whether I would join or no. I told him, if my Lord desired to speak with me, I would wait upon him; and thereupon I went with him, and he carried me to a place where my Lord *Shaftesbury* was retired into the City, somewhere about *Foster-Lane* or *Wood-street*, at the house of one *Watson*. When I came there, after Salutation my Lord *Shaftesbury* began to make great reflections upon the Misery and Badness of the Times, particularly, upon the issue of that great Affair, the Election of the Sheriffs, which had ended so unfortunately to the Terror of all good men: For whereas before, the great and sure resort of innocency was to the Integrity of our Juries, when returned by fair and equal Sheriffs, they looked upon the eagerness of getting those Persons sworn that were then in Office to be a design to intrap the innocent, the elected Sheriffs being esteemed persons that would accommodate themselves to the humour of the Court; and now every man must be run down for Crimes that he was no way guilty of, if the finger of the Court did but point him out to destruction. The apprehension of this, he said, had made him withdraw himself, not knowing how soon he might be seiz'd, should he have remain'd in publick; and he thought the danger was as imminent upon, and likely to reach to others, as well as to him; and particularly to my self, and therefore, he said, the sense of this danger ought to put every *Englishman* that had a value for his Contry, and any thing that was dear to him in it, upon using his utmost endeavours to give some prevention to those calamities which were impendent over us, and which threatened the destruction of all men that stood up for the Rights of the people: and this, he said, was his resolution.

My Lord, in order to this, he declared to me, what Preparations had been made for the Raising of Force for this purpose; he said, there were eight or ten thousand Men (I cannot fix the particular number) that he was well assured to have ready in the City; That there had been divers Horse (I think about Fourscore or an Hundred he named) that about a Fortnight before, had been, by parcels, drawn into the Town, without being observed; and these were in daily expectation to go into Action; but through the unhandfome Disappointment of the Duke of *Monmouth*, and the other Lords that adhered to him, who were to have joined in the Action, and have set the Wheels at work in other Parts, he was left alone to do the whole in his Province of *London*, they being not ready to concur according to their Engagement: But as he should have the greater Danger, so he should have the greater Glory; and he resolved to go through with the Attempt, or perish in the Execution. To all this Discourse, I gave such an Answer as the nature of the thing required: I told my Lord *Shaftesbury*, I could not deny all those things to be true, as he had represented them in his Discourse; and that I would not distrust his Judgment so much, as to suppose he would enter upon such an Affair, without due delibe-

ration of all the Circumstances requisite to it; and so I would not question, but there was such Preparations, and that he had Assurance of such a Force, as he had spoke of, whenever they should begin any Action. But I told him something stuck with me, and troubled me very much; That, in a time of such difficulty, when the convenient Help of the Nation was all little enough to join in the Work, he should stand by himself, and engage in such an Enterprize, in separation from those other Lords, of whose Help there would be so much need. He said, he could not help it, they had appointed this time, and that, but now, when it came to the push, they were not ready to do their Parts; but the People were now in such expectation of something to be done, especially in *London*, that it was impossible to restrain them, and as impossible to get those Lords ready to join with them. I told him, I was altogether unacquainted with the proceedings in this Affair, and that all of it was wholly new to me: But pray, my Lord; said I, give me leave to act that part in this business, that, I think, will most conduce to the successful Issue of it, which is to be a Mediator between you; and let me desire you to let things rest as they are, till I have endeavoured to create a better understanding between your Lordship, and those Lords, of whose Tergiversation you seem to complain. Upon this my Lord was in a great heat, and express'd himself with great warmth; but at last, with much ado, he gave me permission to go to the Duke of *Monmouth*, and assure him, and the rest of the Lords that were concern'd, and tell them from him, that, if they would be ready to take the Posts that were assign'd them, according to their own former Agreement, and immediately enter upon Action, he would join with them; but if not, he was resolv'd to go on alone. This was, as I remember, upon Tuesday, the Second of *October*: upon the Wednesday Morning I went to find out the Duke of *Monmouth*, but coming to his Lodgings, he was gone to *Moor-Park*, where, when I came, I found several Persons with him; but after a little time, I separated him from the Company, and whispering to him, I gave him to understand, how great a Disorder I found my Lord *Shaftesbury* in, and how great a Complaint he made of his being deserted by him, and the other Lords engaged with him, and what Resolution he had taken to set upon the Work alone. "My Lord, says he, I think the Man is mad, his Fear makes him lose his Understanding; I do not know why he hides himself from his Friends, that no body can tell where he is: but as to that which he speaks of, of our forsaking him, and Breach of Faith, he is mistaken. For, 'tis true indeed, we are about doing the Thing, that he is so eager for, but we are not for doing it so hastily, as his Fears precipitate him to do; and he must excuse us, if we comply not with his Humour, to hazard the whole Undertaking by a rash beginning." Upon that, I said to him, My Lord, I shall not discourse the Particularities of the business with your Grace; but this is all that I at present address to your Grace for, to be a means, if I can, with your Grace, as I have been with him, to procure a Meeting between you, that you may settle it with one another. "With all

“ my heart, says the Duke, pray let it be so ; for, though my Lord *Shaftesbury* is angry without a cause, yet I would not have him lose himself in a temerarious Undertaking.” My Lord, said I, I will tell him what you say, and will see if I can work him to a Compliance with the Proposal. The next day, being Thursday, my Lord, I went to my Lord *Shaftesbury* again, and reported to him the Discourse I had with the Duke of *Monmouth*, and what Answer he had given to his Complaint of their deserting him. He reply’d, “ It was false, they had positively engaged to be ready by such a time, and had appointed the very Day ; but now they were off, and would not tell when they would be ready : ” and withal, he told me, he greatly suspected the Duke of *Monmouth* to have a secret Correspondence with the King. I then desired him, That he would please to consent to the Treaty that was propos’d, and give the Duke of *Monmouth*, and the Lords a Meeting. He, in great heat, reply’d, No, he would come no more at them. It is strange, my Lord, said I, that you should have such an Opinion of these Men, that they would go about to betray you ; they are not Men of that size : but he persisted in it, that they had dealt perfidiously with him : For after a positive Agreement, when the Thing was brought just to the Birth, they withdrew their helping hand : but he was sure, in *London*, he could raise a sufficient Force to do the Work, and if he were but once set on horse-back, he would head them himself : But yet he was willing to put it off for a Fortnight, or three Weeks longer, if they would be sure to keep pace with him. With this Proposal I went the next day, which was Friday, to the Duke of *Monmouth*, and had the same Answer from him, that I had before ; but withal, he bid me tell my Lord *Shaftesbury*, That he did make it his earnest Request to him, to give him and his other Friends a Meeting before he engaged in this business : For he found by his precipitation, he was about to destroy himself, and all that adhered to him. Thereupon, I came to my Lord *Shaftesbury* again, upon the Saturday ; and when I came there, after a long and importunate urging all the Arguments I could think of, I so far prevailed with him, that he agreed to give them a Meeting, upon condition, that it should be the next day : and because it should be so private, that no notice might be taken of it, he chose to have the Meeting at his own House, where no body would suspect him to be, and whether he would be conveyed, under the Disguise of a Parson. I went back with this Message to the Duke of *Monmouth*, who did undertake, that the other Lords should be there.

L. H. Steward. My Lord *Howard*, nor to interrupt you, Did he name those other Lords ? If he did, pray acquaint my Lords, who they were.

L. Howard. My Lord *Shaftesbury* named my Lord *Ruffel* and my Lord *Gray*, and a great many more that should bear their parts. I went to the Duke of *Monmouth*, and told him of it, I say, and he engaged, that they should certainly be there : But, upon the Sunday Morning, when I came to the *Temple*, there I found a Message left for me, that my Lord *Shaftesbury* had receiv’d an Alarm, That there was some great Tories

living near his House in *Aldersgate-street*, who were continually spying about ; and so great a Company might make their more than ordinary Observation : That this gave him such a Jealousy, as would not permit him to meet according to his Appointment. Afterwards, I came to a better understanding of the Reason of this, and found there was some Finesse in it, which I could not comprehend before : But after this time, I never saw my Lord *Shaftesbury*, for he removed then to other Lodgings. So that, what I now speak of him, is only what I had, by hear-say, from others : For I had no knowledge of what pass’d, as to him, but what I had from Capt. *Walcot* ; who told me, That after that, there were several days of Meeting appointed, but still, from time to time, put off ; but upon what reason, I cannot particularly remember.

This is all I know of my Lord *Shaftesbury* ; and the latter Part is wholly by Hear-say from *Walcot*. But by reason of this Agitation, we continued under Expectation till such time as my Lord *Shaftesbury* went into *Holland* ; where he shortly after died. And truly, I thought, at that time, much of the Design was quash’d, and laid aside : But, soon after *Ferguson* came over ; who, when he came here, began to revive and quicken the Business, and push it on to Execution. I spoke with him at the One Bell in the *Strand* ; and there he gave me an Account of all the Steps that had been taken : He told me what Preparations had been made in the City, in general ; what to seize the Gates of the City ; what to possess themselves of the *Tower* ; what to attack the Guards ; and several other things, which I can’t now so well remember, the Impressions of them being worn out of my Memory, by length of Time, and other Accidents.

This, in general, is all that I can say, as to what was previous to the particular Engagement wherein I was concern’d : For, at last, after many Discourses, the Troubles and Difficulties of the Times encreasing, and the Dangers that threaten’d us, as we thought, growing higher and higher, this gave an Occasion for our uniting Councils, and entering into a kind of *Juncto* ; which, I suppose, is foreign to this Affair before your Lordships ; and therefore, I suppose, would be likewise impertinent for me, to trouble your Lordships with.

L. H. Steward. Mr. *Attorney*, do you desire my Lord *Howard* should give an Account of the other Meetings, and Consultations, at which he was present ?

Mr. *At. Gen.* My Lord, I think there will be no need of it ; and I am unwilling to take up your Grace’s Time to no purpose.

L. Howard. As for that Noble Lord at the Bar, I know nothing concerning him.

L. H. Steward. Then, Gentlemen, will you have him asked any Questions ?

Mr. *At. Gen.* Yes, my Lord.

L. H. Steward. My Lord *Delamere*, will you ask him any more Questions ?

L. Delamere. No, my Lord.

Mr. *At. Gen.* Before my Lord *Howard* goes, I would ask him one Question in general, whether he knew of any Design of a Rising in *Cheeshire* ?

L. Howard. No, my Lord, I knew of none at all.

Mr. *At. Gen.* Then we desire my Lord *Gray* may be sworn.

[Which was done.

Mr. *At. Gen.* Pray, will you give his *Grace* and my *Lords* an Account, what you know of any Designs of an Insurrection or Rebellion, when you were beyond Sea, or before? and who were engaged in it?

L. *Gray.* My Lord, I am *subpena'd* hither on behalf of the King; and I am also *subpena'd* on behalf of my Lord, the Prisoner at the Bar. I do not know any thing, that I can speak of my own Knowledge, against the Prisoner; nor have I any thing to say, that I know of, that will be for his Advantage. But I am here ready to answer such Questions, as shall be ask'd me, either of one side, or the other.

Mr. *At. Gen.* My Lord, the Question I ask you, is, What do you know of any Design of a Rising in *Cheeshire*, and when?

L. *Gray.* About the Time of Election of *Sheriffs* for the City of *London*; I mean, that memorable Time of the contested Election, which furnished the World with so much Discourse, and was the occasion of such Heats and Animosities: About that time, the Duke of *Monmouth*, and my Lord of *Shaftesbury* began to discourse about making use of that, as an Opportunity to accomplish their Design; for they thought the Ferment was so high, that Men would easily be disposed to an Insurrection: and after many Discourses to that purpose, they came to this Resolution, that they would apply themselves to make what Interest they could, to procure a Rising in three several Parts of the Kingdom at once: one in *Cheeshire*, whither the Duke of *Monmouth* was to betake himself; and there be advised by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Prisoner at the Bar, what Gentlemen were proper to apply to, for joining in the Design. The second was in *London*, which was assigned to be the Province of my Lord of *Shaftesbury*. And the third was in the *West*; which was committed to the Care of my Lord *Russel*. The Duke of *Monmouth* did accordingly go his Progress into *Cheeshire*, as is very well known; and upon his Return, was taken into Custody by the *Serjeant at Arms*: Upon which, Sir *Thomas Armstrong* was sent Post to Town, to get an *Habeas Corpus*; and withal, to deliver a Message to me, to be communicated to my Lord *Russel*, and my Lord *Shaftesbury*: Which Message, as near as I can remember, was to this Effect; That he had been kindly receiv'd by the Gentlemen of the County, and had discours'd the Matter with them, and found them all inclined very much to his Satisfaction: That upon his being arrested, he had been advised to make his escape into *Cheeshire*, and rise immediately; but that he would not do a Matter of that great Importance, without the Approbation of his Friends. This is all that I know of any thing, that was design'd in *Cheeshire*.

Mr. *At. Gen.* Pray, my Lord, what do you know of any Messages that Captain *Matthews* or *Jones* brought over from *Holland*, and to whom, and from whom?

L. *Gray.* Sir, I will give the best account I can, upon the sudden, for I am not prepared to give a particular distinct account, in regard

I did not know it would be expected from me, nor indeed that it would affect the Prisoner at the Bar.

L. *H. Steward.* Pray, my Lord, give my Lords the Peers as succinct and particular an Account as you can.

L. *Gray.* My Lord, soon after the late King's Death, the Duke of *Monmouth* was at *Amsterdam* with my Lord of *Argyle*, where there was an account given of the Design that was in hand, of an Insurrection in *Scotland*, and the Preparations that had been made in order to it; and at that time there came over to *Holland* Mr. *Crag*, that came as I was inform'd from Major *Wildman*, and his Errand was to promote and recommend a Reconciliation between the Duke of *Monmouth* and my Lord *Argyle*, who till that time had acted in separate Interests; and *Crag* then gave an account that Means and Money were prepared: he had no particular Message to the Duke, because he did not know of meeting him there at that time. The Duke of *Monmouth*, upon this Encouragement, did send Captain *Matthews* into *England*, with a Message to Major *Wildman*, wherein he did desire him that he would procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere*, and I think Mr. *Charlton*, and acquaint them that he had received a full account of my Lord *Argyle's* Affair, and the Preparations that had been made for it, and accordingly he had ordered his own Affairs to join with him; he likewise sent *Crag* with a Message to the same purpose to other Friends in *London*, and he dispatch'd away one *Buttscomb* into the *West*, to prepare things there. When *Crag* return'd back again to the Duke, he gave him an account that Major *Wildman* had procur'd a Meeting with those Lords and Gentlemen, that I mentioned before, who were all of Opinion, that the Duke of *Monmouth* should go for *Scotland*, for they thought that his coming there, would be the best Service he could do the Interest at present, and they should know the Strength of the Enemy here, by their sending Forces to suppress the Rebellion there. There was likewise a particular Message from Major *Wildman* to the Duke of *Monmouth*, that he desired he would bring over with him a Broad Seal to seal Commissions with, and to take upon him the Title of King. The other particular Branches of the Message I do not so well remember, but only this, he was particularly ask'd, whether the Prisoner at the Bar was there, and he said he was—

Mr. *At. Gen.* Pray, my Lord *Gray*, will you give an account what you know of *Jones's* coming over, and what Errand he was sent of?

L. *Gray.* *Jones* came some time after *Crag* return'd, and he gave an account of other things conformable to what *Crag* had said, and was sent back again to *England* by the Duke of *Monmouth* to give an account of his being ready to sail; he gave him also a Letter, the Contents whereof I did not see. I had some short account of it, but whether it were written to any particular Person, I cannot tell; the Sum of his Message was, that he would land by that time he could get thither.

Mr. *At. Gen.* My Lord *Gray*, you had frequent Discourse with the Duke of *Monmouth*,
and

and so I suppose you can give an account who he kept Correspondence with, and upon whose Assistance he relied.

L. Gray. I suppose few people will believe we were so weary of our Lives, as to come and throw them away with Threecore, or a very few more Men, (for it was but a very small number we began with) except we had had Expectation of good assistance. This I am sure of, by all Discourses with the Duke of *Monmouth*, he did depend very much upon *Cheshire*, and was resolv'd to have lunded and begun there; but afterwards he considered of it, and thought better to send some sort of excuse for not landing in *Cheshire*; that the Persons that were to be apply'd to there, being Men of great Quality and Interest in their Country, and able to manage it, without his Assistance: but in the *West*, the Friends he relied on, were not of that considerable Quality, and therefore he chose to land there.

Mr. At. Gen. What Lords did he name, that he depended upon.

L. Gray. I did name them; my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*; but I observed when the Duke of *Monmouth* spoke of his Friends in *Cheshire*, he did name my Lord *Macclesfield*, and my Lord *Brandon* as Persons.

Earl of Nottingham. My Lord Steward, I humbly pray this Witness may be asked to whom that Letter was written, that he saith the late Duke of *Monmouth* sent by *Jones*?

L. H. Steward. You hear my Lord's Question, who did *Monmouth* send that Letter by *Jones* to?

L. Gray. My Lord, I never saw the Letter, nor do I know any Directions there were upon it; I always looked upon it as a Paper of Instructions given to him about the time when, and the name of the place where the Duke was to land.

Mr. At. Gen. We will give an account of that by *Jones* by and by, my Lord. Now swear *Nathaniel Wade*.

[Which was done.]

L. H. Steward. Well, what do you ask this Witness?

Mr. At. Gen. Wade, that which I call you for, is this, to give an account what you know of any Design of landing in *Cheshire*, or elsewhere, and of *Jones's* coming over, and what Errand he was sent upon?

Mr. Wade. My Lord, I shall give an account as far as I know. After the death of the late King, Captain *Matthews* came to *Amsterdam* and gave an account there, that the Duke of *Monmouth* intended to be there shortly to meet and consult with my Lord *Argyle*, who, we understood, then was preparing for an Expedition into *Scotland*; thereupon I was sent into *Friesland* to desire my Lord *Argyle* to come to *Amsterdam*, which he did; and there the Duke of *Monmouth* did consult with him, and they did agree together, that at the same time that my Lord *Argyle* made an Insurrection in *Scotland*, the Duke of *Monmouth* should invade *England*, and to that end, that he should send to those Friends he had in *England*, to be ready to assist him when he came there; and in order to it, he did send Captain *Matthews*, who, amongst other things, was to

go to the Duke's Friends in *Cheshire*, and amongst them, my Lord *Delamere* was named to be one, and the business was to desire them to be ready to assist him when he should land. Accordingly Captain *Matthews* went; but a little after his going away, I think one *Crag* came over, and he came from Major *Wildman*, and his business was to endeavour a good Understanding between the Duke of *Monmouth*, and my Lord *Argyle*, who were then at some difference; and to endeavour to make them act jointly by united Counsel. A little after he was sent back again into *England* to Major *Wildman*, to desire him to assist them with some Money; he went back again, and returned, but brought no Money: thereupon he was sent again by the Duke of *Monmouth*, because the first time he was not sent by him. The Sum demanded was six Thousand Pounds, or four Thousand Pounds, and at last he sent for a Thousand Pounds. *Crag* returned with this Answer, that they could not assist them with Money, for they did not know to what end they should have Money, but to buy Arms, and for that the People were well provided enough already, and there was no need of Money for that purpose. The Duke of *Monmouth* a while after sent *Mr. Crag*, and pawn'd all the Jewels he had, to raise Money, and fitted out three Ships for this Service, laden with Ammunition; and because he had promised my Lord *Argyle* to make a Diversion in *England*, while he invaded *Scotland*, he resolved to go with that Provision he had, and desired by *Mr. Crag*, that since those Lords and Gentlemen that were to assist them, had sent no Money, as was desired of them, and expected from them, they should now trouble themselves with no further needless Consultations; but should repair each Man into his own Country, where their Interest was greatest, to be ready when he should come. And in order to this, the Duke of *Monmouth* did set sail from *Holland*, and came to *Lyme*, and landed there; and did afterwards order his March, so that he might most conveniently meet with his *Cheshire* Friends; that is, towards *Gloucester*, and so to get *Gloucester-Bridge*, that thereby gaining the Command of the River of *Severn*, those of *Cheshire*, if they did, as was expected, make an Insurrection at the same time, they might easily join together. In pursuance of this Design we came to *Keingslam Bridge*, and there a Party of the King's Horse set upon us, and we took some Prisoners, and thereupon thought it advisable not to let the King's Army join together, but to go back and engage those that were already come together; and that was the reason we did not go over the Bridge.

Mr. At. Gen. Do you know any thing of *Jones's* coming into *Holland*, and for what?

Wade. My Lord, I had forgot that; a little before *Crag's* going last away, *Jones* came over, and his Business was to know why we staid so long, for the Duke of *Monmouth's* Friends in *England* had expected him long before, and he was dispatch'd away quickly to acquaint them the Duke was coming.

Mr. At. Gen. Who was it he sent to, to acquaint with his coming?

Wade. To Major *Wildman*, he was directed to Major *Wildman*.

Mr. *At. Gen.* Who else were to be acquainted with it?

Wade. Amongst the rest, my Lord *Delamere*, my Lord *Macclesfield* and my Lord *Brandon* were to be acquainted that he was coming, and expected that they should raise what Forces they could to assist him.

L. H. Steward. Will my Lord *Delamere* ask him any Questions?

L. Delamere. No my Lord, I never saw his Face before, that I know of.

L. H. Steward. Who do you go to next, Mr. *Attorney*?

Mr. *At. Gen.* Next we call *Richard Goodenough*: Swear him, [*Which was done.*] That which I would know of you, Mr. *Goodenough*, is, whether *Jones* was sent of any Message, and about what?

Goodenough. My Lord, I was beyond Sea with the Duke of *Monmouth*, and Mr. *Jones* was sent (among other Persons) to my Lord *Delamere* to give him notice that he should be ready against the time that the Duke should land, and take care to secure himself, that he might not be seized here in Town, for we were apprehensive such a thing would be attempted.

Mr. *At. Gen.* What Directions were given him, what Lords to go to?

Goodenough. My Lord, we were informed in *Holland*, that my Lord *Delamere* was one of those Lords that had promised to draw his Sword in his behalf.

Mr. *At. Gen.* Had you any discourse with the Duke of *Monmouth* about it at any time?

Goodenough. Yes, I have discoursed with the Duke of *Monmouth* several times.

L. H. Steward. Ay, what did he say to you about it?

Goodenough. My Lord, he said (among other things) that he hoped my Lord *Delamere* would not break his Promise with him?

L. H. Steward. My Lord *Delamere*, will you ask him any Questions?

L. Delamere. No, my Lord. I never saw his Face before, that I know of, I will assure you.

L. H. Steward. That is pretty strange, so famous an Under-Sheriff of *London* and *Middlesex*, as he was.

Mr. *At. Gen.* Then swear *Jones*, [*Which was done.*] Pray will you give an account what Message you received from the Duke of *Monmouth* upon your going over into *Holland*, and to whom you were to deliver it, and what became of it?

Jones. My Lord, I went to *Holland* about the latter end of *April* last; my going, as I have acquainted his Majesty and the Council, was not only about this Affair, for I had other Business that called me thither, which I shall not now take up your time, or trouble you with repeating of: but having some knowledge from Mr. *Disney*, that there were some Intentions of doing something, tho it was communicated to me but very darkly, and therefore that little I did know, made me the willinger to go for *Holland* so soon as I did: but before I went, I had a mind to understand something more of the Design; and therefore the Night before I went, I came to Mr. *Disney*, and acquainted him with my intended Journey. Mr. *Disney* did persuade me against it, thinking that I had gone upon this account, but I told him the Occasion, which he partly knew,

why I went; but withal I told him, I did intend to see the Duke of *Monmouth*, and if he had any Message that he would have delivered to him, I would deliver it very safely. He told me all the Message I should deliver to the Duke of *Monmouth*, if I saw him, was to desire him to keep to the last Conclusion, which he would find in a Letter that had been sent to him, and that if he had not yet received the Letter, it was to come by the *Crop-hair'd Merchant*, or the *Crop-ear'd Merchant*, I cannot say which, but I think it was the *Crop-hair'd*. I asked him what that Message was, lest the Letter should miscarry; for I told him, if I should go to the Duke of *Monmouth*, and refer him to a Letter wherein a Message was to be brought him, which he was to keep to, and that Letter should miscarry, I should in effect bring no Message at all to him. My Lord, thereupon he told me, that I should acquaint the Duke of *Monmouth* that his Friends in *England* would not by any means have him come for *England*, but that he should continue where he was, and if he thought good to go for *Scotland*, they approved of it. This is the Sum of what he said to me, as near as I can remember. When I came to *Amsterdam*, there was one Mr.

that was kill'd at *Phillips-Norton*, went with me to the Duke of *Monmouth's*, and when I came to him, I acquainted him, as Mr. *Disney* appointed me to do, that there was such a Letter sent by such a Person, and that such a Message was included in it. My Lord, he was in a great Passion, I know not how to express it, and seem'd to be very much troubled, and did reflect very much upon Major *Wildman*, and said, that was *Wildman's Work*; and he said, (as I think that was the word he us'd) *Wildman* was a Villain, or to that purpose: but withal he said it was too late to send such a Message now, and that he was resolv'd to come for *England*; and he would make *Wildman* hang with him, or fight for it, with him: That *Wildman* did think by tying his own Purse, he should tye his Hand, but he should find it should not be so; and some other words of the like nature he us'd, but this is the Substance of what he said. He gave some account what Preparations had been made; he said Money was very short, and he had been fain to pawn all he had, to raise what Money was raised upon his own Charge. He asked me if I did think to return to *England* shortly; I told him if he had any service to command me for *England*, I had some little business to do at *Rotterdam*, which I would dispatch, and then I would perform his Commands. He told me, he would be glad I did return as soon as I could for *England*, and that this should be the Message I should carry to *Wildman* in answer to the Message he had sent him, that he would come for *England*, and he should either fight with him, or hang with him; and that was all he had to say to him. I was coming away from him, but he stopp'd me, and told me he would not have me go out of Town till he had spoke with me again; this was upon the *Sunday*: accordingly I did go in the Evening to him, and when I came, he told me, he would have me stay till *Tuesday Morning*, for he was going out of Town, and intended to be back again at that time; but if not, I should receive from my Lord *Gray* what he had to say to me. He did not come upon the *Tuesday*, but my Lord *Gray* did come, and I think to the best of my remembrance

brance Mr. *Crag* was with me; he told me all he had to say was, that the Duke intended to be in *England* within nine days, and that upon the *Thursday* seven-night after I came away, the Duke would be in *England*: and he bid me to remember to tell *Brand*, that when he heard the Duke was landed, he should acquaint *Sir Robert Peyton* with it, but not till he was landed; for tho' they did think that he would join with them when the thing was begun, yet they ought to be careful who it was communicated to, for fear it should be discovered and disappointed: this was all that I had in command from my Lord *Gray*. I came to *Rotterdam*, and dispatch'd my business there, and would have come away, but it happened there were no Ships coming for *England*, nor would there be any in a Fortnight's time; thereupon I returned to *Amsterdam*. When I came back, I went to see the Duke, to give him an account how it happened that I was not gone for *England*. The Duke told me he was glad I was not gone; for now he had a further Message for me to carry, and he would have me stay two or three days in Town for it. I stay'd three days, and came again to him, but he told me he was not ready for me yet; then I staid two or three days longer till the 21st of *May*, to the best of my remembrance; it was upon a *Thursday* that he gave me the Message that I was to bring into *England*. I came to him in the Morning, and he told me I should come to him upon the Evening of that Day, and when I came, there was a Paper lay before him on the Table, and he took the Paper and seal'd it up; I cannot say he wrote all that was in that Paper, but the Paper that lay before him was not finished when I came in, and that he did not write while I was there, I am sure; but he took it up, and sealed it before me, and when he had sealed the Paper, he told me, I must as soon as I came to *London*, see for Captain *Matthews*, *Sir Thomas Armstrong's* Son-in-Law, who lodged at *Mr. Blake's* in *Covent-Garden*, and desire him to acquaint my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere* with his design of coming for *England*, and that he was resolv'd to set out upon the *Saturday* Morning after I came away, which was upon the *Friday*. He told me Captain *Matthews* was to send one post to that place that was named in the Note to receive Intelligence of his landing, and that should be brought to his Friends here immediately, (he designed it should be twenty-four Hours before the Court had notice of it in Town,) and those Lords were to be in Readiness, that as soon as they knew he was landed, they might repair to their several Posts to assist him. I told him that I would deliver what Message he gave me, and asked him, what I was to do with the Paper he put into my hands; thereupon, as near as I remember, he used these Expressions to me; I do by you, as Princes do by their Admirals, when they send them out upon any considerable Expedition, which requires Secrecy in the Management of it, they have their Commission delivered to them sealed, which they are not to break open till they are at Sea. So here I deliver you your Instructions sealed up, which you are not to open till you are at Sea; and when you have opened them, and read what is contained in

them, I would have you tear the Paper, and throw it into the Sea, or otherwise dispose of it, lest you be surpris'd and searched at your landing, and my Papers found about you. My Lord, I asked him, because I would be as punctual in my Message as I could, what those Lords were to do when they came out of Town, whether they should come directly to him or no; he told me no, not but that they should go into the Country, and secure their Interest for him there. I ask'd him then, if Captain *Matthews* be out of the way, and I be disappointed of meeting with him, shall I deliver this Message to the Lords my self? He told me no, by no means, for those Lords were Persons of Quality, and that that was not a thing to be done by me. What shall I then do, my Lord, said I, if Captain *Matthews* be out of the way? You need not question that, faith he, but if you meet not with *Matthews*, speak to *Wildman*.

My Lord, with these Instructions (and this as near as I can remember is the Sum of all he said to me) I came away, and came to Sea; when I was out at Sea, I broke open the Letter that I had given me by the Duke, and I will tell you as near as I can, what were the Contents of it; there was written in it to this Effect:

TAUNTON in *Somerfetshire* is the place to which all are to resort; the Persons to be acquainted with the time of landing, are the Lord *Macclesfield*, the Lord *Brandon*, and the Lord *Delamere*; the Place to send the Coach to, is *Taunton*, to *Mr. Savage's* House at the *Red-Lion*. The place where the Post was appointed to return, was Captain *Matthews's* Lodging, at *Mr. Blake's*, and he was to receive the Message, or if he did not, he was to appoint one that should receive it; or if it were to return to any other place, that was left to him to do as he thought fit.

And this was all, as near as I can remember. When I had seen this, I came to *London*, and being very weary and tired, when I came home, I went to bed.

Mr. *At. Gen.* Pray tell the Court as near as you can, what day it was you came.

Jones. I came out of *Holland* the 22d of *May*, I came home the 27th, and looking upon my Almanack, I find that it was the *Wednesday* Fortnight before the Duke landed, that I came. When I was come home, I sent for Mr. *Diney*, and he came to me immediately; I told him I had seen the Duke, and desired that he would help me to the Speech of Captain *Matthews*. He told me he was out of Town; then I desired to speak with Major *Wildman*, he told me he was gone out of Town too. Then I told him I must deliver my Message to him, and I told this Message as I have told your Lordships before, and therefore left it to him to convey it to the Knowledge of those Lords that were concerned; he did seem to be unwilling, and told me he did not know how to communicate it to those Lords, and asked me why I would not deliver the Message my self. I told him I did ask the Duke of *Monmouth* that very Question, whether I might, and he had forbid me, and ordered me to deliver it either to Captain *Matthews*, or to Major *Wildman*; and since they were absent, I knew not any to communicate it to but only to him, in order to their having notice

notice of it. He told me he would do what he could.

Mr. *At. Gen.* Pray who were present when you had this Discourse with *Disney*?

Jones. There was none present but himself then, for it was the first time that I spoke with him after I came from *Holland*; I told him there was a Post to go to receive Intelligence which should bring notice of his landing twenty four Hours before it could be known at *Whiteball*, and therefore it were fit they should be in a readiness. He did scruple at it, and said he did not know where to get any one that could convey the Message to them, but he would do what he could; and concluded to meet at night in *Smithfield*, and he did so, and there were two Persons with him, Mr. *Crag*, and Mr. *Liste*, and another, I think his Name was *Brand*, and he took me and *Brand* aside, and did ask me where was the place that the Post was to go. I told him where, and then he did discourse of the Duke's coming over, but I mentioned not any thing of the Lords, but only to *Disney*; and after an Hour's talk or thereabouts, we parted. I saw Mr. *Disney* once afterwards, but what he did with the Message I cannot tell, he gave me no account of it; I did indeed before I went out of Town see him at the *Half-Moon Tavern* in

I went out of Town, and met the Duke of *Monmouth* at *Lyme* where he landed; and when I came to him, I told him what I had done with my Message, and how it happened that I could not deliver it to the Persons that he had ordered. The Duke told me he was satisfied that I had done what I could, but seemed to be troubled that *Matthews* was out of Town. And this is the Sum of what passed in my Knowledge, as near as I can remember.

Mr. *At. Gen.* Had you no Discourse with *Disney* what he had done with the Message, when you met at *Smithfield*?

Jones. No, because those Men were Strangers to me, and I had never seen them before.

Mr. *At. Gen.* But afterwards had you no discourse with *Brand* nor *Liste* about it?

Jones. No, not at all: *Brand* I never spoke but once with, and *Liste* would not own that he was the Man that was there.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. *At. Gen.* No, my Lord.

L. H. Steward. My Lord *Delamere*, will your Lordship ask him any Questions?

L. Delamere. No, my Lord, I never saw his Face before this time, that I know of, in my Life.

L. H. Steward. Then who do you call next, Mr. Attorney?

Mr. *At. Gen.* The next Witness that we call, my Lord, is *Story*.

[*Who was sworn.*]

L. H. Steward. Well, what do you ask him?

Mr. *At. Gen.* Mr. *Story*, pray will you give an account what notice you had of *Jones's* Message, and what was done upon it, and what Discourse you had with any body concerning my Lord *Delamere*, the Prisoner at the Bar, and with whom?

Story. My Lord, I had notice of it by one — that lived at *Bishopsgate*, who told me the 28th of *May* last, that Mr. *Jones* was returned home from *Holland* upon a Message from the Duke of

Monmouth, and that he had agreed to go to *Taunton*, and there he expected Mr. *Dare* or Mr. *Williams* to bring an account that the Duke was landed; and he said that Mr. *Jones's* Message was delivered to *Disney*, in the absence of Captain *Matthews*, who was out of Town; that after *Disney* had receiv'd the Message from *Jones*, he went and had some discourse with my Lord *Delamere*, and that that night my Lord *Delamere* went out of Town with two Friends, and went a by-way through *Enfield Chase*, towards *Hatfield*.

Mr. *At. Gen.* Pray when was it you went out of Town, *Story*?

Story. The 28th of *May*.

Mr. *At. Gen.* Who went out of Town with you?

Story. No body, but I overtook Mr. *Brand* that Evening.

L. H. Steward. Pray repeat what it was he acquainted you with?

Story. He told me that the day before, *Jones* was returned home with a Message from *Holland*, which Message was to be delivered to Captain *Matthews*, but in his absence *Disney* received it; and that Evening after he had discoursed with my Lord *Delamere*, my Lord that Night went out of Town, and two Friends of mine he said went with him, and did convey him away by a By-way through *Enfield Chase* towards *Hatfield*.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. *At. Gen.* Pray, Sir, had you any discourse with the late Duke of *Monmouth* at *Shepton-Mallet*? and about what?

L. H. Steward. By the way, Friend, where is that *Brand* that you speak of?

Story. He is kill'd; I did not see him die, but he is said to be kill'd at *Keinsham Bridge*.

Mr. *At. Gen.* Pray what Discourse had you with the late Duke of *Monmouth* about the Prisoner at the Bar?

Story. I heard the late Duke of *Monmouth* say at *Shepton-Mallet*, that his great Dependance was upon my Lord *Delamere* and his Friends in *Cheshire*, but he was afraid they had failed him, or betray'd him, or some such word he used; and he said he could have been supply'd otherwise, but that he had a dependance upon them.

Mr. *At. Gen.* Pray what Office had you under the Duke of *Monmouth*?

Story. I was Commissary-General.

Mr. *At. Gen.* Well, we have done with you.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. If your Grace please, I have a Question to ask him.

L. H. Steward. Ay, with all my heart; what Question you will, my Lord.

L. Delamere. My Lord, I desire to know whether he knows one *Saxon*.

L. H. Steward. What *Saxon* does your Lordship mean, one that was in the Army?

L. Delamere. Yes, one *Thomas Saxon*.

Story. Yes, my Lord, I knew him a Prisoner in *Dorchester Prison*, where I was a Prisoner my self.

L. H. Steward. Has your Lordship nothing more to ask him but that?

L. Delamere. No, my Lord.

Mr. *At. Gen.* Now, my Lord, we call some Persons to prove, that that very night when *Jones* came to Town, my Lord *Delamere* the Prisoner at the Bar goes out of Town without any Servant, changes

changes his name, and goes a By-way: Swear *Vaux* and *Edlin*.

[*Vaux was sworn.*]

L. H. Steward. Well, what says this Man?

Mr. At. Gen. Pray give my Lords an account whither you went out of Town with my Lord *Delamere*, and when?

Vaux. My Lord, perhaps I may not remember the very words that I gave my Evidence in before, but I will repeat the Substance.

Mr. At. Gen. It is not so long ago, but you may easily recollect your self; pray what day was it that my Lord *Delamere* sent for you?

Vaux. The 26th Day of *May*, and I went out of Town the 27th.

Mr. At. Gen. You are upon your Oath, and you must remember you are sworn to tell the Truth, the whole Truth, and nothing but the Truth.

Vaux. Sir, I shall take care to do it as far as I can remember.

Mr. At. Gen. Whither was it that he sent for you?

Vaux. To the *Rummer Tavern* in *Queenstreet*, and the next day I went out of Town with him.

Mr. At. Gen. What day of the Month did you go out of Town?

Vaux. It was the 27th day of *May*.

Mr. At. Gen. What time of the night was it you went out of *London*?

Vaux. It was about nine or ten of the clock.

Mr. At. Gen. What name did my Lord *Delamere* then go by?

Vaux. He went by the name of *Brown*.

Mr. At. Gen. My Lord, I would acquaint your Grace, that this is an unwilling Witness, and we are forc'd to pump all out of him by Questions?

Vaux. I do tell you the Truth of all that I know.

Mr. At. Gen. How far did you ride that night?

Vaux. To *Hoddesden*.

Mr. At. Gen. What time did you get thither?

Vaux. About twelve of the clock.

Mr. At. Gen. Whither did you go then?

Vaux. We went to *Hitchen*, and I return'd back again the next Day.

Mr. At. Gen. Whither was my Lord *Delamere* going then?

Vaux. To see his Son that was sick in the Country.

L. H. Steward. What! he told you so, did he?

Vaux. Yes, my Lord.

Mr. At. Gen. What other Company went with you?

Vaux. Two Gentlemen, the one I knew, the other I did not.

Mr. At. Gen. What was the name of him you did know?

Vaux. It was *Edlin*.

Mr. At. Gen. Pray was that the direct Road to *Cheshire* that you went?

Vaux. We made it our Way.

Mr. At. Gen. You made it your Way; but I ask you whether it be the best Way?

Vaux. It is the freest Road from *Duff*.

Mr. At. Gen. But I ask you a plain Que-

stion, upon your Oath is it the best way into *Cheshire*?

Vaux. Truly, my Lord, I do not know that.

L. H. Steward. Pray who gave you Directions to call my Lord *Delamere* by the name of *Brown*?

Vaux. Himself, my Lord.

L. H. Steward. Was that the first time my Lord went by that name, as you know of?

Vaux. Yes, my Lord, I never heard that he was called by that name till that time.

L. Delamere. I was call'd by the name of *Brown* at that time, and I will give your Grace an account by and by of the reason of it.

L. H. Steward. Has your Lordship any Question to ask him?

L. Delamere. No, my Lord.

L. H. Steward. Then go on to the next.

Mr. At. Gen. Our next Witness is *Edlin*, pray swear him, [which was done.] Pray will you give my Lords and the Court an account whither you went with my Lord *Delamere* out of Town, and when?

Edlin. The 27th of *May* last, I was at the Custom-House, and there came *Mr. Vaux*, the Gentleman that was here last, who told me he was going out of Town as far as *Hitchen*, and asked me to go along with him; he said he was to go that Evening. I asked him what time he intended to return? he told me, he was resolv'd to return the next day. I told him, then I would go along with him, and we appointed the place of meeting to be at the *Bell-Inn* in *Coleman-street*; when I came there, he said there was a Friend that was going along with him, one *Mr. Brown*, we went as far as *Hoddesden* that night.

Mr. At. Gen. Pray *Mr. Edlin*, will you look upon that Gentleman that stands at the Bar; is that he that went by the name of *Brown*?

Edlin. Yes, my Lord, that is he.

Mr. At. Gen. Well then, what time did you set out?

Edlin. It was very near nine of the clock.

Mr. At. Gen. Pray when was it that *Vaux* met you at the Custom-House?

Edlin. It was about ten of the clock in the Morning.

L. H. Steward. Pray did you hear or know upon the Road, whither he was going?

Edlin. My Lord, I did never see my Lord *Delamere* before in my life.

L. H. Steward. But did not he tell you as he went along, whither he was going?

Edlin. He said he was going for *Cheshire* to see a sick Child.

Mr. At. Gen. You say, Sir, that you went first for *Hoddesden*?

Edlin. We did so, my Lord.

Mr. At. Gen. Pray, Sir, how long were you riding that, from the *Bell* in *Coleman-street* to *Hoddesden*?

Edlin. It was three hours I believe, or about three hours and a half.

Mr. At. Gen. Then you rid hard out of Town.

Edlin. My Lord, it was towards nine of the clock when we got on Horseback, and it was about twelve or a little more, when we came to *Hoddesden*.

L. H. Steward. Well, *Mr. Attorney*, is that all you have to ask him?

Mr. At. Gen. Yes, my Lord.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. No, my Lord.

Mr. At. Gen. Then, my Lord, to confirm this Evidence, and to explain it, I shall call you a couple of Witnesses to prove that this Gentleman went by the name of *Brown* in the Cant of those that were engaged in this Business, that the name was known as his name by all the Party, and called so constantly in their Letters and Messages. Swear *Tracey Pounceford*, and *Thomas Babington*.

[Which was done.]

L. H. Steward. Which will you begin with first?

Mr. At. Gen. We begin with *Pounceford*. Pray will you give his Grace and these Lords an account what discourse you heard at *Disney's* concerning the Prisoner at the Bar, and what name was he usually call'd by, in your Meetings.

Pounceford. My Lord, I shall give as just an account as I can; I was acquainted with *Mr. Disney*, and the 14th of June I was at his House.

L. H. Steward. What June do you mean?

Pounceford. Last June, my Lord, and there were three more besides, one *Joshua Lock*, and a Country Gentleman that I have understood since to be one *Hooper*, and there was one *Halsey*; and being there, *Lock* staid for some Declarations.

L. H. Steward. What Declarations were those you speak of?

Pounceford. The Declarations of the late Duke of *Monmouth*.

L. H. Steward. Were they printed at that time?

Pounceford. They were not ready at four of the clock in the Afternoon; but about nine of the clock they were finished, and three were printed off, and were delivered to *Joshua Lock*, and when he had received them at that time, there was a discourse of having them sent into *Cheshire* to one *Mr. Brown*. After we had received them, we came over the Water together, and we landed at *Salisbury Stairs*, and *Lock* was very earnest for going out of Town that night, with those three Declarations, which, as he said, were to be carried to one *Mr. Brown*: This was at nine of the clock, and so we parted.

L. H. Steward. Pray into what Country was he to carry them?

Pounceford. A little way out of Town, he said.

L. H. Steward. Just now you said they were to go to *Cheshire*.

Pounceford. My Lord, the Discourse at *Disney's* House was, that they were to be sent into *Cheshire*; but when we came over the Water, *Lock* said he was to go a little out of Town to one *Mr. Brown*.

Mr. At. Gen. Pray who was that *Mr. Brown* as they meant, as you apprehended?

Pounceford. I understood *Mr. Brown* to be my Lord *Delamere* by some discourse.

L. H. Steward. Whose discourse did you understand it by?

Pounceford. The first time, my Lord, that I heard of my Lord *Delamere's* going by the name of *Brown*, was upon a discourse with one *Edlin*.

L. H. Steward. Prithce tell us what that discourse thou hadst with *Edlin*, was.

Pounceford. *Mr. Edlin*, about the latter end of *May* last, went out of Town, as I heard, and when he came back again, I asked him whither he went? he said he was invited by a Friend to go with him out of Town, and my Lord *Delamere* went along with them, and went by the name of *Brown*.

Mr. At. Gen. What Discourse had you with *Disney*, or any body else about my Lord *Delamere's* going by the Name of *Brown*?

Pounceford. *Mr. Disney* did use to mention my Lord *Delamere* by the name of *Brown*.

Mr. At. Gen. Pray were you at any Meeting with any body, and whom, at any Tavern, and what Tavern, where any such discourse was had?

Pounceford. My Lord, I was at a Meeting at the *Castle-Tavern* with *Mr. Vermuyden*, and my Brother *Babington*, and one *Manning*; but there was no mention then of any *Brown* that I remember, nor of my Lord *Delamere*, but only there was something in relation to the landing of the Duke of *Monmouth*; the Question was asked where he was to land, and *Mr. Vermuyden* made answer he did not know.

L. H. Steward. Will your Lordship please to ask this Witness any Questions, my Lord?

L. Delamere. Pray, Sir, did you ever know any body else that went by the name of *Brown* besides me?

Pounceford. May I answer this Question, my Lord?

L. H. Steward. Answer it! yes you must, you are sworn to tell the Truth, and the whole Truth, Man.

Pounceford. My Lord, there was a discourse of *Mr. Vermuyden's* going by the name of *Brown*.

L. H. Steward. Will you ask him any more Questions, my Lord?

L. Delamere. No, my Lord.

L. H. Steward. Then go on, *Mr. Attorney*.

Mr. At. Gen. Pray, *Mr. Babington*, do you tell my Lords what you know of my Lord *Delamere's* going by the name of *Brown*.

Babington. My Lord, I shall give an account. When I first knew any thing of the Transactions, I was with my Brother *Pounceford*, *Mr. Vermuyden*, and one *Chadwick* that went into the West, and there was a discourse of two Gentlemen that went by names I did not know; *Brown* was one, and I was desirous to know who was meant by it: I was at that time but newly acquainted with the Concerns of these People; and so I found they were fearful to entrust me: but afterwards I was at the *Castle-Tavern* where my Brother, and my Uncle *Vermuyden* was, and in discourse of *Mr. Brown*, some body happened to name my Lord *Delamere's* name, but he was presently taken up; you mean *Mr. Brown*. Ay, saith he, I do.

L. H. Steward. About what time was this, pray you?

Babington. About the middle or latter end of *May* last.

Mr. At. Gen. Were you at *Disney's* when the Declarations were printed there?

Babington. *Mr. Attorney*, I will give an account of that afterwards, but I have something else to say first. After this, I was diligent to know of my Uncle *Vermuyden* and my Brother, who this *Mr. Brown* was: my Uncle told me it was my Lord *Delamere*, and desired me whenever I discoursed of him, to call him by that name, and I have very good reason to believe *Mr. Vermuyden* knew of the matter,

matter, because he was acquainted with a great many of that sort of People, and declared he had collected and knew of Moneys that were gathered for that Purpose; and he had a good account of *Monmouth's* landing, and of the Force he had in the West, and how long it was presumed that he could maintain that Force without Assistance from any body else; and so I presume he was very well acquainted with the whole Transaction. Afterwards I happened to be at *Disney's* over the Water, there was my Brother *Paunceford*, Mr. *Halsey*, and my self.

Mr. *At. Gen.* Tell what passed there at that time.

Babington. *Disney* shew'd me a Declaration that was not perfected quite, but after that we fell into a discourse about Mr. *Brown*, and afterwards my Lord *Delamere's* name was named by some body, that some of the Declarations were to be sent to him; and I remember Mr. *Disney* said he was afraid my Lord *Delamere* was not capable of doing that Service that was expected from him in *Cheshire* for want of some of those Declarations, which would be mighty useful to him to inform the People, they being *Monmouth's* Declarations.

L. H. Steward. Had *Lock* any of those Declarations away for that Mr. *Brown* you speak of?

Babington. I never knew *Lock*, my Lord.

Mr. *At. Gen.* What number of Declarations did *Disney* print?

Babington. *Disney* told us he hoped in twenty four Hours to have 500 printed, a good number of them were to be sent to my Lord *Delamere*, and several of them were dispersed.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. *At. Gen.* No, my Lord.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. No, my Lord.

Mr. *At. Gen.* Then may it please your Grace, the next Witness we shall bring, shall be to prove that my Lord *Delamere* took frequent Journeys backward and forward in a very little compass of time, and the same Witnesses will likewise tell you what Discourse he had with my Lord during the very time of *Monmouth's* Rebellion, to stir up the People to join with him. Swear *Hope*, [Which was done.] Pray tell my Lords what discourse you had with my Lord *Delamere*, and when?

Hope. Upon the Sunday before the Coronation, my Lord *Delamere* came down Post to my House, towards his own House in *Cheshire* —

L. H. Steward. Prithce where is thy House? For these noble Lords do not know thee, perhaps so well as I do; therefore tell us where it is.

Hope. My Lord, my House is at the *Three-Tuns* in *Coventry*.

L. H. Steward. Well, go on, tell what thou knowest.

Hope. — Some time after that he came down Post again, and a little after he went up again Post, and he told me he went down another way; and after that, the 21st of *June*, he came down Post again, this was upon a Sunday, the Sunday Seven-night after the Duke of *Monmouth* landed.

Mr. *At. Gen.* Had he any Servant with him at that time?

Hope. Yes, he had.

L. H. Steward. Had he a Servant with him every time he came down Post?

Hope. No, he came over, I remember, without any Servant, only with a Post-Boy.

L. H. Steward. Well, and what discourse had you with him at that, or at any other time?

Hope. My Lord, that Sunday the 21st of *June*, my House was very full of People to enquire News; it being in the time of the Rebellion, every one was desirous to know how things went: and there was one *Ingram* in the House, that came to me, and asked what News from *London*, for they say, faith he, that the Duke of *Albemarle* is killed, and his Hearse brought to *Westminster* Abbey. Thereupon I knowing my Lord *Delamere* was come from *London*, I went into the Room to my Lord, and desired to know of his Lordship what was the News in *London*. He told me he was little at Court, and therefore could not tell much News. I then asked him what he heard concerning the Duke of *Albemarle*; said I, they say here he is killed. Saith my Lord, I am sorry for it, if it be so, but I fear it is too true; but if he be killed, it is said he is killed by his own Party. I asked him how? He told me, a Party of the Duke of *Albemarle's* Men were commanded to fire at the Duke of *Monmouth's* Men, but instead of shooting at them, they shot into the Ground, upon which they were very severely handled by their Officers; which so enraged them, that they fired upon them, and killed several of them, and amongst others, the Duke of *Albemarle* was killed; and he told me the Duke of *Monmouth* had several Field-Pieces, and Arms sufficient for near thirty thousand Men.

Mr. *At. Gen.* Pray, did he shew you any Places in any Maps?

Hope. There was in the Room *Adams's* Map of *England*, and my Lord *Delamere* shewed me which way *Monmouth* went, and pointed out such and such Towns that he was possessed of; and withal said, he did fear there would be many bloody Noses before the Business was at an end.

Mr. *At. Gen.* How many times do you think my Lord did ride post to and fro?

Hope. About five times, I believe.

L. H. Steward. Within what space of time?

Hope. From the Sunday Sev'night before the Coronation to the Twenty-first of *June* following.

L. H. Steward. Have you done with him, Mr. Attorney?

Mr. *At. Gen.* Yes, my Lord.

L. Delamere. My Lord High Steward, with your Grace's Leave, may I ask this Witness any Questions?

L. H. Steward. Yes, my Lord, what you please.

L. Delamere. Pray, did I go down post four or five times, do you say in that space?

Hope. My Lord, I say you did go so often backward and forward.

L. Delamere. What time was that, you say, I came without any Servant, only with a Post-boy?

Hope. I cannot tell.

L. H. Steward. Will your Lordship ask him any more Questions?

L. Delamere. No, my Lord.

Mr. At. Gen. Then, my Lord, we desire Thomas Saxon may be sworn: [*Which was done.*] Pray, Mr. Saxon, will you give an account to his Grace and my Lords, what you know of my Lord Delamere, the Prisoner at the Bar, concerning any Insurrection or Rebellion designed by him in Cheshire, and when?

Saxon. At the beginning of June last, I was sent for to Merè, my Lord Delamere's House in Cheshire, where when I came I was conveyed into a lower Room, where were my Lord Delamere, Sir Robert Cotton and Mr. Crew Offley, and they told me I was recommended to them by my Lord Brandon, who had said, I was an honest useful Man, and they hoped I would prove so: For they had sent to the Duke of Monmouth, who was in Holland, and received an answer by one Jones, and as soon as they had an answer, my Lord Delamere came away post into the Country under another Name, and by being conveyed through Merefields, came down to raise ten thousand Men for the Duke of Monmouth in Cheshire, by the first of June: but now they had considered of it, and found they could not raise them till Midsummer, for they must have time to raise a Sum of Money, forty thousand Pounds in that Country, to maintain the Men. They asked me, whether I would not undertake to carry a Message to the Duke of Monmouth: I told them I would, and I had there given me eleven Guineas, and five Pounds in Silver for my Journey, and I did hire a Horse afterwards, and did deliver my Message to the Duke of Monmouth.

L. H. Steward. When was this, do you say?

Saxon. This was the beginning of June.

L. H. Steward. What day of June?

Saxon. I cannot tell to a day, what day in June it was, for I did not set it down; but I believe it was the third or fourth of June.

L. H. Steward. How came you to be recommended by my Lord Brandon to these Gentlemen? Were you acquainted with my Lord Brandon?

Saxon. I was acquainted with him: The first time I was with him was at Over, the next time was at my Lord's own House.

Mr. At. Gen. Ay, pray tell my Lord, how you came acquainted with my Lord Brandon?

Saxon. Upon the Monday in Easter Week last, being at Over, I was sent for by my Lord Brandon to drink a Glass of Ale, and smoke a Pipe of Tobacco with him; and when I came thither, my Lord told me he had a desire to be acquainted with me; so we drank a considerable while; and he was attended at that time with one Holinshead, and one Mr. Lee. And after we had drank pretty smartly, and after some Discourse, Lee and Holinshead went forth, being called out to speak with some body, about an Estate or a Tenement that they were concerned in. After they were gone out, my Lord Brandon began to discourse about the Elections of Parliament-men, how unfairly they had been carried: he said, he stood both for the Town and County of Lancaster, but had lost it by an unfair Election; for the other Party had made sevenscore Freemen in one night in the Town, and by that means had carried it against him; which had exasperated the Country so much, that they were resolved to

make it an occasion of raising up the Country in Arms, under pretence of maintaining the Christian English Liberties; and that they had a design to send for the Duke of Monmouth, and make him King, and that they must make use of such Men as me, that were Men of Interest in the Country, to stir up the People to rise in Arms: and if I would come to Gosworth, his House, upon the Monday after, he would tell me more of that Business. I went according to the time, and there he told me a great deal to the same purpose, and withal he shewed me a Letter that he had written to the Duke of Monmouth; which Letter I afterwards saw at Bridgewater.

L. H. Steward. Have you any more Questions to ask him?

Mr. At. Gen. No, my Lord; but if my Lord Delamere please to ask him any Questions, he may.

L. Delamere. I humbly pray he may repeat the Evidence he hath given against me, for I have not heard what he has said.

L. H. Steward. Turn toward my Lord Delamere, and repeat the Evidence that you gave against him, so as he may hear you.

[*Which he did to the same effect, as before.*]

L. H. Steward. Pray, from whom did you receive that Money?

Saxon. I received it from my Lord Delamere.

L. H. Steward. My Lord Delamere, will you ask him any Questions?

L. Delamere. Yes, may it please your Grace.

L. H. Steward. Then the Method you are to take, is this, you must propound your Questions to me, and then I will propound them to the Witnesses?

L. Delamere. I desire to know, may it please your Grace, when was the first time that he declared this that he has now sworn against me?

L. H. Steward. My Lord desires to know of you, when it was that you first made known this against him?

L. Delamere. And to whom my Lord?

Saxon. I suppose I told Mr. Storey of it first, my Lord, at Dorchester after I was taken Prisoner for the Rebellion.

L. Delamere. When did he tell it Storey, my Lord?

Saxon. I think it was a Fortnight after my acquaintance with him.

L. H. Steward. Were you then in the same Prison with Storey?

Saxon. Yes, I lay with him in the same Bed.

L. Delamere. If your Grace please, I would ask him another Question.

L. H. Steward. Ay, what you will.

L. Delamere. I desire to know, when was the first time that he made Oath of this, and upon what occasion it was?

L. H. Steward. What say you to that?

Saxon. The first time I made Oath of it, was when I lay sick.

L. Delamere. Will your Grace please to ask him where that was, and when?

Saxon. It was before his Majesty's Counsellors, that were sent to take my Examination in Newgate.

L. H. Steward. Prithee, I do not know when thou camest to Newgate, it may be thou hast been there oftner than once.

Saxon. I gave my first Information immediately after I was brought to Town, when I was removed from *Dorchester* Goal to *Newgate*.

L. Delamere. My Lord, I desire your Grace would ask him what time he came up?

Saxon. The beginning of the last Term.

L. Delamere. Then I desire to know, my Lord, whether he did remain a Prisoner in the Country all the other time?

Saxon. Yes, I did so, from the Tenth of *July*, till the time that I was brought up to *Newgate*.

L. Delamere. My Lord I desire to know of him, whether I had ever employed him about any of my Concerns, that should give me an occasion of trusting him with such Secrets?

L. H. Steward. What Business of Importance had my Lord *Delamere* ever employ'd you about before this time?

Saxon. I was never employ'd about any Concerns of my Lord *Delamere's* before that time; neither was I ever in his Company, but only then, and then as recommended by him to him; for they said, they must make use of such as me to make their Designs known to the Country, for the accomplishing what they did intend.

L. Delamere. Recommended by him, who does he mean?

Saxon. By my Lord *Brandon*.

L. Delamere. If your Grace please, I desire to know what the Business was that he was to do?

Saxon. I was to inform the Country concerning the time of the Rising, my Acquaintance abounded that way, and by their Discourse they had got Men in every Place to acquaint the Country when they should rise.

L. H. Steward. Were you acquainted with any great number?

Saxon. My Lord, I was a publick Tradesman in *Middlewich*, and much acquainted with the ordinary sort of People.

L. Delamere. My Lord, he says he was sent for to my House, I desire to know who was the Messenger that was sent for him?

Saxon. My Lord, I did ask him his Name, but he would not tell it me; he told me he was but a Tenant to my Lord *Delamere*, and had been employed in such Businesses for my Lord *Delamere's* Father, Sir *George Booth*; he was a lame Man in one Arm, for he had his Hand shot away at the Siege of *Nantwich*.

L. Delamere. It was *Tom Long* the Carrier, I suppose, or some such Fellow or other, that I sent for him; my Lord, I desire to know what time of Day or Night was it when he came to my House?

Saxon. It was just when it began to be dark, the Messenger came to me in the Afternoon to fetch me thither, and I sent for a Man's Horse that lived near me, and when it was brought me, he asked me what made me go so late; I told him I had occasion to go late, and I should return late, and the Man staid at my House for his Horse till it was late: but I not coming home, he left order for his Horse to be brought to him.

L. Delamere. Next, my Lord, I desire to know when he came to my House, whether he did a-

light from his Horse at the Stables that belong to the House or no?

Saxon. I did alight just at the Old-Buildings, and the Man's Horse that came with me and mine were taken into the Stables.

L. Delamere. Pray, my Lord, ask him who took his Horse from him?

Saxon. The Man that came with me, and he went into the House and brought out a Candle.

L. Delamere. My Lord, I would ask him whether the Door he was let in at, was that which was nearest the Stable, or which Door?

L. H. Steward. Do you know what Door of the House you were let in at?

L. Delamere. My Lord, I ask him whether it were the next Door to the Stable?

Saxon. My Lord, I cannot very well give an account of that, for I never was at the House before.

L. Delamere. Pray, my Lord, let him recollect himself, whether it were the Door next the Stable or not.

L. H. Steward. Ay, with all my heart, if he can.

Saxon. I did not see any other Door but that I came in at, and therefore I cannot tell which Door it was.

L. Delamere. These Questions, my Lord, I take to be proper for me to ask, and I believe I shall make it appear to your Grace to be so by and by.

L. H. Steward. Good my Lord, take your full Liberty, and ask what Questions you please; for I know my Lords here will be very well pleased that you have all the Scope allowed you that can be.

L. Delamere. I humbly thank your Grace; I desire to know of him, who let him into the House?

Saxon. The Man that came with me went with me just to the Door, and let me in within the Door, and I saw no other Man but that Man, till I came into the Room where my Lord and those two Gentlemen were.

L. Delamere. Was there no body else but we there?

Saxon. No, you were so wise, you would let no body be by.

L. Delamere. My Lord, I shall trouble this Witness no farther at present.

L. H. Steward. Then Mr. *Attorney-General*, will you proceed?

Mr. At. Gen. My Lord, we shall give no more Evidence at present, but shall rest here till we see what Defence this Noble Lord will make for himself.

L. H. Steward. Then, my Lord *Delamere*, your time is now come to make your Defence, you have heard what has been evidenced against you, and my Lords now expect to hear what you have to say for your self.

L. Delamere. May it please your Grace, a great part of the Day is spent, and I would beg the Favour of your Grace, that I may have the Favour till to-morrow Morning to review the Notes I have taken, and then I shall make my Defence.

L. H. Steward. My Lord *Delamere*, I had this very thing in my Thoughts before I came
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hither

hither this Day, because I did foresee that this was likely to be a long Cause, and the proceeding in it would take up much time: I have a little doubt, I must needs say, in my own Mind, whether it may be done by Law; I know very well, if this were a Trial in full Parliament, there have been Precedents to warrant the Adjournment till another Day, though it be in the midst of a Trial; and in the middle of the Evidence: But this Court I take to be of the same nature, though of a degree higher, with the other ordinary Courts of Judicature; and whether it be not obliged and tied up to the same Method of Proceedings with those other Courts, where all Capital Offences are tried, is a thing I am in some doubt about: In those Courts it has not been usual to adjourn the Court after Evidence given; nay, it has been sometimes a Question, whether the Judges in those Courts, after the Jury are gone from the Bar, to consider of their Verdict, could adjourn themselves: I say, the Judges have sometimes made a Doubt of it, though I know the Point is now settled, and the Practice is, that they may, and do. But this is most certain, after the Evidence given, the Jury cannot be adjourned, but must proceed in their Enquiry, and be kept together till they are agreed of their Verdict; this has caused some Hesitancy in me, what the Law may be in this Case; therefore I think it may be proper to consult with my Lords the Judges; for I desire the thing may be considered and settled.

L. Delamere. My Lord, I humbly beg this Favour of your Grace, but to adjourn till to-morrow.

L. H. Steward. With all my heart, my Lord, if it may be done by Law.

L. Delamere. I hope it may, my Lord, and I beg that Favour of your Grace.

L. H. Steward. My Lord, I should be very glad to comply with your Lordship's Desires, but truly I have considered it, and do doubt whether I can by Law do it: In full Parliament it is clear it may be done, but upon this Commission, after my Lords the Peers are once charged, and the Evidence partly given, whether I can then adjourn them till another Day, is with me a Doubt. My Lords, if your Lordships please, before such time as my Lord, the Prisoner at the Bar, enters upon his Defence, I will with your leave propound the Question to my Lords the Judges, and hear their Opinion what the Law is.

L. Delamere. My Lord, I shall hardly be able to finish all I have to say in any convenient time this Day.

L. H. Steward. But, my Lord, if an Adjournment cannot be by Law, I cannot help it.

L. Delamere. There has a great deal been said, and it will require a great deal of time to give it an Answer.

L. H. Steward. Ay, but if it cannot be done as you would have it, we must be contented to stay the longer together; for I would not abridge you of your Defence: therefore, my Lords the Judges, if you will please to go together and consider of it, and report your Opinions, what the Law is in this Case, we will stay till you come again.

Then the Judges withdrew into the Exchequer-Chamber.

E. of Nottingham. My Lord High Steward, I do humbly conceive this is a Matter that concerns the Privilege of the Peers; and because it is a matter that doth so much concern the whole Peerage, I think my Lords here ought in some measure to concern themselves about it: Therefore, my Lord, I have a short Motion to make to your Grace, That, considering the Consequence that the Precedent of this Case may draw with it, since my Lords the Judges are gone together to consult of this Point, of which, I may say, they are not altogether the sole Judges; we may also withdraw to consider of this Matter with them, because it may not be proper for my Lords in publick here, to offer what they may have to say, to incline my Lords the Judges in their Judgments one way or other.

L. Falconberg. My Lord, I humbly offer this to your Grace, upon the Motion that this Noble Lord has made, That, with Submission, I take this to be a thing that concerns the Privilege of Peerage only, and I conceive the Judges are not concerned to make any Determination of that Matter. I think therefore, my Lords here ought to retire with them to consider of it.

L. H. Steward. My Lords, I think, with Submission to your Lordships, that this is a Question naturally proper for my Lords the Judges to give their Opinions in, Whether this Court, as a Court of Judicature for the Trial of this Noble Lord, may, in the midst of the Trial, adjourn till another Day: And the Privilege of the Peerage cannot at all come in question, here as I conceive.

L. Falconberg. My Lord, that we conceive is a Point of Privilege, which certainly the inferior Courts can have no power to determine.

L. H. Steward. If your Lordships have a mind to withdraw, you may.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew, and after half an hour the Judges returned and took their Places as before, and after about an hour the Peers returned to their former Places.

L. H. Steward. My Lords, the Judges have you considered the Matter that has been proposed to you, and what is your Opinion?

L. C. J. Herbert. May it please your Grace, the Judges in obedience to your Grace's Commands have withdrawn, and considered of what your Grace proposed to them, and with humble Submission they take the Question to be this.

Not, Whether your Grace may adjourn your Commission from one day to another, for that is clear you may, and has been practised, for that is the Case of the Earl of *Somerfet* and his Wife:

But the Question is, Whether after the Prisoner is upon his Trial, and the Evidence for the King is given, the Lords being, as we may

term it, charged with the Prisoner, the Peers Triers may separate for a time, which is the Consequence of an Adjournment to another Day.

And, my Lord, the Judges presume to acquaint your Grace, that this is a matter wholly new to them, and that they know not upon recollection of all that they can remember to have read, that either this matter was done, or questioned, whether it might or might not be done in any Case.

My Lord, if the matter had been formerly done, or been brought into question in any Case, where it had received a determination, and reported in any of our Books of Law, then it would have been our duty to contribute all our Reading and Experience for the satisfaction of this great Court: But being, as it is, a new Question, and a Question that not only concerns the particular Case of this Noble Lord at the Bar, but is to be a Precedent in all Cases of the like nature for the future: All we can do is, to acquaint your Grace and my Noble Lords, what the Law is in the inferior Courts in Cases of the like nature, and the Reason of the Law in those Points, and then leave the Jurisdiction of this Court to its proper Judgment.

My Lord, in the first place, where the Trial is by a Jury, there the Law is clear, the Jury once charged can never be discharged till they have given their Verdict, this is clear; and the reason of that is, for fear of Corruption, and tampering with the Jury. An Officer is sworn to keep the Jury together without permitting them to separate, or any one to converse with them; for no Man knows what may happen, for (though the Law requires honest Men should be returned upon Juries, and without a known Objection they are presumed to be *probi & legales homines*, yet) they are weak Men, and perhaps may be wrought upon by undue Applications.

This, my Lord, it is said, fails in this Case, because the Lords that are to try a Peer, are Persons of that great Integrity and Honour, that there is not the least Presumption of their being to be prevail'd upon in any such way; and for that reason, because of the Confidence which the Law reposes (and justly) in Persons of their Quality, they are not sworn as common ordinary Jurors are, but are charged and deliver their Verdict upon Honour.

My Lord, in the Case of a Trial of a Peer in Parliament, as your Grace was pleased to observe, and as is very well known by late Experience, there the matter has been adjourned till another Day, and for divers Days; the Evidence being in several Parcels, and there the danger is as great (if any were to be supposed) of Tampering: But whether the Lords being Judges in that Case, and in this Case only in the nature of a Jury, makes the Difference, though in both Cases it is but like a Verdict, for they give their Opinions *seriatim*, whether the Peer tried be Guilty or not Guilty, that they submit to your Grace's Consideration.

Upon the whole matter, my Lord, whether their being Judges in the one, and not in the other Instance, alters the Case, or whether the Reason of Law in inferior Courts, why the Jury are not permitted to separate till they have dis-

charged themselves by their Verdict, may have any influence upon this Case, where that Reason seems to fail, the Prisoner being to be tried by his Peers, that are Men of unquestionable unsuspected Integrity and Honour, we can't presume so far as to make any Determination in a Point that is both new to us, and of great consequence in it self; but think it the properest way for us, having laid matters as we conceive them before your Grace and my Lords, to submit the Jurisdiction of your own Court to your own Determination.

L. H. Steward. My Lords, I confess I would always be very tender of the Privilege of the Peers, wherever I find them concerned; but truly I apprehend, according to the best of my Understanding, that this Court is held before me. It is my Warrant that convenes the Prisoner to this Bar. It is my Summons that brings the Peers together to try him, and so I take myself to be Judge of the Court.

My Lords, 'tis true, may withdraw, and they may call the Judges to them to assist them, which shews they have an extraordinary Privilege in some Cases more before the High-Steward, than Juries have in inferior Courts in Cases of common Persons: For, if it be in a common Case, no Jury can call either Counsel or Judges to assist them, in the absence of the Prisoner; but if they will have advice, it must be asked in open Court, in the presence of the Party accused.

But now, my Lords, if you have a mind to consult with me in private, as I now sit by virtue of this Commission, which is his Majesty's Warrant for me to hold this Court, I could not withdraw with you; but you must ask all your Questions of me, in the presence of the Prisoner, in open Court: whereas if it were in full Parliament, as were the Cases of my Lord *Stafford*, and my Lord of *Pembroke*, then he that were the High Steward might go along with you when you withdrew, and consult with you, and give his Opinion, which I cannot do in this Case; for I am bound to sit in Court, while you withdraw to consider of the Evidence, and am not to hear any thing said to me, but what is said in open Court in the presence of the Prisoner, except it be when you deliver your Verdict.

This I confess, my Lords, has a great weight with me, and I know your Lordships will be very tender of proceeding in such a Case any way but according to Law: For though you are Judges of your own Privileges, yet, with Submission, you are not Judges of the Law of this Court; for that I take to be my Province.

Why then, Suppose, my Lords, I should take upon me to do as my Lord *Delamere* desires, and adjourn the Court; and suppose the Law should fall out to be that indeed I ought not so to have done; would it be any advantage to this Noble Peer, if he should be acquitted by your Lordships after such an Adjournment? Might not the evil Consequence of that be, that he might be indicted for the same Crime, and tried again? For all the Proceedings after that would be void, and liable to be reversed.

And if on the other side your Lordships should think fit, upon the Evidence you have now heard, and what he shall say for himself, to convict him after I have adjourned as is desired, and I pass Judgment upon him, as it will be a Duty incumbent upon me to pass Sentence on him, if you convict him; what will become of the Case then? and how shall I be able to answer it, as having done my Duty, when I pronounce a Judgment notoriously Erroneous and Illegal? for so it will be, if the Law prove to be against my adjourning. This, my Lords, is a matter of great Moment, and worth the Consideration.

But in the other Case of a Trial in full Parliament, the Lord that sits where I do, is only as the Chairman of the Court rather than Judge, he gives a Vote in such Proceedings; and therefore my Lord the Prisoner did very well at the beginning to ask the Question, whether I had any Vote in his Trial, as a Peer, jointly with your Lordships. If I sit in full Parliament, I should without all question give my Vote as well as any other Peer; but sitting here by immediate Commission from the King *pro hac vice*, High-Steward; I acquaint you as I did him, I have no authority to give any Vote: my Business is to see the Law observed and fulfilled as Judge.

Certainly, my Lords, your Lordships and I, and all Mankind ought to be tender of committing any Errors in Cases of Life and Death, and I would be loth, I will assure you, to be recorded for giving an Erroneous Judgment in a Case of Blood, and as the first Man that should bring in an illegal Precedent, the Consequence of which may extend I know not how far.

Mr. *At. Gen.* Will your Grace give Direction for my Lord to proceed?

L. *H. Steward.* Yes; he must proceed I think.

L. *Delamere.* May it please your Grace, and you my Lords, it is an Offence of a very high nature, for which I am this day to answer before your Lordships; yet I thank God I am not afraid to speak in this place, because I am not only certain and well assured of my own Innocency, no such Thought having as yet entered into my Heart; but I am also well assured of your Lordships Wisdom and Justice, which cannot be imposed upon or surprized by Insinuations and florid Harangues, nor governed by any thing but the Justice of the Cause.

My Lords, I can with a great deal of Comfort and Satisfaction say, that these Crimes where-with I am charged are not only Strangers to my Thoughts, but also to what has been my constant Principle and Practice; for I think that in matters relating to the Church and the things enjoined therein, few have conformed more in Practice than I have done, and yet do I confess, and am not ashamed to say it, that I have always had a Tenderness for all those who could not keep pace with me, and Charity for those that have outgone me, and differed from me, though never so far; nay, though of a different Religion: For I always thought Religion lay more in Charity than Perfection.

VOL. IV.

While I had the Honour to be a Magistrate in my Country, I did constantly, duly and impartially execute the Laws, and in every publick Trust I was very faithful in the Discharge of it; for I never voted nor spoke in any manner but as my Conscience and Judgment did dictate to me. I have always made the Laws the measure of my Loyalty, and have still been as Zealous and Careful to give the King his Prerogative, as to preserve to the People their Properties, and have endeavoured as far as in me lay to live peaceably with all Men.

This, my Lords, was not only the Dictates of my own Inclinations, but it was the Principle of my Father, and the Lesson that he taught me: I say my Father, who was so greatly instrumental in snatching this Nation out of its Confusion, and restoring it to its ancient Government, by settling his late Majesty upon his Throne, and consequently was the means of his present Majesty, that now is, his coming so peaceably to the Crown. And this I may the more boldly speak, because I speak it by good Authority; because in the Patent that created my Father a Peer, his late Majesty is pleased to say, his Rising was mainly instrumental in his Restauration. I beg the Favour of your Grace and my Lords, that I may read you that Clause in the Preamble of the Patent, which I have here ready to produce.

Which was read, and then my Lord proceeded as follows, viz.

My Lords, I suppose most of your Lordships did know him, and whosoever did so, I dare say, did believe him to be a good Man: For my part I did not know a better Copy to write after than his Example, which I endeavoured always to imitate, and that I hope will go very far to vindicate me from the Imputation of being inclined to any such Crime as I stand charged with.

My Lords, it is now late and therefore I shall cut off a great deal of what I had intended to say to your Lordships, that I may not take up too much of your time, and come immediately to my Defence, as to what I stand accused of.

And first, my Lords, I shall observe that here have been a great many Witnesses produced, and a great deal of Swearing, but little or nothing of Legal Evidence to affect me; for there is but one Man that saith any thing home and positively against me (and whom I shall answer by and by) all the rest are but Hearsays, and such remote Circumstances, as may be tacked to any Evidence against any other Person, but are urged against me for want of greater matters to charge me with; and therefore I hope the producing and pressing of these things against me, is rather a strong Argument that I am innocent, and that there have been mischievous and ill Designs of some against me, than that I am Guilty; for if they had had other and greater matters, your Lordships would have been sure to have heard of them.

With your Lordships leave, I cannot but observe to your Lordships an excellent Saying of that great Man my Lord of *Nottingham*, (whose Name

H h

Name

Name will ever be remembred with Honour in our English Nation,) when he sat in the same place that your Grace does now, at the Trial of my Lord *Cornwallis*, which I will read to your Lordships. Speaking to the Peers, he has this passage:

I know your Lordships will weigh the Fact, with all its Circumstances, from which it is to receive its true and its proper doom. Your Lordships are too just to let Pity make any abatement for the Crime, and too wise to suffer Rhetorick to make any Intrument of it: This only will be necessary to be observed by all your Lordships, that the fouler the Crime is, the clearer and the plainer ought the Proof of it to be; there is no other good Reason can be given, why the Law refuses to allow the Prisoner at the Bar Counsel in Matter of Fact, when Life is concerned, but only this, because the Evidence by which he is condemned ought to be so very evident and so plain, that all the Counsel in the world should not be able to answer it.

My Lords, I think the Evidence that has been given against me this day does not come up to this. And I hope your Lordships will regard this Saying of my Lord *Nottingham's*, as more worthy of your consideration, than the fine Flourishings and Insinuations of the King's Counsel, which tend (if it be not so designed) rather to misguide your Lordships, than to lead you to find out the Truth.

My Lords, I shall now tell you the method that I shall proceed in, in making my Defence; and I begin with *Saxon*, for he I perceive is the great *Goliath*, whose Evidence is to maintain this Accusation, and if I cut him down, I suppose I shall be thought to have done my own business: therefore to that I shall apply my self first, and do it if I can; and I will in the first place examine several Persons that are his Neighbours and have conversed with him, what they have heard and know of him: and first I desire *Richard Hall* may be called.

L. H. Steward. My Lord *Delamere*, if you begin that way to call Witnesses against *Saxon*, it is fit he should be here to know what is said against him.

L. Delamere. Ay, with all my heart, my Lord.

L. H. Steward. Then call *Saxon* again.

[Then *Saxon* and *Hall* came both in.]

L. Delamere. Pray Mr. *Hall* tell my Lords here what you know of *Thomas Saxon*.

L. H. Steward. What is it you ask of this Witness

L. Delamere. My Lord I desire him to give an account what he knows of a Letter, that was forged by *Saxon*, in the name of one *Hildage*.

Hall. About the nineteenth of *December* in the year 1683, I received a Letter by *Thomas Saxon* from *Richard Hildage*, wherein he desired me to send him the sum of six pounds odd money which I owed him: I received the Letter and paid the money, and to the best of my knowledge some little time after I met with the said *Hildage* at *Newcastle*, who asked me to pay him the money I owed him. I replied I had paid the money, according to his Note, but he said he never gave any such Note, and threatened to sue me; thereupon I sent one *Lord* to *Hildage*, that is

here now in the Court, and desired *Hildage* his forbearance for a while, till I could get the money from *Saxon* back again, and afterwards he sent again for his money, and I sent to *Saxon* for it, but still the money did not come.

L. H. Steward. Did you ever speak with *Saxon* himself?

Hall. No, but with his Wife, who came to me about it; but he acknowledged, he wrote the Letter before *John Lord*.

Saxon. Did not my Wife tell you that *Richard Hildage* lent me the money?

L. H. Steward. Nay, you must not dialogue with one another, but if you have any Questions, you must propound them to the Court: My Lord *Delamere*, have you any Questions to ask him?

L. Delamere. No, my Lord.

L. H. Steward. Then what is it you would have him asked, *Saxon*?

Saxon. I desire you would please to ask him whether or no he did not lend me the money?

L. H. Steward. He! who do you mean?

Saxon. *Richard Hildage* did.

L. H. Steward. What say you, did *Richard Hildage* lend him the money?

Hall. No, my Lord.

L. H. Steward. Look you, my Lord *Delamere*, the Objection carries a great deal of weight in it, to prove him a very ill man, if it be fully made out.

L. Delamere. My Lord, if your Grace please, I can prove that he owned the writing of the Letter to another man.

L. H. Steward. My Lord, he does own here, that he wrote the Letter, and that he wrote it in *Hildage's* name, but he saith, the Letter, he so wrote in *Hildage's* name, was by *Hildage's* direction; and if so, that takes off the Objection made against him.

L. Delamere. I must submit that to your Grace, whether what he says in that matter be Evidence.

L. H. Steward. What *Hildage* did, or did not, is the main turn of the question in this Case; for he might lend him the money, and yet afterwards might say, when he thought he might lose it, that he did not send any such Letter, and all this be true, and *Saxon* in no fault: I must confess, if *Hildage* were here himself, and should deny the lending of the money, or the giving him Directions to receive it, you would have fixed a shrewd Objection upon him; but otherwise Hear-says and Discourses at second hand are not to take off the Credit of any Man's Testimony.

L. Delamere. But *Hall* says *Hildage* denied the receipt of the money, or any Order for receiving of it.

L. H. Steward. That signifies nothing, being but by second hand.

Saxon. If it please your Grace, here is my Brother in Court will give you an account of it.

L. H. Steward. Well, well, hold your tongue; will your Lordship please to go on?

L. Delamere. The next Witness, my Lord, that I shall call, shall be *Francis Ling*, [who came in.]

L. H. Steward. What do you ask this Witnesses?

L. Delamere. Mr. *Ling*, pray will you tell his Grace, and my Lords, what you know concerning *Saxon's* receiving any Money in the name of Mrs. *Wilbrabam*, without her Order.

Ling. He called at this fame *Hildage's* at *Newcastle*, and received twenty five Shillings, and said it was for Mrs. *Wilbrabam*, in her name; but she never received a penny of the Money, nor knew of his having received it, till he came to pay another Quarter.

L. H. Steward. Where is that Mrs. *Wilbrabam*, is she here?

Ling. No, my Lord, she is a Neighbour of ours, an Ancient Woman, fourscore years of Age, and cannot come so far.

L. H. Steward. This is the fame Cafe with the other, you can never think to take off the Credibility of Witnesses by such Testimony; for this is only a Tale out of an Old Woman's Mouth: What if that Old Woman told him a false Story?

Ling. She said——

L. H. Steward. I care not what she said, this is no Evidence at all.

L. Delamere. Then pray call *Richard Shaw*, [who came in]

L. H. Steward. Well, what says this Witnesses?

L. Delamere. Shaw, can you tell any thing of *Thomas Saxon's* writing a Letter and sending it in the name of one *Pangston* a Bayliff?

Shaw. He writ a Letter, as I understand, concerning some Money that I owed him; for I owed him a little Money, and being I did not pay it, he does forge a Letter and puts *William Pangston's* name to it, so I got up the other Morning——

L. H. Steward. Where is *Pangston*? Is he here?

Shaw. No, my Lord, he is not, but he told me he did not write the Letter.

L. H. Steward. Why, this is just the fame again, and we all know how easy a thing it is to hear a Bayliff tell a Lye.

Shaw. I cannot tell, but I called——

L. H. Steward. All that is nothing. It is a difficulter matter to hear such Fellows speak Truth, than any thing else, I am sure.

L. Delamere. The next Witness that I shall call is *Peter Hough*.

[Who appeared.]

L. H. Steward. There is your Witnesses. What say you to him?

L. Delamere. Pray acquaint his Grace, and my Lords, what you know of *Saxon's* cheating you in the making of a Bond.

Hough. My Lord, he had six Pound ten Shillings in Money, and ten Shillings in Work done, for which he was to give me a Bond, and hereof he made the Bond himself. I thought it had been right, and took it; but about the time when the Money was become due, I looked upon it, and it proved to be but for 6*l*.

L. H. Steward. What should it have been for?

Hough. It should have been for six Pounds ten Shillings in Money, and ten Shillings in Work.

L. H. Steward. Did not he give thee a Bond for all thy Money?

Hough. It should have been so, but I never had it.

L. H. Steward. Had you never the Money?

Hough. No, I never had the Money?

L. H. Steward. What did he say the Bond should be made for?

Hough. For seven Pounds.

L. H. Steward. What say you to it, *Saxon*.

Saxon. My Lord, I had five Pounds ten Shillings of him, and ten Shillings in Work, for which I gave him Bond; there were the Witnesses Names at it, the Bond was fairly read, and I sealed it, and he took it with him.

L. H. Steward. Ay, but he says it was to be for seven Pounds.

Saxon. I never had any more of him than six Pounds, and for that I gave him Bond.

L. H. Steward. Was the Bond read to you?

Hough. He read it himself, and he made it himself.

L. H. Steward. How did he read it? What did you apprehend by his reading it was made for?

Hough. I took it as he read it to be made for seven Pounds.

Saxon. He may say what he pleases, but I had no more of him but six Pounds; I was to give Bond for no more.

L. H. Steward. Now the Witnesses to this Bond would be very proper to be produced here: For, if he did make the Bond but for six Pounds, when the Debt that was to be secured was seven Pounds, that is a sign that he had an intention to cheat him of the Twenty Shillings.

L. Delamere. That shews what a kind of Man he is,

L. H. Steward. But this is but Witness against Witness, for he says he owed no more, and was to make the Bond for no more.

Hough. It was as I tell you, I assure you, my Lord.

Saxon. I had no more of him than six Pounds.

Hough. Did not I ask you afterwards one Question more, and told you it was a Cheat, and you said it should be mended?

L. H. Steward. Well my Lords have heard it, they will consider what weight to lay upon it.

L. Delamere. Pray call *Edward Wilkinfon*.

[Who appeared.]

L. H. Steward. What do you ask him?

L. Delamere. Wilkinfon, pray tell my Lords, how *Saxon* dealt with you about your Horse?

Wilkinfon. My Lord, he hired a Horse of me for three Days, and was to give me twelve-pence a Day, but he never came again, nor had I any Satisfaction for my Horse, but I lost my Horse by the bargain, and my Money too.

L. H. Steward. How long ago was it since he hired your Horse?

Wilkinfon. My Lord, it was the twenty third of *June*, to the best of my remembrance.

L. H. Steward. Did he not agree with you for 12*d*. a day as long as he used your Horse?

Wilkinfon. I expected to have my Horse in three days time.

L. H. Steward. But mind my Question, did you agree that he should have him but three Days? or, was he to give you 12 *d.* a day for so long as he kept him out?

Wilkinson. I was to have 12 *d.* a day for him.

L. H. Steward. What! as long as he used him, or only for three days?

Wilkinson. He did agree with me to bring him again in three days.

L. H. Steward. I perceive by the time, he rid into the Rebellion with this Horse, and he was a very Knave for so doing, upon my Conscience.

L. Delamere. Call *William Wright*, [*who came in.*] Pray will you give my Lords an account what Reputation this *Thomas Saxon* is of in his Country.

Wright. My Lord, this *Thomas Saxon* came to live at *Sambige*, and I had some dealings with him as well as other Men, and I never found him to perfect his Word in any thing.

L. H. Steward. What didst thou never find him?

Wright. To perfect his Word in any thing, my Lord.

L. H. Steward. That is, make good his word, I suppose; but that is your *Cheshire* Phrase.

Wright. Whereupon I met with him one Evening after Evening-Prayer, and said to him, *Thomas Saxon*, if I cared no more for keeping my Word than thou do'st, it were no matter if I were hang'd; for to be sure if thy Mouth open, thy Tongue lyes: and he turn'd away from me, and would not answer me a word; and since that he owed me some Money, and when I asked him for it, he told me if I did trouble him for the Money, it should be the worse for me; whereof all the Town knows as well as I, that I cannot set him forth in words as bad as he is.

L. H. Steward. Can you instance in particular, Friend, of any Fraud, Cheat, or Cozenage that he has been guilty of? for it is not what the Town says, but what can be proved, that we must take for Evidence; the Town that thou livest in may reckon thee but an idle Fellow, and yet thou may'st be a very honest Man for all that.

Wright. I trust, my Lord, I am so, and shall always prove so.

L. H. Steward. Well, what do'st thou know ill of him?

Wright. He did not keep his Word with me.

L. H. Steward. Wherein dost thou mean?

Wright. As to Money he owed me.

L. H. Steward. How much Money did he owe thee.

Wright. He owed me a deal.

L. H. Steward. How much do'st thou call a deal?

Wright. I cannot tell how much exactly.

L. H. Steward. Does he owe thee any thing now?

Wright. Yes, but I cannot justly tell how much.

L. H. Steward. My Lord *Delamere*, I would be very unwilling to interrupt the method of your defence, or abridge you in your Evidence; but really this Objection that you endeavour to

prove by this Witness, is not at all, as I conceive, for your Lordship's Service: For it is a very hard case, if any one that owes Money and does not pay it, shall for that very reason lose the credit of his Testimony; this rather gives a countenance to what he says, that you know no other Objections but such trivial ones to make against him.

L. Delamere. Then, if your Grace please, I will make short work of it, and spare your time; I shall pass over this part of my Evidence, though I have more Witnesses to this Point, and come to other matters, to Matter of Fact, to encounter this positive Proof that has been given against me. Your Grace and my Lords do observe, that this Man *Saxon* has testified that about the third or fourth of *June* last (for there he fixed the time) this Man as an extraordinary Person that was fit to be trusted in an Affair of this nature, being confided in, and recommended by my Lord *Brandon*, was sent for by me to *Mere*, where he found me and Sir *Robert Cotton* and Mr. *Offley*, who did employ him to transact the matter of stirring up the Country in order to a rising and joining with the late Duke of *Mommouth*: Now I will first prove to your Lordship in general, that Sir *Robert Cotton* was not in *Cheshire* for many Weeks, nay, several Months, both before and after the time he speaks of: And next in particular I shall prove as to the time that he has pitched upon, by divers Persons that saw Sir *Robert Cotton* here then in *London*, and give you particular Reasons for it. First to prove, that he was here in Town so long in general, I shall produce his Servants that saw him every day: Call——*Billing*, [*who appear'd.*] Pray Sir, will you give an account what time Sir *Robert Cotton* came to *London*, when he went out of *London*, and whether you were frequently in his Company and saw him here?

Billing. My Lord, to the best of my remembrance, Sir *Robert Cotton* came to Town the 10th of *April* last, and I was with him here in Town, at his House at the Horse-Ferry till the latter end of *July*, and saw him constantly more than once or twice every day for that time: I used to come into his Chamber most Mornings before he was up; I used to buy in his Provision for his House, I saw him a-bed, or heard he was in Bed every Night.

L. H. Steward. Did you belong to him?

Billing. I am his Servant.

L. Delamere. He lived with him in the House all the while, he says?

Billing. Then about the latter end of *July* he went out of Town for three Days to *Epsom*, and then he came to Town again, and continued here till the time he was committed to the Tower, and never was in *Cheshire* since the 6th of *April* last.

L. H. Steward. How came you to remember so punctually when he came to Town, and that he staid here all the while?

Billing. I know it by my Accounts for the Journey up, and by the Tradefmens Bills for the Provision of the House ever since.

L. H. Steward. In what Capacity did you serve Sir *Robert Cotton*?

Billing. I bought in all the Provision for his House, and paid the Tradefmens Bills.

L. H.

L. H. Steward. Have you any Papers in your Pocket that will point to any particular Time?

Billing. I have not the Tradefmens Bills here, my Lord, nor my own Accounts; but I have look'd upon them, and by that I am sure what I have testified is true.

L. H. Steward. Who do you call next, my Lord?

L. Delamere. Call *Margaret Davis*, [*who appeared.*] Pray will you give an account to my Lord, what time *Sir Robert Cotton* came to Town, and to the best of your remembrance when he went out of Town again.

Davis. He came to Town upon the Tenth of *April* last, or thereabouts, and he has not been out of Town any Night since, except it were in *August*.

L. H. Steward. What day did he come to Town, do you say?

Davis. About the tenth of *April*.

L. H. Steward. And you say he did not go out of Town till *August*?

Davis. No, my Lord.

L. H. Steward. How do you know this?

Davis. I was constantly in the House with him.

L. H. Steward. But how came you to be so exact as to the Time?

Davis. I saw him continually every day.

L. H. Steward. How came you to see him?

Davis. I live with him in the House.

L. H. Steward. Pray recollect your self as to the time he went out of Town, for I perceive the other Man says it was the latter end of *July*.

Davis. It was in *August* certainly, my Lord.

L. Delamere. My Lord, the other Witnes's faith it was the latter end of *July*, and that may be very well consistent, neither of them speaking to a day.

L. H. Steward. Well, are you sure he was in Town all the Month of *June*?

Davis. Yes he was.

L. H. Steward. Well, who do you call next?

L. Delamere. Mrs. *Sidney Lane*, [*who appeared.*]

L. H. Steward. What do you ask this Gentlewoman?

L. Delamere. I examine her to the same Point: and I question not but I shall make it out to your Grace, and my Lords, none of us all three that he has named were there at that time.

L. H. Steward. I shall be very glad of it, my Lord.

L. Delamere. Pray Mrs. *Lane* will you give an account when it was *Sir Robert Cotton* came to Town, and how long he staid here?

Mrs. Lane. He came to Town the *April* before the Coronation, and never lay out of Town I am sure all those three Months of *April*, *May* and *June* after he came to Town.

L. Delamere. This Gentlewoman, my Lord, lived in the same House with him.

Mrs. Lane. I did so, my Lord, and saw him every Night and Morning.

L. Delamere. If your Grace please, I have two or three more Witnes'ses to the same purpose; but I would spare their Lordships time, if this Point be fully cleared.

L. H. Steward. Pray, my Lord, do not abridge your self, for I know my Lords will not grudge the time, but are very desirous you should have full Liberty in what is pertinent.

L. Delamere. Then I desire *Charles Reeves* may be called, [*who appeared.*] I pray, my Lord, that this Man may give an account what time it was *Sir Robert Cotton* came to Town, and how long he staid here.

Reeves. If it please your Lordship, he was in Town before the Coronation, and I saw him here every day from that time till after *July* once or twice every day.

L. H. Steward. Did you belong to him?

Reeves. Yes, and I do now.

L. H. Steward. In what Capacity, Friend?

Reeves. My Lord, I am his Footman.

L. Delamere. May it please your Grace, the next Witnes's I have to produce is *Mr. Afburnbam*; being he cannot easily remove, I beg he may be heard in the place where he is.

L. H. Steward. Ay, let him speak where he is, and let him speak out.

L. Delamere. Pray Sir, will you please to recollect your self what time you saw *Sir Robert Cotton*, and where the last Summer?

Afburnbam. My Lord, I being at *Sir Robert Cotton's* House at *Westminster*, he desired me to present a Petition of his to the House of Commons for him, and it was about the latter end of the time allotted for Petitions, I cannot exactly tell what Day of the Week or Month it was, but I saw him that day I presented his Petition, and I saw him at the Committee of Elections two or three days after.

L. Delamere. *Sir William Twisden* I desire may be also heard what he has to say to the same Point.

[*Who answered to the same effect.*]

L. Delamere. *Mr. Heveningham* is my next Witnes's, my Lord; who I desire that he would please to give your Grace and my Lords an account, when he remembers to have seen *Sir Robert Cotton* in Town.

Mr. Heveningham. My Lord, it was a more than ordinary Occasion that makes me remember the thing and the time so particular. I was engaged in a dispute in the House of Commons about my own Election, and that was upon the second of *June*; then was a Case debated in the House, whether a Mayor that was elected a Burgess for any Town could sit upon his own Return; it was then carried he should not, and the next day, which was the third of *June*, another Question came on, whether *Sir Joseph Williamson* was duly elected and returned; and I remember at that time I was walking with *Sir Robert Cotton* in the Court of Requests, and *Mr. Neal* came out of the House and told me, that it was carried by five, that he was not; and then *Sir Robert Cotton* was with me.

L. H. Steward. So you speak as to the second and third of *June*?

Mr. Heveningham. My Lord, had it not been upon this particular occasion, I could not have remember'd the time so exactly.

L. H. Steward. You give a very good token for your remembrance, and my Lords hear what you have said.

L. Delamere. Will your Grace please that the Clerk of the House of Commons may be called, and examined to the Journal of that House, when it was Sir *Robert Cotton* preferred his Petition, and that will fix the time as to what Mr. *Afburnham* and Sir *William Twissden* have said?

L. H. Steward. Call whom you please, my Lord.

L. Delamere. It seems he is not ready, but I hope I have given your Grace and my Lords sufficient satisfaction, that Sir *Robert Cotton* was not there at that time that this Fellow speaks of. I will now go on and prove Mr. *Offley* was not there neither; and the first Witness I call to that, shall be Sir *Willoughby Aston*, whom I desire your Grace will be pleased to hear speak in his Place.

L. H. Steward. Well, what do you say, Sir *Willoughby*?

Sir *W. Aston.* My Lord, I desire to be guided in what account I shall give by the Questions that shall be asked.

L. H. Steward. What is it you ask Sir *Willoughby Aston*?

L. Delamere. Pray can you remember, Sir *Willoughby*, what time it was, and whether about the latter end of *May* last, or when, that you know of Mr. *Offley's* being at your House, and how long he staid there?

Sir *W. Aston.* I can give an account of his Motion for ten days together, but that perhaps may be more than is necessary.

L. H. Steward. It will not be improper, Sir, for you to give as exact and particular account as you can of the times.

Sir *W. Aston.* If your Grace please, I will do it.

L. H. Steward. Pray do, Sir.

Sir *W. Aston.* Upon the twenty sixth of *May*, which was Tuesday, at Night Mr. *Offley* and his Lady and some of their Relations, came to my House; upon Wednesday the twenty seventh of *May* Mr. *Offley* was so sick that he kept his Chamber and his Bed all day; upon the twenty eighth of *May*, which was Thursday, he was so ill that he kept his Chamber all day, and rose about five at Night, and I then waited upon him, and sat with him three Hours in his Dressing-Room. On Friday the twenty ninth of *May* he went to Church, that day was employed a great part in Devotion. Upon the thirtieth of *May*, which was Saturday, Mr. *Offley* and his Lady went, and a great part of my Family went with them, to one Mr. *Pickering's* six Miles off my House, there they dined, and returned at Night to my House. Upon Sunday the thirty first of *May*, I have a particular Remark whereby I remember that Mr. *Offley* went to visit Mr. *Needham*. Upon Monday the first of *June*, Mrs. *Offley* and the Women of my Family went to visit my Lady *Brooks*, but Mr. *Offley* not being well, staid at home. On Tuesday the second of *June* he was still at my House, there was a great deal of Company there, and he was in the Company all the day long. On Wednesday the third I fell sick in the Morning about four of the clock, but Mr. *Offley* was in the House all the Morning; but in the Afternoon he went to make a Visit two Miles from my House, at a place called the *Ware-house*, where the Ships ride at Anchor: and upon Thursday Morning, which was the fourth of

June, he went from my House. Now if your Lordship desire to know any thing about any particular Time about this Compass, I'll give you the best account I can.

L. H. Steward. Can you tell where he went when he went from your House?

Sir *W. Aston.* He went directly home, as he said.

L. H. Steward. Did you hear at any time that he staid by the way, between his going from you and coming to his own House?

Sir *W. Aston.* My Son went with him two or three Miles of his way, and I heard that at *Middlewich* he staid to speak with some of the Militia Officers that he met with by the way there at a Muster, and afterwards went directly home.

L. H. Steward. Pray is the usual Way from his House to yours by my Lord *Delamere's*?

Sir *W. Aston.* No, my Lord, directly another way.

L. H. Steward. Will you ask Sir *Willoughby Aston* any more Questions?

L. Delamere. No, my Lord.

Mr. *At. Gen.* If your Grace please, I would ask Sir *Willoughby Aston* one Question. Sir, I desire to know how far it is from your House to my Lord *Delamere's*?

Sir *W. Aston.* Sir, it is about Eleven Miles.

L. H. Steward. Eleven Miles you say, Sir?

Sir *W. Aston.* Yes, my Lord, Eleven of those Northern Miles.

L. Delamere. My Lord, I have some more Witnesses to examine to this Point.

L. H. Steward. Call whom you please, my Lord?

L. Delamere. I call Mr. *Gregory* next, my Lord, [who appeared.] Pray give my Lord an account, when Mr. *Offley* went from Sir *Willoughby Aston's* last Summer, and whither he went?

Gregory. My Lord, my Master went from Sir *Willoughby Aston's* House——

L. H. Steward. Who is your Master?

Gregory. Mr. *Offley*, my Lord. It was upon the fourth of *June* at nine of the clock in the Morning, and went from thence to *Middlewich*, and was at home at his own House about five of the clock in the Evening, as I was told, for I did not go directly home with him.

L. H. Steward. Was he at *Mere* that day at my Lord *Delamere's*?

Gregory. No, not that I know of, I was not with him.

L. Delamere. Then pray call *Thomas Kidd*, [who appeared.] Pray were you that day with Mr. *Offley* when he went from Sir *Willoughby Aston's*?

Kidd. Yes, my Lord, I was.

L. Delamere. What day was it?

Kidd. The fourth of *June*.

L. Delamere. Then whither went he?

Kidd. He went the direct Road to his own House, I never parted from him, nor did he stop any where till he came to *Middlewich*, where the Country Militia were exercising; and he just alighted off his Horse, and spoke with Major *Minsbaw* and some of the Officers, but never so much as drank by the way till he came to his own House.

L. H. Steward. What to his House in *Staffordshire*?

Kidd. No, but to *Crew-Hall* in *Chefbire*.

L. H. Steward. Does *Mere* lie in the Road between *Sir Willoughby Aston's* and *Crew-Hall*, fo that your Master might be there within that time?

Kidd. No, that he could not do.

L. H. Steward. Were you with *Mr. Offley* the whole Journey home?

Kidd. Yes, my Lord, I was.

L. H. Steward. Were you no time from him?

Kidd. No, my Lord, I was not.

L. H. Steward. What time did he come home?

Kidd. He came to his own Houfe about four or five a-clock at night.

L. H. Steward. And did not he go from thence that night?

Kidd. No, my Lord.

L. Delamere. Now, my Lord, I will prove as to my felf that I was in *London* at the time as he fpeaks of. And firft, I defire *Sir James Langham* may be heard to that.

[*He appeared, but gave no Evidence.*

L. Delamere. Pray call———*Booth*, [*who appeared.*]

L. H. Steward. What is this Gentleman's Name?

L. Delamere. He is my Brother, my Lord, his Name is———*Booth*.

L. H. Steward. What do you afk him?

L. Delamere. Pray can you remember what time in *June* you faw me in *Town* here?

Mr. Booth. My Lord, I faw my Brother here in *Town*, the third, fourth, fifth, sixth, and fo on to the tenth of *June*, and the tenth of *June* I went out of *Town* my felf; I faw him fometimes twice or thrice a day in that time, for I did not lodge above half a fcore doors from him.

L. H. Steward. Where was that?

Mr. Booth. In *Great Ruffel-ftreet*.

L. H. Steward. How come you to remember the time fo particularly?

Mr. Booth. It was that day Se'nnight before I went out of *Town*, which was Wednesday the tenth of *June*, and had it not been for that particular Circumftance, I had not remark'd it fo much as to be able particularly to remember it.

Mr. At. Gen. Pray, *Mr. Booth*, did you know of your Brother's going out of *Town* the twenty feventh of *May*?

Mr. Booth. I heard he was gone out of *Town* about that time.

L. H. Steward. Why then, when came he hither to *Town* again?

Mr. Booth. I cannot tell, but I faw him upon the third of *June* in the Evening.

Mr. At. Gen. My Lord, it is not poffible for him fo to do in that time, if he rode *Post*.

L. H. Steward. He did make a great deal of hafte backward, and forward, that is certain.

L. Delamere. My Brother does not know when I went, but as he heard, he fays.

L. H. Steward. But pray, my Lord, mind the Objection that has been made, for it carries a great deal of weight in it. It is plainly proved by two Witneffes, that you went out of *Town* the twenty feventh of *May* at nine of the clock at Night, and rode to *Hoddefden*, and the next day came to *Hitchin* about Noon; then they left you and return'd back again to *London* that Night, and you told them you were going to fee a fick Child

of yours in *Chefbire*; how came you to make fuch poft-hafte back again, that he fhould fee you here in *London* the third of *June*?

Mr. Booth. My Lord, I am certain I faw him that day in the Evening, and fo on to the tenth.

L. H. Steward. Did my Lord then tell you how your Friends did in *Chefbire*?

Mr. Booth. I cannot remember the particular dif-courfe we had.

Mr. At. Gen. Pray, Sir, when did he tell you he came to *Town*?

L. H. Steward. You fay you ufed to fee him every day once or twice a day.

Mr. Booth. Yes, I did fo.

L. H. Steward. Pray where was he the Second of *June*?

Mr. Booth. He was not come to *Town*.

L. H. Steward. How long time was it before that, that you had not feen him?

Mr. Booth. I had not feen him of feveral days before.

L. Delamere. If it pleafe your Grace, here is another Brother of mine that faw me, at the fame time; and tho' he be my Brother, I hope he is a good Witnefs.

L. H. Steward. Ay, God forbid elfe; what is his name?

L. Delamere. *George Booth*.

L. H. Steward. Well, what fay you, Sir?

Mr. George Booth. My Lord, I faw my Brother *Delamere* here in *Town* the fourth of *June*, by this particular Circumftance which I cannot err in, That the next day, as I take it, I went down with him to the Houfe of Lords, to hear my Lord *Macclesfield's* Caufe, which was then there to be heard upon the Appeal of *Mr. Fitton*; and my Brother was in the Houfe of Lords at that time, which was the fifth of *June*.

L. H. Steward. My Lord *Delamere*, I think it not amifs to put you in mind of one thing, which it is fit your Lordfhip fhould give fome answer to: Does your Lordfhip deny that you went out of *Town* the twenty feventh of *May*?

L. Delamere. No, my Lord, I do not; I acknowledge I did fo.

L. H. Steward. Then it will be fit for you to give an account where you were the twenty eighth of *May*, and fo all along till the third of *June*?

L. Delamere. If your Grace pleafe, I hope I fhall give you full Satisfaction in that by and by; but I have one Witnefs more to this point of my being in *Town* at fuch a time, that I could not be in *Chefbire*, when this Fellow fays I was; and that is my Lord *Lovelace*.

L. H. Steward. There is my Lord *Lovelace*, what will you afk him?

L. Delamere. Whether he did not fee me at the Trial of my Lord *Macclesfield* in the Houfe of Lords?

L. Lovelace. I was in the Houfe of Lords that day that my Lord *Macclesfield's* Trial was, and I remember I did fee my Lord *Delamere* there.

L. H. Steward. But we are as much at a lofs now as ever we were, for what day that Trial was, does not appear: What day was my Lord *Macclesfield's* Trial?

L. Delamere. The Journal of the Houfe of Lords proves that to be the fifth of *June*.

L. Lovelace. My Lord stood just by the Bar, and if I am not mistaken took Notes.

L. Delamere. My Lord, I hope now I have satisfied your Grace, and the rest of my Lords, that none of us three whom this Fellow has mentioned were there at that time at *Mere*, when he says we were: For my own part, I do positively affirm, and I speak it as in the Presence of Almighty God, that I have not seen Sir *Robert Cotton* at my House that I know of these many Years, and I believe Mr. *Ossley* was never in my House since I was Master of it: And I do likewise protest, that to my knowledge, I never saw the Face of this Man till now that he is produced as a Witness against me; I am sure I never spoke with him in all my Life, nor never sent for him to come to my House: And if your Lordship please to consider the Story that he tells, it will easily appear to be very improbable, for he neither tells you who the Messenger was that was sent for him, nor the way that he came into the House, which any body that has ever been at the House could not mistake. For when I asked him what door it was he came in at, it was for this reason, because he must needs have gone a great way about, if he had not come in at the usual Entry into the House, for I have but one door into my House except that by the Stables, which is a great way off the House? And it being about that time of the Year, if it were eight or nine of the clock in the Evening, he must needs discern which way he came in: And, besides, my Lords, is it probable what he says, that he should see no body stirring about the House except it were this Man without a Hand, that he says was sent for him? I assure your Lordships, I have not, nor had my Father ever that I know of, any Servant or Tenant that was maimed in that manner that he speaks of. He saith, he was recommended to us by my Lord *Brandon*: But he cannot tell your Lordship any thing that ever he had done, to recommend him either to him or us. I did ask him what important Service he had ever done for me, that might give a credibility to my employing him in such a business as this. My Lord, I cannot help it, if People will tell false Stories of me, but I hope your Lordships will consider the Credibility of it; is it to be imagined that I would take a Man I knew nothing of, upon another Man's Word, into so great a Confidence, as to employ him about a business of this nature? I am glad that he was called in here again for your Lordships to view him. I beseech your Lordships to look at him; is this Fellow a likely Fellow to be used in such an Affair? Does he look as if he were fit to be employed for the raising of ten thousand Men? Does he seem to be a Man of such considerable Interest in his Country? A Fellow, that though it be not direct Evidence, yet by several Witnesses, I have shewn to be a Man of no Reputation in his Country, nay of a very ill one; and could we have none else to employ in a matter of this Moment but such a Fellow as his Neighbours would not take his Word for any thing? It is an improbable Story upon these accounts, if I should say no more. Your Lordships likewise see, that he is so well thought of, that he dare not be trusted out of *Newgate*, but is kept still a Prisoner, and as such gives Evi-

dence here: And I know your Lordships will not forget that he swears to save himself, having been a Rebel by his own Confession, and he would fain exchange his Life for mine; till he has a Pardon, which as yet, as I am informed, he has not. The Objection will still lie upon him, that he swears to save himself, which will render his Testimony not credible, and the Law requires the Witnesses in Treason, to be credible ones: And yet forsooth! this Man, that no body that knows him will believe a Word he says, must be taken to be the Man of Integrity, Zeal and Industry; the Man of Management and Dispatch, the Man of Interest and Authority in his Country, that nothing can be done, but he must have a hand in it. My Lords, I think I need say no more of him; your Lordships time is precious, too precious indeed to be spent upon such a Subject, and so I set him aside.

My Lords, there is a thing that I perceive the King's Counsel lay a great weight upon; and that is my going down upon the 27th day of *May*, and my frequent riding Post to and fro. I shall now satisfy your Lordships of the Reasons of my Journeys. The first time, which was betwixt the Coronation and the sitting of the Parliament was upon this reason; I went down to take possession upon a Lease of a considerable value which was renewed to me by the Bishop. I did not think of going down at that time so soon; but I had Word wrote me out of the Country that the Bishop was ill, and that obliged me in point of Interest to make haste down. And this I shall prove by one that was Attorney for me, and another that was a Witness of my taking Possession: and for this, I first call Mr. *John Edmonds*, [who came in] Pray, Sir, will you tell his Grace and my Lords, what you know of my coming down into the Country in the beginning of *May*, and upon what account, and what time it was?

Mr. *Edmonds*. May it please your Lordship, upon the fifth of *May* my Lord *Delamere* did me the honour to come to my House, and he staid there a little while, and desired me to be a Witness of his taking Possession upon a Lease of my Lord Bishop of *Chester's*, and we went into the House that was next to mine, which was and there did take Possession.

L. H. Steward. Where is your House?

Mr. *Edmonds*. At *Boden*, in *Cheeshire*.

L. H. Steward. When was this, do you say?

Mr. *Edmonds*. The fifth of *May*.

L. Delamere. Pray Sir, will you satisfy my Lord, whether the Bishop was not ill at that time?

Mr. *Edmonds*. My Lord, I had been a little before at *Chester*, and hearing my Lord Bishop was not very well, I went to Mr. *Allen*, and told him I was desirous to see my Lord, and speak with him, if I might; he told me my Lord was so ill, that he would speak with no body.

L. H. Steward. Was it a Lease for Years, or a Lease for Lives?

Mr. *Edmonds*. It was a Lease for Lives.

L. H. Steward. Then that might require my Lord's taking Possession. Who do you call next, my Lord?

L. Delamere. Mr. *Henry*.

L. H. Steward. What do you ask this Man, my Lord?

L. Delamere. Pray will you give his Grace and my Lords an account, whether you were not Attorney, and deliver'd me Possession upon the Lease of my Lord Bishop of *Chester*?

Mr. Henry. My Lord, I was Attorney by Appointment, and the 5th of *May* last I delivered Possession to my Lord *Delamere* at one of the most remarkable places of the Land that belonged to that Lease of the Bishop.

L. Delamere. My Lords, I hope this is a satisfactory Reason for my going down at that time, the Bishop being ill, and the Lease being worth 6 or 7000*l.* The next time that I have to speak to, is, That of my going the 27th of *May*, and for that I give this answer; I did go out of Town the 27th of *May*, the occasion of my going was, I had taken up a Resolution before to go see my Child that was not well, but I had not taken my Journey so soon, nor with such Privacy, but that I had notice, there was a Warrant out to apprehend me; and knowing the Inconveniences of lying in Prison, I was very willing to keep as long out of Custody as I could, and therefore I went out of the way, and under a borrowed Name. When I came to my House in *Cheeshire*, there were not above five of my own Servants that saw me all the while I was there, and I saw no body but them; but while I was there, my Wife sent me an Express, that as to the Warrant she hoped it was a Mistake, and there was no such thing; but my eldest Son was very ill, and if I intended to see him alive, I must make haste up: this was the occasion of my quick return, and I shall satisfy your Lordships by Proof, that I came thither in that manner to avoid the Warrant, and for no other Reason.

L. H. Steward. You say you went to see a sick Child in the Country.

L. Delamere. May it please your Grace, my Mother that is here, wrote me word that my Child was not well.

L. H. Steward. Pray what made you come back again so soon?

L. Delamere. Because I had an Express sent me by my Wife that my other Son was like to die.

L. H. Steward. Call your Witnesses, my Lord.

L. Delamere. Mrs. *Kelsey*, [*who came in.*] Pray will you give an account what I said, when I came down, was the occasion of my coming so privately and changing my Name?

Mrs. Kelsey. My Lord heard, he said, there was a Warrant for taking of him up, and he gave me that for a Reason; besides his little Son in the Country was ill.

L. H. Steward. What, she lived in the Country, did she?

Mrs. Kelsey. My Lord, I was in the House with him.

L. Delamere. If your Lordships please, my Mother may be examined?

L. H. Steward. Yes, with all my heart.

[*She sat by him at the Bar.*]

L. H. Steward. Pray, Madam, will you lift up your Voice, that my Lords may hear what you say.

Lady Delamere. My Lords, this Child of his that was in the Country, was more than ordinarily precious to him, in regard it was born to him at that time, when he was an innocent honest

Man, (as he is now, a Prisoner in the Tower for High-Treason,) above two Years ago, and I think it increased his Affection to the Child, that God had given it to him when he was in that Affliction. My Lord, I knowing the Affection that the Father and Mother both had to the Child, my Care in their absence I thought ought to be more exercised about him: The Child sucked, but I saw the Child decline, and therefore I was of Opinion that he should be wean'd, and I sent up word that if they did not take care quickly and look a little after him, I was afraid he would go into a Consumption. Upon this, my Son came down, I saw him not indeed, because he was very private all the while he was in the Country; but while he was there, it pleased God to visit his eldest Son with a dangerous Distemper, upon which my Daughter sent for him Post, if he intended to see his Son alive. And thereupon I think he made what haste back again he could.

L. H. Steward. Were you in the same House with him, Madam?

Lady Delamere. My Lord, I say, I did not see him all the time he was there, I only tell you what I heard.

L. H. Steward. How long was he in the Country?

Lady Delamere. I cannot tell exactly that, I think he was not above two days.

L. H. Steward. He must be but one day by Computation of Time?

L. Delamere. Pray, my Lord, I will satisfy you in that point presently: Mrs. *Kelsey* will give an account what time it was that I came down, and when I went away.

Mrs. Kelsey. My Lord came down on the *Sabbath-day* night, and staid there Monday, and went away the Tuesday Morning.

L. H. Steward. Look you, my Lord, the 27th of *May* was upon a Wednesday, that night you went out of Town, and went to *Hoddesden*. Thursday, which was the 28th, you came to *Hitchin* at Noon. Friday was the 29th. Saturday the 30th. Sunday was the 31st, then you came to your House; Monday the first of *June*, Tuesday the 2d, then you came away, and upon Wednesday the 3d you were in Town, so says your Brother.

L. Delamere. It was so, my Lord.

L. H. Steward. Which way did you come back?

L. Delamere. I came Post through *Coventry*, my Lord, and that was the time that *Hope* speaks of, that I told him I had come another way into *Cheeshire*, when I came down.

L. H. Steward. My Lord, you say you went down to secrete your self from a Warrant that you apprehended was out against you, and that made you go a by-way; how came you then to come so publickly back, the ordinary Post-Road?

L. Delamere. If your Grace please, I have told you I had an Express came from my Wife, that told me it was a Mistake as to the Warrant, but that my Child was very ill, and I must make haste up.

L. H. Steward. Have you any more Witnesses, my Lord?

L. Delamere. Yes, my Lord, I desire Mr. *Kelsey* may be called. [*He came in.*]

L. H. Steward. Well, what say you?

Mr. Kelsey. My Lord came down upon the Sunday night at eleven of the clock, and staid at home all Monday; and on Tuesday Morning

at three of the clock in the Morning, he took horse for *London*, and I have Letters by me that are dated the 4th of *June*, which was *Thursday*, that told me my Lord was come to *Town* the night before.

L. H. Steward. Whose are those two Letters?

Mr. Kelsey. They were from my Lady and *Mrs. Vere Booth*, and both came by the same Post.

L. Delamere. I shall call one Witness more, my Lord, to prove that my Child was sick here in *Town*, and the time; and that is *Sir Thomas Millington*, who was his Physician.

[Sir Thomas was called, and came in.]

L. Delamere. Pray, *Sir Thomas*, can you recollect your self what time my Son was ill last Year?

Sir Thomas Millington. My Lord, I was sent for to my Lord *Delamere's* Son upon the 28th of *May*, and I found him then very ill, and he continued so for two days, insofmuch as I told my Lady *Delamere* his Mother that I thought the Child would not escape. I told it likewise to *Sir James Langham*, who is my Neighbour in *Lincolns-Inn-Fields*; what they did upon it, whether they sent for my Lord *Delamere* to *Town* or no, I cannot tell, but I know punctually this was the time, by reason the Bills I wrote are dated on that day, otherwise I could not have remembered the time; but the Bills being sent me from the Apothecary, I find that date to them.

L. H. Steward. Pray, *Mr. Attorney*, will you call *Edlin* again, or *Vaux*, either of them.

Mr. At. Gen. Here is *Edlin*, my Lord.

L. H. Steward. Where did you part with my Lord *Delamere*, and when?

Edlin. Upon *Thursday* the 28th of *May* at *Hitchin*.

L. H. Steward. What time of the day was it when you parted?

Edlin. It was about ten of the Clock.

L. H. Steward. He went forward Post into *Cheeshire*, did he not?

Edlin. He did not go Post I suppose, for he went upon his own Horse.

L. H. Steward. Did he go upon his own Horse?

Edlin. It was the same Horse he went to *Hitchin* upon.

L. H. Steward. Have you any more Witnesses, my Lord?

L. Delamere. No, my Lord, I hope I have given their Lordships Satisfaction in all Points, and need to give no further Evidence.

L. H. Steward. Have you any thing more then to say, my Lord?

L. H. Steward. My Lords, I acknowledge I did go at that time privately a *By-Road*, and by the name of *Brown*; and as for *Jones*, who it is said came from *Holland* that day, I appeal to him himself, and I call God to Witness I never saw the Man before now in my Life; nay, till after I was made a Prisoner upon this account, I never so much as heard of his Name: and your Lordships see by the Proofs, that all that has been said against me, except what this Fellow *Saxon* has testified, is but hearsay, nay indeed but hearsay upon hearsay at the third and fourth hand.

My Lords, if People will make use of my Name, and say this, and that, and the other, and among themselves talk of Messages sent to me; can I or any Man in the world help it? At this rate who can be innocent, if a Man must be

guilty because others intend to draw him into Treason? For there is no more in the utmost that this Proof can amount unto. It is at the pleasure of any two Men in the World, to take away the Lives, Honours, and Estates of any of your Lordships, if it be a proof sufficient to make you guilty of Treason, for them to swear you were intended to be drawn into Treason.

And, my Lords, as to the Truth of the thing it self, that there was any Message or Correspondence between the late Duke of *Monmouth* and me, I call God to witness I have neither wrote nor sent Letter or Message to him, or received Letter or Message from him, this three Years: I cannot tell what expectation he might have concerning me, or any body else. It is very probable he might have Expectation of Assistance from some body, and that without such Expectation he would not have made the attempt he did: But, my Lords, all that is nothing to me, I had no correspondence either by Letters or Messages with him; so that all that has been said upon that point of his Expectations, and what he declared, I must give the same answer to, that I gave to the Evidence about *Jones's* Message, That admitting it to be true, he did declare so, yet, no proof being made of an actual Correspondence, it is no more but only an Intention in him to draw Men into Commission of Treason; and if that be allow'd for Proof of guilt, I must repeat it again, there's no Man can be innocent.

Upon the whole matter, my Lords, I must leave my Case to the Consideration of your Lordships: I am not Master of so much Law or Rhetoric as the King's Counsel, to plead in my own Cause, and I have had but little time to recollect and apply my Defence to my Accusation; but I hope what Evidence I have offered, has given your Lordships full Satisfaction that I am not guilty of what I stand charged with.

And after all that has been said, my Lords, I would beg your Lordships to consider this, that if in case I were guilty of these things, and were conscious to my self of having been engaged in an Affair of this nature, can any Man imagine I could have been so hardy as to have surrendered my self upon the King's Proclamation: nay, if I with those other two Gentlemen that he has named, had had any Transactions of this kind, with such a Fellow as he has been made appear to be by his Neighbours, (that must needs be thought a Man of no Faith, because of no Reputation, tho' he gives himself a great Character as a Man of great Interest, of wonderful Dispatch and Dexterity in the Management of such matters) so as at first sight to put this large Confidence in him; can it be imagined I so little regarded my own Life and all that is dear to me, as to have surrendered my self, were it not that I was certain of my own Innocence and Integrity? Life it self, my Lords, is to be preferred above all things but Honour and Innocence; and *Job* faith, *Skin for Skin*, and all that a Man hath will be give for his Life: and why should I be presumed to have so little value for it, as voluntarily to deliver up my self to Destruction, had I been conscious that there was any one, who could really testify any thing that could hurt me?

Besides, my Lords, this very Fellow *Saxon* is but one Evidence, and how far you will believe him, I must submit it to you; but surely one Witness will never be sufficient to convict a Man of Treason, tho' thousands of Hear-says, and such

trivial Circumstances be tacked to it; especially when they are tacked to an Evidence, which I dare say your Lordships are far from thinking it deserves any Credit.

My Lords, I desire your leave to ask this one Question; Would not any of your Lordships think himself in a bad Condition as to his Fortune, if he could produce no better Evidence to prove his Title to his Estate, than what has been produced against me this day to take away my Life? And if such Evidence as this would not be sufficient to support a Title to an Estate, certainly it can never be thought sufficient to deprive a Man of Life, Honour, Estate and all.

My Lords, I am not the only Man that has been or may be falsely accused: God knows how soon the Misfortune of a false Accusation may fall to the Lot of any of your Lordships; I pray God it never may, but since that may happen, I question not, but your Lordships will be very cautious, how by an easy Credulity you give Encouragement to such a Wickedness: For Knights of the Post will not end in my Trial, if they prosper in their Villany; and perhaps it may come home to some of your Lordships, if such Practices be encouraged, as I cannot but firmly believe they will not.

My Lords, the Eyes of all the Nation are upon your Proceedings this day; nay, I may say, your Lordships are now judging the Cause of every Man in *England*, that shall happen to come under like Circumstances with my self at any time hereafter: For accordingly as you judge of me now, just so will inferior Courts be directed to give their Judgments in like Cases in time to come.

Your Lordships very well know, Blood once spilt can never be gathered up again, and therefore unless the Case be very clear against me, you I am sure will not hazard the shedding of my Blood upon a doubtful Evidence. God Almighty is a God of Mercy and Equity: Our Law, the Law of *England*, is a Law of Equity and Mercy; and both God and the Law require from your Lordships Tenderness in all Cases of Life and Death: and if it should be indifferent, or but doubtful to your Lordships, (which upon the Proofs that I have made, I cannot believe it can be) whether I am innocent or guilty, both God and the Law require you to acquit me.

My Lords, I leave my self, my Cause and all the Consequences of it with your Lordships; and I pray the All-wise, the Almighty God direct you in your Determination.

L. H. Steward. Have you any thing more to say, my Lord?

L. Delamere. No, my Lord.

L. H. Steward. Then Mr. Attorney, and you that are of the King's Counsel, what have you to say more?

* *Mr. Finch.* *Mr. Sol. Gen.** May it please your Grace, and you my noble Lords the Peers of my Lord *Delamere*, the Prisoner at the Bar:

The Evidence that hath been given against this noble Lord is of two Natures, part of it is positive Proof, and part is circumstantial; and though it be allowed that there must be two Witnesses in Cases of Treason, and that Circumstances, tho never so strong, and sufficient to fortify one positive Proof, do not, nor can make a second positive Witness; yet I crave leave to say, that there may be Circumstances so strong and

cogent, so violent and necessary to furnish a positive Testimony, that will in Law amount to make a second Witness, such as the Law requires.

My Lords, I do not say every Circumstance will do it, but such as is necessarily and violently tending to the same thing that was positively proved. As for Example;

If a Man comes and swears against another that he said he will go immediately and kill the King, and another Man that did not hear those Words, comes and testifies his lying in wait; that Circumstance of lying in wait, that was an Action indifferent in it self, yet, when applied to the positive Proof, will be a second Witness to satisfy the Law, which requires two Witnesses in Treason.

I must confess, my Lords, when we will make Circumstances to be a second Evidence, they must be such as are necessarily tending to fortify the positive Evidence that was given by the single Witness: Now whether that be so in this Case, I must, as becomes me, leave to your Lordships Consideration. It is not my business to carry the Evidence further than it will go, and I am sure it is not my duty to let it lose any of its weight; and if it have not that force it ought to have, I should be to blame, as not having done what belongs to me to do. I will therefore state the Fact to your Lordships plainly as it stands upon the Proof, and submit the whole to your Lordships Determination.

My Lords, our positive Proof with which I crave leave to begin, is but by one single Witness, and that is *Saxon*; and his Evidence is this, that being in *Cheshire*, where he lives, he was sent for about the third or fourth of *June* last to my Lord *Delamere's* House at *Mere*, and there he was brought into a lower Room, where he saw my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offley*: That my Lord *Delamere* told him he had received a Message lately by one *Jones*, that was sent from the Duke of *Monmouth*, whereby he understood that the Duke would speedily be in *England*, and that they must provide Men and Arms to assist him when he came; that he was a Man recommended to them by my Lord *Brandon*, and that upon his Recommendation they had thought fit to intrust him in the matter, and withal told him, they were to raise 40000 *l.* and 10000 Men in that County: He tells you likewise, these Gentlemen gave him eleven Guineas and 5 *l.* in Silver to go of an Errand for them to the Duke of *Monmouth*, which he undertook to do, and hired a Horse to that purpose.

This, my Lords, is the positive Proof, and this, I must acknowledge, standing single and by it self, will make but one Witness; but whether the Circumstances that have been offered to your Lordships by the other Witnesses, be such violent Circumstances as necessarily tend to fortify and support that positive Evidence, and so will supply the defect of a second Witness, is the next Question that I come to consider, and I shall take them into Consideration in the same order that the Evidence was delivered.

The first Step, my Lords, that was made as to any Evidence that toucheth this noble Lord at the Bar, was what was testified by my Lord *Gray*; for as to the other part of the Evidence that related to the Conspiracy in general, I need not trouble your Lordships with the Repetition of it, (that there was such an one, is notoriously known)

known) but I say that part of the Evidence in his History of the Conspiracy, which my Lord *Gray* brought home to my Lord *Delamere*, was this :

That upon the first Meetings and Consultations, it was resolv'd upon, that the Duke of *Monmouth* should go into *Cheeshire* to make an Interest there; and among the Persons that he was directed to go to, and to apply to for advice there, as Persons fit to be trusted, this noble Lord was one.

That upon the Duke of *Monmouth's* Return out of *Cheeshire*, he did give his Confederates here in Town an Account, how well he had been received, and that he liked all things very well there. This, my Lords, is the first Circumstance that has been offered to you, to shew that he had a Confidence in my Lord *Delamere*, as a principal Support of his Designs at that very time.

The next thing that we offer, is this Message of *Jones's*, and for that, our Evidence has fully and plainly made it out to your Lordships, that *Jones* did go over into *Holland*, and his Business there was an Errand from *Disney* and Major *Wildman*, and the Confederates here. The effect of his Message was, that it was their Opinion, that the Duke of *Monmouth* should go for *Scotland* and join with my Lord *Argyle*; but upon the Receipt of the Message, he being angry, said, it was too late for such a Message now, and he would come into *England*, for he was ready to fail: and thereupon he did send this same *Jones* back again into *England* upon a Message, to inform the Lords and others of his Party, among whom my Lord *Delamere* was one, that he would have them betake themselves into their several Countries, and not stay to be taken or clap'd up here, for that, he did understand, was the Design: and this Message was delivered in Writing; (now that the Duke of *Monmouth* did write a Note and give it to *Jones*, is verified by my Lord *Gray's* Testimony too) and this sealed up, and he was not to open it till he came to Sea; and when he did open it, he found it contain'd a Signification of the Place where he was to land, and where he was to rendezvouz, which was *Taunton*, and who were the Persons that were to have Notice of it, among whose Names we find my Lord *Delamere's* to be one: but he likewise tells you, he was not the Man that was to carry the Message to these Persons, but he was to deliver it to *Matthews* or *Wildman*, and they were to transmit it to the other Persons.

He tells you likewise, that when he came to Town, which was the 27th of *May*, he met neither with *Matthews* nor Major *Wildman*; whereupon being at a loss what he should do with his Message, for want of those other Persons, he acquainted *Disney*, that was executed, with his Errand, who promised to take care that it should be delivered.

This, my Lords, is all *Jones's* Evidence; for *Jones* does not say that he himself acquainted, or that *Disney* did acquaint my Lord *Delamere* with the Message.

But here, my Lords, is the main Circumstance that renders the matter suspicious; that very Night that *Jones* came to Town, and *Disney* being acquainted with the Message, had undertaken to get it delivered, does my Lord *Delamere* at Ten of the clock at Night go out of Town, in the Company of two Friends under the Disguise of the Name of *Brown*, and a By-Road, and so goes down to his own House in *Cheeshire*; this, I say, is the Circumstance that renders the thing suspicious.

Now, my Lords, if we do prove by such sufficient Evidence, as may make the matter manifest to you, that my Lord *Delamere* had notice of *Jones's* Message, (for upon that Point the Case will turn, whether he had Notice such a Message was brought, that such things were in agitation, such Preparations made, and that they were all to go into the Country) then I say, his going down is a violent Presumption, he had an Intent to comply with the Message, and join in the Design.

But now, my Lords, comes the Question, the main Question, how is it made out that he had notice *Jones* brought such a Message?

Jones indeed, my Lords, does not say that he himself imparted it to him, or that *Disney* told him he had communicated it; but I think there is another Witness, and that is *Storey*, who saith, that *Brand*, one that knew of the Message, did acquaint him, that my Lord had received it at the Coffee-House, and that Night went out of Town.

It is true, my Lords, this is but a Hear-say, but that which followed being Matter of Fact, my Lord's going out of Town that Night, so late in the Night, and in such an unusual suspicious manner, gives more Credit to the Relation, than a bare Hear-say could have of it self.

For unless there be some good account given of my Lord's thus going out of Town, it is a kind of necessary Presumption, that he was acquainted with the Message, part of which was, that he should go out of Town; and if so, it can have no other Construction, with Submission, than to be in pursuance of, and complying with the Directions that that Message brought him from the Duke of *Monmouth*.

My Lords, to carry this a little further, there were two Witnesses produced that went out of Town with him; they seem indeed unwillingly to give their Evidence, but I shall faithfully repeat what Testimony they gave: Their Names were *Vaux* and *Edlin*.

Vaux he saith, he met my Lord *Delamere* at the Rummer-Tavern in *Queen-street* the 26th day of *May*, which was the day before *Jones* came to Town, and that then he appointed to go out of Town the next day, which was the 27th, and accordingly he did go.

Edlin he saith, he met *Vaux* at the Custom-house upon the 27th of *May* in the Morning, and being desired by him to go with him out of Town, he did so, and there was with him a Gentleman whose Name was *Brown*, and who now appears to be my Lord *Delamere*; they went in Company with him as far as *Hitchin*, where they left him upon Thursday the 28th at Noon.

This Evidence is produced to shew, that my Lord did go out of Town at that time, and in that manner as has been alledged, and that these Persons went with him to conduct him a private way, that he should not go the common Road. Your Lordships will consider what Answer hath been given to this, and what account my Lord *Delamere* has given of himself.

Another thing, my Lords, that renders this matter suspicious, is the Name which my Lord was pleas'd to assume to disguise himself by, it being a Name by which the Party use to call my Lord in their Discourses of him; and to prove that, we have likewise produced two Witnesses, *Babington* and *Paunceford*.

Babington, he says, That in their Consultations there were Discourses of my Lord *Delamere*, under the Name of *Brown*; and once at a Tavern, when my Lord *Delamere* was named by one in the Company, he was presently caught up for it, and replied to, You mean Mr. *Brown*; and so it seems that was the canting Name under which they discoursed of my Lord *Delamere*.

The other Witness *Paunceford*, he tells you, That being at *Disney's* House, and concerned with him in printing the late Duke of *Monmouth's* Declarations (for the printing of which *Disney* was executed) one *Lock* came for some of those Declarations for Mr. *Brown*, and they were to be sent into *Cheeshire*: So that though your Lordships observe the Witness's faith, some body else was called by the Name of *Brown*, yet you have had no Account given you, that there was any other *Brown* in *Cheeshire*.

It is true, indeed, my Lords, that these are only things that *Disney* said, and *Lock* said; but I must take leave to say, it is very suspicious, that if my Lord went out of Town into *Cheeshire* under the Name of *Brown*, and some Persons shall, on the behalf of *Brown*, come for Declarations to be sent into *Cheeshire*, and my Lord commonly in that Party go by the Name of *Brown*, that those Declarations were for my Lord, and that will be a great Evidence of his Correspondence with *Monmouth*.

But I confess, my Lords, all this while our Proof is circumstantial, and indeed there is no positive Proof but that of *Saxon*, and in him our Proof must center; for without him, I must acknowledge, nothing that has been offered will be Proof against my Lord upon this Indictment: for bare Circumstances, and bare Suspicions will be no Proof against any Man, but such as are violent and necessary, and those joined to a positive Proof, such as the Law requires.

Now then, my Lords, I come to the Consideration, of what Weight and Stress is to be laid upon this positive Evidence of *Saxon*: And here I must confess there are Objections made to this Testimony, to which I cannot readily give an Answer; for *Saxon* has sworn, That he was there at such a Time, and that he was sent for, and entertained as a Person recommended by my Lord *Brandon*, as fit to be entrusted with the Secret, and capable of being employed to stir up the Country, in order to the Prosecution of a Design they had on foot to raise a Rebellion; and he does charge Sir *Robert Cotton* and Mr. *Crew-Offley* to have been there at the same Time.

The Evidence, my Lords, that has been produced to falsify this positive Witness, in the Point of Sir *Robert Cotton's* being there, has been by five or six Witnesses, who testify Sir *Robert Cotton's* being in Town, and not elsewhere, from the tenth of *April* to the latter end of *July*; and I do not see what we have to say in answer to their Testimony. I must agree the Proof to be full in that Point; and if the Evidence they give be true, I cannot say that *Saxon's* Evidence can be true in that Point.

Likewise as to Mr. *Offley*, Sir *Willoughby Aston* and others have testified that he was not at my Lord *Delamere's* at the Time *Saxon* speaks of: For he gives you an Account where he was every Day, from the twenty-sixth of *May* to the fourth of *June*; and his own Servants bring him to his own House upon the fourth of *June* in the

Evening, which is quite another Way than from Sir *Willoughby Aston's* to my Lord *Delamere's*: If this likewise be true, what *Saxon* says cannot be true, I must agree to it.

There is another Thing that is offered on my Lord *Delamere's* Part, that he was himself in Town at that Time that *Saxon* says he was at *Mere*: But here indeed the Matter seems to be a little more strange and dubious, that my Lord should make so much Hasten down, as to go out late at Night, and so cautiously, as to go by a wrong Name, and yet to ride to Town again the Post-way, to be here just the third of *June*, when *Saxon* swears he was in *Cheeshire*.

I must confess there is the Proof of his two Brothers, that say, they saw him in Town the third and fourth of *June*: There is likewise some Account given of his going out of Town, that it was upon a Message received from his Mother, that his Child in the Country was sick; and indeed he did go a By-way, and change his Name, for fear of a Warrant in a Messenger's Hands that was out against him to apprehend him.

Now, my Lords, I do not hear any thing that has been offered, that there was any such Warrant, or any Discourse to ground that Apprehension upon: My Lord had the first and only Apprehension of a Warrant; but upon what Reasons he himself best knows: This Apprehension made him go out of Town so privately, he says, because he would not be prevented of seeing his sick Child.

But how comes it to pass, that my Lord makes such a speedy Return? By the Proofs, it appears he did not get there till *Sunday* Night, and upon the *Tuesday* Morning comes Post for *London*.

The Account that he gives of that, is this, His Hasten was to see another Child that was here sick in Town: For he had received an Express from his Wife upon the *Monday*, to acquaint him, that the Coast was clear, and there was no Warrant out against him; but if he intended to see his Child alive, he must make Hasten up to Town; and accordingly, upon the *Tuesday* Morning early, he sets out, and upon the *Wednesday* in the Evening is here in Town again.

But, with Submission, my Lords, there is no good Account given by this noble Lord, what Reason there was for so many Post-Journeys backward and forward, as, had been testified, he to have made within a very little Compass of Time; for besides this of his Return Post upon the second of *June*, there is only an Answer given to one of the rest, which is that of the fifth of *May*, when he saith he went to take Possession of the Land that he held by a Lease then renewed to him by the Bishop, which being of some Value and Consideration to his Lordship, and the Bishop being sick, he thought it necessary to go down Post himself, and would not be content to receive Livery by Attornment. This is the only Answer that is given to all those Times of his riding Post that have been given in Evidence.

These are Matters of Suspicion that are offered to your Lordships; but I confess, Matters of Suspicion only, unless clear, positive, probable Proof be joined with them, will not weigh with your Lordships to convict a Man of High-Treason, where two Witnesses are required. But whether these Matters of Suspicion be such violent and necessary Presumptions as tend to fortify the positive Testimony, I must leave that to the Consideration of your Lordships.

L. H. Steward. You do not call any more Witnesses then, I perceive.

Mr. Soll. Gen. No, my Lord.

L. H. Steward. My Lords, it has not been usual of late, for those who have sat in the Place where I now am, upon those Occasions to give your Lordships any Trouble in repeating or observing upon the Evidence. In this Case the Evidence that hath been given has been very long, and it would be too great a Presumption in me, should I have any manner of Doubt in the least, that either your Lordships have not well observed it, or the learned Council for the King have been defective in collecting or remarking upon it, so as to need my Assistance.

But, my Lords, I confess there is something I cannot omit taking Notice of, not for your Lordships Sakes, but for the Sake of this numerous and great Auditor, that one Mistake in Point of Law might not go unrectified, which seemed to be urged with some Earnestness by the noble Lord at the Bar, *That there is a Necessity in Point of Law, that there should be two positive Witnesses to convict a Man of Treason.*

He seemed to lay a great Stress upon that; but certainly his Lordship is under a great Mistake, as to the Law in that Point; for without all doubt, what was urged in answer to this Objection by that learned Gentleman that concluded for the King, is true, There may be such other substantial Circumstances joined to one positive Testimony, that, by the Opinion of all the Judges of *England*, several Times has been adjudged and held to be a sufficient Proof.

As for the Purpose, in this Case, suppose your Lordships, upon the Evidence that has been given here this Day, should believe *Saxon* swears true, who is a positive Witness, and shall then likewise believe that there was that Circumstance of *Jones's* coming over from *Holland* with such a Message upon the twenty-seventh of *May* (which is directly sworn in Evidence, you are the Judges of that Evidence) and what the other Witnesses have sworn likewise, and is not denied by my Lord, the Prisoner at the Bar, that he went out of *Town* that Night, changed his Name, and went in an indirect By-Road; certainly these Circumstances, if your Lordships be satisfied he went for that Purpose, do necessarily knit the positive Testimony of *Saxon*, and amount to a second Witness.

That is, if *Saxon's* positive Testimony be true, then suppose all these Circumstances that gave the Jealousy, do make up a strong Presumption to join with the positive Evidence of *Saxon*; then you have two Witnesses, as the Law requires, especially if the Answer given by the Prisoner to those Circumstances be not sufficient (as the slender Account he gives of his so frequent Journeys in so short a Compass of Time) but that there still remains some Suspicion. I could have wished, indeed, that Matter might have been made somewhat more clear, that no Shadow of Suspicion might remain.

Your Lordships are Judges: And if you do not believe the Testimony of *Saxon*, whose Testimony hath been so positively contradicted by divers Witnesses of Quality, the Prisoner ought to be acquitted of this Indictment: If your Lordships please, you may go together, and consider of it.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew in their Order, according to their Precedency, with the Serjeant at Arms before them.

L. H. Steward. Lieutenant of the *Tower*, take your Prisoner from the Bar.

The Prisoner was taken into the little Room appointed for him at the Entrance into the Court.

The Peers staid out about half an Hour, and then returned in the same Order that they went out in, and seated themselves in their Places as before.

Cl. Crown. Serjeant at Arms, take the Appearance of the Peers. *Lawrence*, Earl of *Rochebester*, Lord High Treasurer of *England*.

He stood up uncovered, and answered,

Lord Treasurer. Here.

And so did all the rest.

L. H. Steward. My Lords, are you agreed of your Verdict?

Lords. Yes.

The Lord High Steward took their Verdict Seriatim, beginning with the puisne Peer, in this Manner

L. H. Steward. How say you, my Lord *Churchill*, is *Henry*, Baron of *Delamere*, guilty of the High-Treason whereof he stands Indicted, and hath been Arraigned, or Not guilty?

The Lord Churchill stood up uncovered, and laying his Hand on his Breast, answered,

Lord Churchill. Not guilty, upon my Honour.

And so did all the rest of the Peers.

L. H. Steward. Lieutenant of the *Tower*, bring your Prisoner to the Bar.

The Prisoner was brought again to the Bar.

L. H. Steward. My Lord *Delamere*, I am to acquaint you, that my Noble Lords, your Peers, having considered of the Evidence that hath been given, both against you and for you, after they were withdrawn, have returned, and agreed on their Verdict, and by that Verdict have unanimously declared, that you are not Guilty of the High-Treason, whereof you have been Indicted, and this Day Arraigned, and therefore I must discharge you of it.

L. Delamere. May it please your Grace, I shall pray to Almighty God, that he will please to give me a Heart to be thankful to him for his Mercy, and my Lords for their Justice; and I pray God deliver their Lordships, and all honest Men, from wicked and malicious, lying and false Testimony; I pray God bless his Majesty, and long may he reign.

L. H. Steward. And I pray God continue to him his loyal Peers, and all other his loyal Subjects.

Cl. Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes! My Lord High-Steward of *England*, his Grace, itraitley willeth and commandeth all manner of Persons here present to depart hence in God's Peace, and the King's, for his Grace my Lord High-Steward of *England* now dissolves his Commission.

God save the King.

At which Words his Grace taking the White-Staff from the Usher of the Black-Rod, held it over his own Head, and broke it in two; thereby dissolving the Court.

CXXXVIII. Proceedings against Dr. HENRY COMPTON,
 Lord Bishop of * London, in the Council-Chamber at
 White-hall, by the Lords Commissioners appointed by His
 Majesty to inspect Ecclesiastical Affairs, for not Sus-
 pending † Dr. JOHN SHARP, Rector of St. Giles's,
 August 1686. 2 Jac. II.

The King's Ecclesiastical Commission.



JAMES the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To the most Reverend Father in God, Our Right Trusty and Well-beloved Councillor, William Lord Archbishop of Canterbury, Primate of all England, and Metropolitan. And to Our Right Trusty and Right Well-beloved Councillor, George Lord Jeffereys, Lord Chancellor of England. And to Our Right Trusty, and Right Well-beloved Cousin and Councillor, Lawrence Earl of Rochester, Lord High Treasurer of England. And to Our Right Trusty, and Right Well-beloved Cousin and Councillor, Robert Earl of Sunderland, President of Our Council, and Our Principal Secretary of State. And to the Right Reverend Father in God, Our Right Trusty and Well-beloved Councillor, Nathaniel Lord Bishop of Durham. And to the Right Reverend Father in God, Our Right Trusty and Well-beloved Thomas Lord Bishop of Rochester. And to Our Right Trusty and Well-beloved Councillor, Sir Edward Herbert, Knt. Lord Chief Justice of the Pleas, before Us to be holden, Assigned, Greeting. We for divers good, weighty and necessary Causes and Considerations, Us hereunto especially moving, of Our meer Motion, and certain Knowledge, by Force and Virtue of Our Supream Authority and Prerogative Royal, do assign, name and authorize by these Our Letters Patent under the Great Seal of England, you the said Lord Archbishop of Canterbury, Lord Chancellor of England, Lord High Treasurer of England, Lord President of Our Council, Lord Bishop of Duresme, Lord Bishop of Rochester, and Our Chief Justice aforesaid, or any three or more of you, whereof you the said Lord Chancellor to be one, from Time to Time, and at all Times during Our Pleasure, to Exercise, Use, Occupy and Execute under Us all manner of Jurisdictions, Privileges, and Prebeminencies in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdictions, within this our Realm of England, and Dominion of Wales, and to visit, reform, redress, order, correct, and amend all such Abuses, Offences, Contempts, and Enormities whatsoever, which by the Spiritual or Ecclesiastical Laws of this Our Realm can or may lawfully be reformed, redressed, corrected, restrained, or amended, to the Pleasure of Almighty God, and Increase of Virtue, and

the Conservation of the Peace and Unity of this Realm. And We do hereby give and grant unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, thus by Us named, assigned, authorized and appointed, by Force of Our Supream Authority and Prerogative Royal, full Power and Authority, from Time to Time, and at all Times, during Our Pleasure, under Us to exercise, use and execute all the Premises according to the Tenor and Effect of these Our Letters Patents, any Matter or Cause to the contrary, in any wise notwithstanding. And We do by these Presents give full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, by all lawful Ways or Means, from Time to Time hereafter, during Our Pleasure, to enquire of all Offences, Contempts, Transgressions and Misdemeanors done and committed, and hereafter to be done and committed, contrary to the Ecclesiastical Laws of this Our Realm, in any County, City, Borough, or other Place or Places, exempt or not exempted, within this Our Realm of England, and Dominion of Wales, and of all and every Offender or Offenders therein, and them, and every of them, to order, correct, reform and punish by Censure of the Church. And also We do give and grant full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, in like Manner as aforesaid, from Time to Time, and at all Times during Our Pleasure, to enquire of, search out, and call before you all and every Ecclesiastical Person or Persons, of what Degree or Dignity soever, as shall offend in any of the Particulars before-mentioned, and them, and every of them, to correct and punish for such their Misbehaviours and Misdemeanors, by suspending or depriving them from all Promotions Ecclesiastical, and from all Functions in the Church, and to inflict such other Punishments or Censures upon them, according to the Ecclesiastical Laws of this Realm. And further We do give full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, by Virtue hereof, and in like Manner and Form as is aforesaid, to enquire, hear, determine and punish all Incest, Adulteries, Fornications, Outrages, Misbehaviours, and Disorders in Marriage, and all other Grievances, great Crimes or Offences, which are punishable or reformatable by the Ecclesiastical Laws of this Our Realm, committed or done, or hereafter to be

* Burn. Hist. Own Times, Vol. I. p. 676.

† Ibid. p. 674.

committed or done, in any Place exempt or not exempt, within this our Realm, according to the Tenor of the Ecclesiastical Lawes in that Behalf: Granting you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, full Power and Authority to order and award such Punishment to every such Offender, by Censures of the Church, or other lawful Ways, as is aforesaid. And further, We do give full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, all and every Offender and Offenders in any of the Premises, and also all such as by you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall seem to be suspected Persons in any of the Premises, and them to examine, touching every or any of the Premises which you shall object against them; and to proceed against them, and every of them, as the Nature and Quality of the Offence, or Suspicion in that Behalf shall require: And also to call all such Witnesses, or any other Person or Persons that can inform you concerning any of the Premises, as you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, and them, and every of them, to examine upon their corporal Oaths, for the better Trial and Opening of the Truth of the Premises, or any Part thereof. And if you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall find any Person or Persons whatsoever obstinate or disobedient in their Appearance before you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, at your Calling and Commandment, or else not in obeying, or in not accomplishing your Orders, Decrees and Commandments, or any Thing touching the Premises, or any Part thereof, or any other Branch or Clause contained in this Commission, that then you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall have full Power and Authority to punish the same Person and Persons so offending, by Excommunication, Suspension, Deprivation, or other Censures Ecclesiastical; and when any Persons shall be convicted or prosecuted before you, as aforesaid, for any of the Causes above expressed, at the Instance and Suit of any Person prosecuting the Offence in that Behalf, that then you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall have full Power and Authority to award such Costs and Expences of the Suit, as well to and against the Party as shall prefer or prosecute the said Offence, as to and against any Party or Parties that shall be convicted, according as their Causes shall require, and to you in Justice shall be thought reasonable. And further Our Will and Pleasure is, That you assume Our Well-beloved Subject William Bridgman, Esquire, one of the Clerks of Our Council, or his sufficient Deputy or Deputies in that Behalf, to be your Register, whom We do by these Presents depute to that Effect, for the Registering of all your Acts, Decrees and Proceedings, by Virtue of this Our Commission; and that in like Manner you, or any three or more of you, whereof you the said Lord Chancellor to be one, by your Discretions shall appoint one or more Messenger or Messengers, or other Officer or Officers necessary and convenient to attend upon you for any Service in this Behalf. Our Will and express Commandment also is, That there shall be two Paper Books indented and made, the one to remain with the said Register, or his sufficient Deputy or Deputies, the other with such Person, and in such Places as you the said Commissioners, or any three or more of you, whereof you the said Lord Chancellor

to be one, shall in your Discretions think most fit and meet; in both which Books shall be fairly entered all the Acts, Decrees and Proceedings made, or to be made, by Virtue of this Our Commission. And whereas Our Universities of Oxford and Cambridge, and divers Cathedral and Collegiate Churches, Colleges, Grammar-Schools, and other Ecclesiastical Incorporations, have been erected, founded, and endowed by several of Our Progenitors, Kings and Queens of this Realm, and some other by the Charity and Bounty of some of their Subjects, as well within Our Universities as other Parts and Places, the Ordinances, Rules and Statutes whereof be either imbezelled, lost, corrupted, or altogether imperfect; we do therefore give full Power and Authority to you, or any five or more of you, of whom We will you the forenamed, the Lord Chancellor always to be one, to cause and command in Our Name, all and singular the Ordinances, Rules and Statutes of Our said Universities, and all and every Cathedral and Collegiate Churches, Colleges, Grammar-Schools, and other Ecclesiastical Incorporations, together with their several Letters Patents, and other Writings, touching or in any wise concerning their several Erections and Foundations, to be brought and exhibited before you, or any five or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one; willing, commanding, and authorizing of you, or any five or more of you, as aforesaid, whereof you the said Lord Chancellor to be one, upon the exhibiting, and upon diligent and deliberate View, Search and Examination of the said Statutes, Rules and Ordinances, Letters Patents and Writings, as is aforesaid, the same to correct, amend and alter; and also where no Statutes are extant, in all or any of the aforesaid Cases, to devise and set down such good Orders and Statutes as you, or any five or more of you, whereof you the said Lord Chancellor to be one, shall think meet and convenient, to be by Us confirmed, ratified, allowed, and set forth, for the better Order and Rule of the said Universities, Cathedral and Collegiate Churches, Colleges and Grammar-Schools, Erections and Foundations, and the Possessions and Revenues of the same, and as may best tend to the Honour of Almighty God, Increase of Virtue, Learning and Unity in the said Places, and the publick Weal and Tranquillity of this Our Realm. Moreover, Our Will, Pleasure and Commandment is, that you Our said Commissioners, and every of you, shall diligently and faithfully execute this Our Commission, and every Part and Branch thereof, in Manner and Form aforesaid, and according to the true Meaning thereof; notwithstanding any Appellation, Provocation, Privilege or Exemption in that Behalf, to be had, made, pretended, or alledged by any Person or Persons resident or dwelling in any Place or Places exempt, or not exempt, within this Our Realm; any Law, Statutes, Proclamations or Grants, Privileges or Ordinances, which be, or may seem contrary to the Premises notwithstanding. And for the better Credit, and more manifest Notice of your so doing, in the Execution of this Our Commission, Our Pleasure and Commandment is, That to your Letters missive, Proccesses, Decrees, Orders and Judgments, for or by you, or any three or more of you, as is aforesaid, to be awarded, sent forth, had, made, decreed, given or pronounced, at such certain publick Places as shall be appointed by you, or by any three or more of you, as is aforesaid, for the due Execution of this Our Commission, you or some three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall cause to be put and fixed a Seal, engraven with a Rose and Crown, and the Letter J. and Figure 2 before, and the Letter R. after the same, with a Ring or Circum-

Circumference about the same Seal, containing as followeth, Sigillum Commissionarium Regiæ Majestatis ad Causas Ecclesiasticas. Finally, We will and command all and singular other our Ministers and Subjects in all and every Place and Places, exempt and not exempt, within our Realm of England, and Dominion of Wales, upon any Knowledge or Request from you, or any three or more of you, as is aforesaid, to them, or any of them, given or made, to be aiding, helping or assisting unto your Commandments, in and for the due executing your Precepts, Letters and other Processes, requisite in and for the due executing of this Our Commission, as they and every of them tender our Pleasure, and will answer the contrary at their utmost Perils. In Witnesses, &c.

The King's Letter.

Dated Monday, June the 14th.

Delivered at Fulham on Thursday, being the 17th of the same June, in the Afternoon, by Mr. Atterbury the Messenger.

JAMES R.

Right Reverend Father in God, We greet you well. Whereas We have been inform'd, and are fully satisfied, that Dr. John Sharp, Rector of the Parish-Church of St. Giles in the Fields, in the County of Middlesex, and in your Diocess, notwithstanding Our late Letter to the most Reverend Fathers in God the Archbishops of Canterbury and York, and our Directions concerning Preachers, given at our Court at Whitehall, the 15th of March, 1685, in the second Year of Our Reign; yet he, the said Dr. John Sharp, in Contempt of the said Orders, hath in some of the Sermons he hath since preached, presumed to make unbecoming Reflections, and to utter such Expressions as were not fit or proper for him; endeavouring thereby to beget in the Minds of his Hearers an evil Opinion of Us and Our Government, by insinuating Fears and Jealousies, to dispose them to Discontent, and to lead them into Disobedience and Rebellion. These are therefore to require and command you immediately upon Receipt hereof, forthwith to suspend him from further Preaching in any Parish-Church or Chapel in your Diocess, until he has given Us Satisfaction, and Our further Pleasure be known herein: And for so doing, this shall be your Warrant: And so We bid you heartily Farewell.

Given at Our Court at Windsor, the 14th Day of June, 1686. in the second Year of Our Reign.

By his Majesty's Command.

SUNDERLAND.

The Bishop of London's Answer,

Sent by Dr. Sharp to the Earl of Sunderland, then at Hampton-Court, upon Friday, June 18. who could have no Answer.

To the Right Honourable the Earl of Sunderland, Lord President, &c.

MY LORD,

I Always have, and shall count it my Duty to obey the King in whatever Commands he lays upon me, that I can perform with a safe Conscience: But in

this, I humbly conceive, I am obliged to proceed according to Law; and therefore it is impossible for me to comply; because though his Majesty commands me only to execute his Pleasure, yet, in the Capacity I am to do it, I must act as a Judge; and your Lordship knows no Judge condemns any Man before he has Knowledge of the Cause, and has cited the Party. However, I sent to Mr. Dean, and acquainted him with his Majesty's Displeasure, whom I find so ready to give all reasonable Satisfaction, that I have thought fit to make him the Bearer of this Answer, from him that will never be unfaithful to the King, nor otherwise than,

*My Lord, your Lordship's
most humble Servant,
H. LONDON.*

On Sunday after, Dr. Sharp carried a Petition to Windsor, which was not admitted to be read: Which is as follows.

To the King's most Excellent Majesty.

The humble Petition of John Sharp, Clerk,

Sheweth,

That nothing is so afflictive to your Petitioner, as his Unhappiness to have incurred your Majesty's Displeasure; which he is so sensible of, that ever since your Majesty was pleased to give Notice of it, he hath forborn all publick Exercise of his Function, and still continues so to do.

Your Petitioner can with great Sincerity affirm, that ever since he hath been a Preacher, he hath faithfully endeavoured to do the best Service he could in his Place and Station, as well to the late King, your Royal Brother, as your Majesty, both by preaching and otherwise.

And so far he hath always been from venting any thing in the Pulpit tending to Schism or Faction, or any way to the Disturbance of your Majesty's Government, that he hath upon all Occasions in his Sermons, to the utmost of his Power, set himself against all Sorts of Doctrines and Principles that look that way: And this he is so well assured of, that he cannot but apprehend that his Sermons have been very much misrepresented to your Majesty.

But if in any Sermon of his, any Words or Expressions have unwarily slipped from him, that have been capable of such Constructions, as to give your Majesty Cause of Offence, as he solemnly professes he had no ill Intention in those Words or Expressions, so he is very sorry for them, and resolves for the future to be so careful in the Discharge of his Duty, that your Majesty shall have Reason to believe him to be your most faithful Subject.

And therefore he earnestly prayeth, that your Majesty out of Your Royal Grace and Clemency, would be pleased to lay aside the Displeasure You have conceived against Your humble Petitioner, and restore him to that Favour which the rest of the Clergy enjoy under your Majesty's gracious Government.

So shall Your Petitioner ever Pray, &c.

In the Council-Chamber at White-Hall, &c.

Mercurii 4 die Augusti, 1686.

Present in Council, *Lord Chancellor, Lord Bishop of Durham, Lord Treasurer, Lord Bishop of Rochester, Lord President, Lord Chief Justice Herbert.*

Upon my Lord Bishop's appearing before them, according to a Summons sent unto him, the Lord Chancellor Jeffereys began, viz.

Lord Chancellor. MY Lord Bishop of London, the Lords here present have received Orders from the King to inspect all Ecclesiastical Affairs and Persons; and He hath commanded us to cite you before us; and I desire you would give a positive and direct Answer to it: What was the Reason you did not suspend Dr. Sharp, when the King commanded, and sent you express Order so to do, and told you what it was for, *viz.* for preaching seditiously and against the Government?

Lord Bishop. I have received such an Order; and if what was done in that Affair was done amiss, and contrary to my Duty, it was my Ignorance and Inadvertency, and not a wilful Fault: I have been always ready to express my Duty to his Majesty; and if in this Particular I have not complied, it was because, as I was told, I could not. I was not so shallow as to go on my own Head, but took the best Advice I could get: I consulted those whose Business it is more perfectly to understand these Proceedings; all told me I could not legally do it, but by way of Citation and hearing him.

Lord Chanc. *Ignorantia Juris non excusat*; you ought to have known the Law, and it was a wonder you did not: The King is to be obey'd, and if you have any Reason to shew in this Particular, we are ready to hear you.

Lord Bishop. I knew not what would be laid to my Charge, and therefore was not provided to make such a Defence as I might have done; but if your Lordships will give me a Copy of your Commission, and a Copy of my Charge, and allow me some Time, I will endeavour to give your Lordships Satisfaction.

Lord Chanc. My Lord, I would not misinterpret your Words, but shall desire you to explain their Meaning. If by desiring a Copy of our Commission, you design to quarrel with the Jurisdiction and Legality of the Court, I have another Answer for you; but till I know your Meaning here, my Answer is, that no Copy of the Commission can be granted, and it is unreasonable to desire it; it is upon Record; all the Coffee-houses have it for a Penny a-piece, and I doubt not but your Lordship has seen it.

Lord Bishop. I have never seen it, nor have I desired it for such Ends, to dispute the Legality of it: But your Lordship knows it is a Thing altogether new to this Generation, and, it may be, something may be found in it, whereby I may be instructed and directed in my Answer and Behaviour in the Matter. But, my Lord, if I

may not have a Copy of it, will your Lordships please I may either read, or hear it read?

Lord Chanc. That is a Thing I cannot grant of my self, I must ask my Lords Commissioners Judgment; and if you will be pleased to withdraw, you shall hear it.

The Bishop and all the Company withdrew for a Quarter of an Hour; then returning, the Lord Chancellor said,

My Lord, all the Commissioners are of Opinion, that your Request is not to be granted, and that it is unreasonable. Might every one that appears here challenge the sight of our Commission, and the reading of it, all our Time will be spent in the reading, and we have something else to do.

The Proceedings of Courts in this Kind are never by Libel and Articles: *Sapientem succinctim ore tenus*, by Word of Mouth only; and it is a short Question I ask, Why you did not obey the King?

Lord Bishop. It is a short Question, but requires more Words to answer it. I pray your Lordships to consider I am a Peer, a Bishop, and have a Publick Trust, though unworthy, under a Publick Character; and I would behave my self as becomes one in these Capacities.

Lord Chanc. We know very well your Lordship's Quality and Character, and are willing to shew all due Respect to your Lordship; but yet we must have a due Regard for the King, and Government too: His Majesty must not be neglected.

Lord Bishop. My Lord, I suppose there is no Appeal from the Court; and when a Man is to be condemned at one Bar, and is in Danger of being knock'd down at one Blow, you would think it unreasonable he should not have some Time to make his Defence.

Lord Chanc. My Lord, I suppose their Lordships will be willing to grant some Time: I pray what Time does your Lordship desire?

Lord Bishop. My Lord, it is the Affize-time, and most of the Council, upon some Occasion or other (either Business or Diversion) are in the Country: I pray you, my Lord, I may have till the beginning of the Term.

Lord Chanc. Hah! That's unreasonable: His Majesty's Business cannot admit of such Delays; methinks a Week should be enough: What say your Lordships, Is not a Week enough?

The Commissioners being asked, signified by the Chancellor that a Week was enough.

Lord Bishop. Since your Lordship will grant no more, I will ask no more.

Lord Chanc. Adjourn until Monday next, the Ninth of August, 1686.

Upon the Ninth Day his Lordship came, attended with his Nephew, the Earl of Northampton, his Brother in Law, Sir John Nicholas, and his Brother, Sir Francis Compton, &c.

There being present in Council the same as before in the same Proceedings.

Lord Chanc. MY Lord, we are here to hear your Reasons.

Lord Bishop. My Lord, I have lost no Time for preparing my Answer, but am not so ready as I might have been, because I could not light of the Commission your Lordship told me was upon Record, and in every Coffee-house, but employed a whole Week to search for it, and could not have a Sight of it until last Night: If your Lordship doubts the Truth of this, I have the Person ready to make Oath here of it.

Lord Chanc. My Lord, you are a Person of Honour, and we will not question the Truth of what you say, there needs no Oath: But, my Lord, I must tell you, that we will not admit of any quarrelling with our Commission, we are well assured of the Legality of it, otherwise we would not be such Fools as to sit here.

Lord Bishop. My Lord, I have other Reasons why I desire a Sight of your Commission; it may be, it may not reach me, being a Peer and a Bishop; and it may be, it may not reach this particular Case; and therefore I desire a Sight of it, in regard I could not see it until the last Night. I have not had time to take Advice what to answer; if your Lordship will not be satisfied, I must give such an Answer as I have prepared; but it is my Desire to have longer Time for it.

Lord Chanc. Is this all you have to say?

Lord Bishop. This is the first Thing: I do not desire to prolong the Time, the Necessity of the Case requiring it, the Council being out of Town in whom I think to confide.

Lord Chanc. If your Lordship will withdraw, we will give you an Answer.

He withdrew for a Quarter of an Hour.

Lord Chanc. My Lord, as I formerly told you, we will not endure any quarrelling at our Commission; it will be an odd Thing in us to give you Time to pick Holes in it; but we are willing to pay all due Respects to your Lordship: What Time do you require?

Lord Bishop. I shall submit to your Lordships; but I hope a Fortnight will not be unreasonable.

Lord Chanc. Agreed: You shall have it until to Morrow Fortnight in the Morning.

To which my Lord Chancellor added,

Lord Chanc. My Lord, when I told you our Commission was to be seen in every Coffee-house, I did not speak with any Design to reflect on your Lordship, as if you were a Hunter of Coffee-houses. I abhorred the Thoughts of it, and intended no more by it, but that it was common in the Town.

Note, When the Bishop spake concerning the Commission, Sir Thomas Clarges spake with a loud Voice, saying, *Well put, well put; my Lord speaks nothing but Truth.* There was also another Gentleman, Sir John Lowther of Lincolnshire, who as he was coming away in the Crowd, said, *There are some who have*

represented me as a Papist, but the contrary shall appear; I will not be afraid, nor ashamed, to vindicate my Lord Bishop's Cause before the Commissioners themselves.

TUESDAY, August 23, 1686.

There being present in Council the same as in the former Proceedings: The Lord Bishop attending, the Proceedings were as follow.

Lord Chanc. MY Lord, we are now ready to hear your Lordship's Answer.

Lord Bishop. My Lord, notwithstanding the Time hath been very short, considering the Weightiness of the Matter, and the Absence of many of the learned Council, I have taken what Advice I could, and have consulted those that are very learned in the Laws. I hope there will be no Misinterpretation of my Words, I do not intend any Thing which is derogatory to the King's Supremacy, that is undutiful to his Majesty, or disrespectful to your Lordships. My Council tells me, that your Proceedings in this Court are directly contrary to the Statute Law, and are here to plead it, if your Lordships will admit them.

Lord Chanc. We will neither hear your Lordship nor your Council in the Matter; we are sufficiently satisfied of the Legality of our Commission, as we often told you.

Lord Bishop. My Lord, I am a Bishop of the Church of England, and by all the Law in the Christian Church in all Ages, and by the particular Law of this Land, I am, in Case of Offence, to be tried by my Metropolitan and Suffragans: I hope your Lordship will not deny the Right and Privilege of Christian Bishops.

Lord Chanc. My Lord, you know our Proceedings are according to what has been done formerly, and that we have an original Jurisdiction: This is still questioning our Court.

Lord Bishop. It is partly.

Lord Chanc. Nay, it is absolutely so.

Lord Bishop. My Lord, I hope you will interpret every Thing in your Commission in Favour of the Person that is brought before you: I humbly conceive that your Commission doth not extend to the Crimes laid to my Charge, for you are to censure Faults which shall be committed: That that I am accused of, was before the Date of your Commission.

Lord Chanc. I confess there is such a Clause, but there are general Clauses, that take in Things that are past, as well as those that are to come. Hath your Lordship any thing more?

Lord Bishop. My Lords, protesting in my own Right to the Laws of the Realm, as a Subject, and the Rights and Privileges of the Church, as a Bishop, I shall, with your Lordships leave, give you my Answer.

Which was accepted; and the Bishop withdrew, and left Dr. Sharp's Petition, which the King had refused to accept.

Lord Chanc. My Lords, we have read the Paper.

Lord Bishop. My Lord, it is Dr. Sharp's Petition to the King.

Lord Chanc. My Lord, be pleased to take it again, we are not concerned in it; will you please that your Lordship's Answer be read?

Lord Bishop. Yes, if your Lordship please. My Lord, I have this to say further, What I did

in this Matter was *Jurisperitorum Concilio*. I consulted my Council, who is the Judge of my Courts, as well as others; and the Law says, That what is done by the Advice of Council, shall not be interpreted to be done maliciously, or obstinately. The Law, in this Case, requires, that if a Prince require a Judge to execute an Order, which is not agreeable to the Law, he shall *Rescribere & Reclamare Principi*. Now, my Lord, I conceived I acted in this according to my Duty, for I wrote back to my Lord President, in as becoming Words as I could; and acquainted him, that an Order to suspend before Citation and hearing the Person, is against Law, and expected his Majesty's further Pleasure.

In the next Place, my Lords, I did in Effect what the King commanded to be done, for I advised Dr. *Sharp* to forbear Preaching till his Majesty had received Satisfaction concerning him; and accordingly he hath forborn in my Diocess.

Lord Chanc. My Lord, will you have your Paper read?

Lord Bishop. Yes, if your Lordship please.

Which contained the King's Letter, and the Bishop's Answer thereto.

Lord Chanc. Hath your Lordship any more to say?

Lord Bishop. My Lord, I desire your Lordship would hear my Council, by whom you may have more clear and full Satisfaction concerning what I have said.

Whereupon the Bishop was desired to withdraw, and after half an Hour, he and his Council were called in; who were Drs. Oldish, Hodges, Price, and Newton. A brief Account of what they pleaded.

Dr. Oldish. My Lord, the Question before your Lordship is, Whether the Bishop of London hath been disobedient to the King's Command; concerning which, it must be considered,

First, What was commanded to be done.

Secondly, What he did in Obedience to it.

Thirdly, What Judgment ought to have been given by him.

It is apparent by the Letter, that the King did not take Cognizance of the Cause, for the Words are, *Being informed that Dr. Sharp, &c.* So that it could not be an absolute Suspension, for that supposeth a Proof of the Crime charged upon him: Then let us consider the Words themselves:

That you suspend him from Preaching. Now, my Lords, we have no such Thing in our Laws; so that the Meaning must be Silencing of him. Where there is an absolute Suspension, there ought to be Citation, Form of Proceeding, Judgment and Decree; to act otherwise is contrary to the Law of God, of Nature, of all Nations in all Ages, and was never known in the World.

Lord Chanc. I am loth to interrupt you; but I must tell you, this is an unnecessary Harangue; we know that it was not an absolute Suspension: But the Question is, Whether the Bishop could suspend him from Preaching?

Dr. Oldish. Then, my Lords, I have gained another Point; if it were only Silencing him, the Question is, Whether the Bishop did not execute the King's Commands? I think he did, and in such a Method as is observed in our Courts.

When any eminent Person is accused, the Judges send to him by a Letter; and if he appears and complies with the Judges Order, the Law is satisfied.

Judicium redditur in invitum non in volentem: The Bishop did send for Dr. *Sharp*, shewed him the King's Letter, advised him not to Preach till the King had received Satisfaction; in which he promised to observe his Lordship's Command, and hath not preached to this Day; so that his Majesty's Command was, in Effect, fulfilled. My Lord, there is the like Proceedings in the Common Law; for if an Attorney takes a Man's Word for his Appearance, there lies no Action against the Attorney.

Lord Chanc. Cujus contrarium: There lies an Action of Escape against the Attorney —

Dr. Hodges. My Lords, the Matter of Fact hath been stated, and the Question is, Whether the Bishop hath been disobedient to the King's Command? It appears, that he has not; because upon the Receipt of his Majesty's Letter, he required the Doctor not to Preach, and he hath obeyed him in that which the King commanded. To suspend him, the Bishop could not do, the Act of Suspension is a Judicial Act: The King writes to him as to a Bishop, to suspend as a Bishop and as a Judge, which could not be done without the hearing of the Cause. If the Prince sends to a Person that is not a Judge, that is only in a ministerial Office, that Officer is to execute his Commands: But when the King commands a Judge, he commands him to act as a Judge. This is no light Matter the Doctor is accused of; it is for preaching Sedition and Rebellion, which requires a severe Censure. And if the Bishop, as a Judge, had suspended him, he had begun at the wrong End, for this had been Judgment before Process: In this Cause there ought to have been a Citation, our Books giving many Instances, which would be too tedious to your Lordships — I will give this one: The Emperor's Proceedings against the King of *Sicily*, upon Information which he had received; and giving him no Citation, the King appealed to the Pope, who declared the Proceedings to be void; and that it was against the Law of Nature, which is above all positive Laws, to pass Sentence before Citation. This is the Method of proceeding before all Courts, and I humbly conceive it is, and will be, the Method of this Court; for otherwise, the Bishop need not to have been cited before you. The Bishop has done what was his Duty, he was bound to return his Reason to the King, why he did not do that which he commanded, and to expect his further Answer; which was done. I affirm, that if a Prince, or a Pope, command a Thing which is not lawful, it is the Duty of a Judge *Rescribere*; which is all he can do, quoting his Author.

Dr. Price. The Question is *ut supra*: A Citation is *Jure Gentium*, and can never be taken away by any positive Command or Law whatsoever: The Bishop hath obeyed the King so far as he could, and did rescribe, expecting his Majesty's further Pleasure. If the Bishop could have suspended him, it must have been done *in Aula*; but in regard it was only silencing him, which was required, it might be done in a private Room: The Advice of a Bishop is in some Sense an Admonition, which is a Judicial Act,

dicial Act, and this was given by a Bishop, and obeyed by the Doctor.

Dr. Newton. My Lord, the Question is not *ut supra*, the Bishop hath not been disobedient. As in Nature no Man can be desired to do that which is impossible, so no Man can be obliged to do an unlawful Act. (*Id non fit quod non legitime fit.*) This Rule obliges all Men, at all Places, and at all Times. The Charge against *Dr. Sharp* is of a very high Nature; and he desired to be heard before he was condemned.

My Lords, the Bishops are *Custodes Canonum*, and therefore must not break them themselves. I affirm, the Bishop was so far from being Disobedient, that he was Obedient to the King: For where he did *Rescribere*, and heard not the further Pleasure of the King returned, he ought to conclude, the King was satisfied with what he had written, according to his Duty, and the King had altered his Commands. A Citation, as your Lordships have heard, is according to all Laws, in all Places, in all judicial Acts; there is something to be done according to Law, and somewhat according to the Discretion of the Judges, and for that Reason as well as these, the Offenders ought to be cited before him; that which was in the Bishop's Power to do, he hath done, and it was in Effect what the King commanded to be done.

Lord Bishop. If through Mistake I have erred in any Circumstance, I am ready to beg his Majesty's Pardon, and shall be ready to make any Reparation I am capable.

The Bishop withdrew for Half an Hour, then was called in.

Lord Chanc. We will be here again on *Wednesday* next, and I desire your Lordship to be here again about Ten in the Forenoon.

Lord Bishop. My Lord, I desire that Care may be taken concerning the Minutes, which are taken by the Clerks of what hath passed, and that I may not be misrepresented to the King by the Mistake of the Penman.

Lord Chanc. My Lord, you need not fear it; I hope you have a better Opinion of us; there shall be no Advantage taken by them or us.

Bishop Rob. There shall be no Advantage taken, but all imaginable Care taken concerning it.

Note, When the Councillors were Pleading, *Dr. Pinfold*, the King's Advocate, stood at the Chancellor's Elbow, and took Notes; by which it was expected that he should make a Reply, but he said nothing; and 'tis supposed that he staid with the Council, when the Bishop withdrew, and gave them Reasons for his Silence.

Die Lunæ, 6 September, 1686.

There being present in Council the same as in the former Proceedings.

Lord Chanc. MY Lord, pray sit down. You were desired to appear this Day to hear your Sentence, which (to prevent Mistake) we have ordered to be put in Writing.

Lord Bishop. My Lord, may I have leave to speak before Sentence is read?

Lord Chanc. My Lord, we have heard you and your Council already.

Then the following Instrument, whereby the Bishop of *London* was suspended, was, by the Commissioners Order, read by *Mr. Bridgman*, their Lordships Register.

By his Majesty's Commissioners for Ecclesiastical Affairs.

WHEREAS *Henry*, Lord Bishop of *London*, hath been convened before Us, for his Disobedience, and other his Contempts, mentioned in the Proceedings of this Cause; and the said Bishop being fully heard thereupon, We have thought fit, upon mature Consideration of the Matter, to proceed to this Our definitive Sentence, declaring, decreeing and pronouncing, that the said *Henry*, Lord Bishop of *London*, shall for his said Disobedience and Contempt, be suspended during his Majesty's Pleasure; and accordingly, We do, by these Presents, suspend him the said Lord Bishop of *London*, peremptorily admonishing and requiring him hereby, to abstain from the Function and Execution of his Episcopal Office, and from all Episcopal and other Ecclesiastical Jurisdiction, during the said Suspension, upon Pain of Deprivation and Removal from his Bishoprick.

Given under our Hand and Seal the 6th Day of *September*, 1686. Sealed with the Seal of the Court, C. J. 2. Rose and Crown with this Inscription round it, *viz. Sigillum Commissionariorum Regiæ Majestatis ad Causas Ecclesiasticas.*

Signed by no body at all.

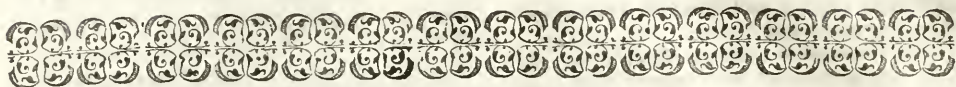
Some Days since, one of the Messengers attending the Court, deliver'd to the Dean of *St. Paul's* a Warrant, the Tenor whereof followeth:

By his Majesty's Commissioners for Ecclesiastical Affairs.

WHEREAS We have given Sentence of Suspension against *Henry* Lord Bishop of *London*, a Copy of which Sentence, under our Seal, is hereunto affixed: We have thought fit, and do hereby enjoin and require you, to cause the said Sentence to be affix'd on the Door of that Chapter-House, and on the Place now called the South Door of the said Church; to the End that publick Notice may be taken of the said Suspension. And you are to certify Us, under your Common Seal, of the due Execution of what is hereby required.

At our Council-Chamber at *Whiteball*, on *Tuesday* the 28th of this Instant *September*, at Eleven o'Clock in the Morning. Given under our Seal this Day of *September*, 1686. Sealed with the same Seal as the Sentence, but no Persons Names. Subscribed to the Dean and Chapter of *London*.

Dr. Sharp was also suspended about the same Time, but he was soon after restor'd to the Exercise of his Function; and when the King receiv'd Advice of the Prince of *Orange's* intended Expedition, the Bishop's Suspension was taken off.



CXXXIX. Proceedings against Dr. John Peachell, Vice-Chancellor, and the University of Cambridge *, for not admitting Alban Francis, a Benedictine Monk, to the Degree of Master of Arts, April and May 1687, 3 Jac. II.



On the ninth Day of *February*, being *As-Wednesday*, came a Letter under his Majesty's Signet Manual, dated the seventh of the same Month; the Substance whereof was, That hearing much in Commendation of one *Alban Francis*, a Benedictine, the King was pleased to command the University, that they should admit him to the Degree of Master of Arts, without administering to him any Oath or Oaths whatsoever, any Law or Statute to the contrary in any wise notwithstanding, with which his Majesty was graciously pleas'd to dispense in the Behalf of the said *Alban Francis*. On *Monday* the 21st, the Vice-Chancellor having summon'd a Congregation, read his Majesty's Letter, purporting as before, and superscrib'd to Our trusty and well-beloved Vice-Chancellor of Our University of *Cambridge*, to be communicated to the Senate there; on the reading whereof, the Senate, who made the best Advantage they could of the Vice-Chancellor's Delay, in order to get Advice, resolv'd to testify their common and almost unanimous Sense of the Thing, and in a Matter of such Consequence and novel Matter to interpose; accordingly there was a Paper, it is commonly call'd a Grace, the original Paper whereof I have seen drawn up in order to be put to the Vote of the House after the ordinary and usual Way; but the Constitution of that Body being such, that this must then of Necessity have been first propos'd to what we call the Head, which consists of six Persons, each of which has an arbitrary Voice and Power, upon dislike to stop any Proceedings finally, and hinder it being put to the House at all; This Method was laid aside as impracticable upon that Occasion; because Mr. *Basset*, a declar'd Roman Catholick, and one that had openly asserted Mr. *Francis*'s Cause, happen'd to be one of the six who compose the Head for this Year; it was therefore presum'd, with great Appearance of Reason, that he would put a Bar to the Proceedings, so the Grace not being suffer'd to be offer'd to the House, the Senate's Sense could never have been fully and particularly known thereupon.

This Consideration constrain'd them to the Use of another Course, which was, without the Formality of a Suffrage, voluntarily to testify their Concurrence with the Vice-Chancellor, and advise him to forbear the admitting Mr. *Francis* till the King had been petition'd to revoke his Mandate. As soon as the Letter came to *Town*, the Vice-Chancellor wrote a Letter to the Duke of *Albemarle* our Chancellor, to beg his Intercession with the King, which he returned Word was tried with none Effect, but possibly such a Body as the University concurring and signing a Petition, if that could be admitted, might prove better and more

successful. Now perhaps if every single Man present, to the Number perhaps of one hundred and fifty or two hundred, should address in Person to the Vice-Chancellor, this might look tumultuary, and it was thought the more quiet, decent, and respectful Way to send up their Sense by Messengers from each House: To this Purpose, Dr. *Smolt*, Professor of Casuistical Divinity, was made Choice of by the Non-Regents, and Mr. *Norris*, Fellow of *Trinity-College*, by the Regents. The Substance of what they deliver'd, was, That the House thought the Admission of Mr. *Francis* without the usual Oaths, illegal and unsafe, and for that Reason advis'd the King might be petition'd, in the doing which they were ready to join and make it their Act. The Opinions were given freely to the two Messengers of each House, and the thing was so unanimously approved of, that the only Persons taking notice of it, were three Papists, and one or two besides; afterwards there was a Gentleman admitted Doctor of Physick, having first taken the Oaths; and the Esquire-Beadles and Registers were sent to let Mr. *Francis* know, that the Senate were ready to admit him also, provided that he would swear as the Law appointed; but he refused, insisting on the King's Dispensation: and this was the Business of the first Meeting about this Matter.

Immediately upon the Congregation's breaking up, Mr. *Francis* took Horse for *London*, to represent at *Whitehall* what had been done, and the same Afternoon the Heads met in the Consistory, to consult what Letters should be sent, and to whom: They agreed upon one to the Duke of *Albemarle*, and another to the Earl of *Sunderland*, being the Secretary of State, through whose Hands the Mandate pass'd: An Esquire-Beadle was dispatched presently to *London*, who after having waited on the Duke of *Albemarle*, endeavour'd several times to get Access to the Lord *Sunderland*, but could not; at last having sent in his Letter, the Main whereof was a most humble Submission to his Majesty, with very solemn and unfeign'd Protestations, that what was now done, proceeded from no Principle of Disobedience and Stubbornness, but a conscientious Sense of our Obligation to Laws and Oaths, and a respectful Intimation that we were ready to petition the King that it might be admitted; but not daring to approach Him without some Significations, that it would be acceptable, we applied ourselves to his Lordship, desiring him to do the University the Favour to mediate for them, &c. He was dismissed without any particular Answer: Within a few Days came a second Letter, dated *February* 24, which by reason of the Assizes and some other publick Business intervening, was not read in the Senate till *Thursday*, *March* the 11th: The University and the Vice-Chancellor in the mean Time received a Letter,

wherein they found great Satisfaction by the Opinions of some eminent Lawyers, who concurr'd in the Approbation of what was already done, and for the future, could advise no better Course than humbly to represent the Cafe to his Majesty, and entreat him not to think amiss of so Loyal a Body, as always the University has shewed herself to be. The second Letter being read the Day aforesaid, which was exactly the same as the former, excepting only the Addition of a Clause, to do it at our own Peril; the Senate proceeded as before, to advise the Vice-Chancellor to some expedient Form, representing the Cafe fully and clearly to the King, as well with respect to the Illegality of such Admission, as the many ill Consequences that were likely to ensue from it: This the Non Regent House did by Mr. *Billers*, Fellow of *St. John's-College* (the publick Orator) and Mr. *Newton*, Fellow of *Trinity-College* (the Mathematical Professor) the Regent House by Mr. *Henry Finch*, Son to the late Lord Chancellor, Mr. *Burton* of *St. John's-College*, and Mr. *William Boveles* of *King's-College*: All which was done without the least Hurry or Irregularity, without so much as asking an Opinion; but every Man went and gave it quietly and of his own Accord, so that no manner of Inducement was put upon any one to declare himself in the Business, but what proceeded merely from his own Conscience, and a due Sense of Things. Another large Letter being prepared for the Duke of *Albemarle*, wherein was every thing that could be thought of to prevail with his Majesty, and one likewise shorter and less particular to the Earl of *Sunderland*; that very Afternoon Mr. *Braddock*, Fellow of *Katharine-hall*, and Mr. *Stanhope* of *King's-College*, were desired by the Vice-Chancellor to go to *London* with these Letters, and other Instructions, to apply themselves to several Persons of Quality and Character, that they would join Forces, and think it a common Cause; for so addressing to the King, the Success would be more probable, and the Honour done to the University the greater. *Sunday, March* the 13th, the two Gentlemen waited on the Duke of *Albemarle* their Chancellor, who received them with all the Goodness in the World, with Assurance, that notwithstanding he had waited on the King before, and knew his Inclinations; nay, though he had been received with something of Displeasure, yet considering the Relation he bore us, he would make another Attempt, and thought himself oblig'd to omit no Endeavours for the University's Safety and Advantage. *Monday* the 14th in the Evening, the Duke of *Albemarle* waited on the King, and in the Passage towards the Bed-chamber, took the two *Cambridge* Gentlemen into the Anti-chamber, that they might be introduc'd if Occasion were: The King, on the Duke of *Albemarle's* acquainting him with the Affair, told him he had not then Leisure to talk, but he commanded the Letter which the Vice-Chancellor sent to the Duke of *Albemarle*, with which in his Hands he passed through the Rooms; and making that Evening a Visit to the Queen Dowager, gave the Duke no further Opportunity of knowing his Pleasure at that Time. At the Duke's return from the Inner-Room, the Gentlemen desired him to give leave that they might use his Name to procure an easy Admittance to the Earl of *Sunderland*; for they resolv'd to deliver their Letter to no Hands but his own, if that might be: The Duke immediately sent his Gentleman of the Horse to one

of the Lord *Sunderland's* Secretaries, making it his Desire that Mr. *Braddock* and his Companion might see the Earl, who accordingly appointed them to attend next Morning, and then conducted them to the Earl of *Sunderland's* Bed-side, who took the Letter, and after some further Application to him by Word of Mouth, he promised to acquaint his Majesty, and tell them his Pleasure. On *Thursday*, at that Time when Mr. *Braddock* and Mr. *Stanhope* came, the Account they received was only this, That the King had seen the Vice-Chancellor's Letter, and was offended at the Proceedings of the University, and would take Care very shortly to give a further Answer.

Saturday the ninth of *April*, Mr. *Atterbury* came down with a Summons from the Ecclesiastical Commissioners to this Effect; That whereas Complaint to them was made against the Vice-Chancellor and Senate of *Cambridge*, for having refused to comply with his Majesty's Royal Letters in Behalf of Mr. *Francis*; they were therefore commanded to appear, the Vice-Chancellor in Person, the Senate by themselves, and the Deputies before the Lords Commissioners, in the Council-Chamber, the 21st of *April*, to answer to such things as shall be objected against them in his Majesty's Behalf upon the Premises, &c. *Monday April* the 11th, a Senate was called, and Persons nominated to represent the University, together with the Vice-Chancellor; all which being unanimously approved by the Senate, they empowered them, by an Instrument under the Common-Seal, to answer in their Behalf, and be their full Actors, Attorneys and Proctors, as to what should arise from the Commission upon the late Summons. And Mr. *Atterbury* having received private Instructions to stay, and cite every Man that was chosen personally, he came accordingly into the Senate-House, and summon'd as many as were present, waiting on the rest on a convenient Time. The Persons deputed by the Senate to represent and act were these:

Dr. *John Peachell* Vice-Chancellor, Master of *Magdalen-College*.

Dr. *John Eachard*, Master of *Katharine-hall*.

Dr. *Humfrey Babington*, Fellow of *Trinity-College*.

Dr. *Thomas Smoult*, Fellow of *St. John's-College*, and Professor of Casuistical Divinity.

Dr. *William Cook*, Doctor of Civil Law, and Fellow of *Jesus-College*.

Mr. *John Billers*, Fellow of *St. John's-College*, and the Publick Orator.

Mr. *Isaac Newton*, Fellow of *Trinity-College*, and Mathematical Professor.

Mr. *James Smith*, Fellow of *Queen's-College*.

Mr. *George Stanhope*, Fellow of *King's-College*.

THURSDAY, *April* the 21st, 1687.

Council-Chamber. Commissioners present.

L. Chancellor *Jefferys*. L. Bishop of *Durham*.

L. President *Sunderland*. L. Bishop of *Rockester*.

L. *Mulgrave*. L. Ch. Justice *Herbert*.

Earl of *Huntingdon*.

L. *Chanc.* IS Mr. Vice-Chancellor here?—
Which is he?

He standeth over against the Lord Chancellor, bowed and shewed himself.

L. *Chanc.* Is there any one come from the Senate to attend him?

K k 2

Mr. *Stan-*

Mr. Stanhope. Yes, my Lord, we are eight of us here deputed by the Senate to answer what shall be objected against them, according to your Lordships Summons.

The Noise and Crowd being great, Mr. Bridgman the Register was forced to repeat that again to the Lord Chancellor.

L. Chanc. Read the Summons.

Which was done.

L. Chanc. Now Mr. Vice-Chancellor, what have you to say why you did not obey his Majesty's Command, in Behalf of the Gentlemen mentioned there?

Vice-Chanc. My Lord, you enquire of me why I did not admit Mr. Francis, according to the King's Letters?

L. Chanc. Yes, that's the Question I ask you.

Vice-Chanc. Is this the only Question your Lordship is pleased to ask me?

L. Chanc. Nay, Mr. Vice-Chancellor, we will not capitulate in the very Beginning: Pray answer the first, and then you shall know what we have to say more.

Vice-Chanc. It is but a little while since we met in Town, and this is a Question of great Concern; I am not prepared to answer it on a sudden.

L. Chanc. Why, Mr. Vice-Chancellor, my Lords specified it in their Summons what would be questioned, on Purpose you should not come unprepared; but it may be Mr. Vice-Chancellor did not attend sufficiently to that Part of the Summons, therefore let it be read to him once more.

Which was done.

L. Chanc. Now, Sir, you hear it is for refusing to comply with the King's Commands.

Vice-Chanc. My Lords, I beg Time to answer you. My Lords, I am a plain Man, not used to appear before such an honourable Assembly, and if I should answer hastily, it may be I might speak something indecent or unsafe, which I should be afterwards sorry for; therefore I beg Leave, my Lords, to have Time allowed us for giving in such Answer, as may be both for our Safety, and your Lordship's Honour.

Lord Chanc. [*Smiling.*] Why, Mr. Vice-Chancellor, as for your own Safety, my Lords are willing you should take all the Care you can; but for what concerns our Honour, do you not trouble your self; we are able to consult that, without any Interposition of yours.

Vice-Chanc. My Lords, I beg your Pardon if I have said any thing unbecoming; I mean only the Honour that is due to your Lordship's Quality, my Lord; and therefore being to answer before Persons of Quality, I beg leave to do it with Council, and in Writing.

Lord Chanc. Well, withdraw a little, and my Lords will consider of your Request.

Then all the Company withdrew, and about three Quarters of an Hour after the Vice-Chancellor was sent for into the Anti-Chamber, where Mr. Bridgman told him, the Lords Commissioners had given him Time till *Wednesday* next, till Four in the Afternoon, and Leave to put his Answer in Writing, and with Council, and by what Council he would.

When the Council had heard the Commissioners had granted it, they were something surprized, and loath to move in the Thing without a Rule of Court; therefore on *Friday* Morning Dr. *Eachard* and Mr. *Stanhope* went to Mr. *Bridgman's* Office, to desire such an Order, or at least a Co-

py of what had been said to the Vice-Chancellor; but he told them he had no Power to give either; only he repeated the Words over again for the Satisfaction of them and the Council, which was the same the Vice-Chancellor had related from his Mouth before.

WEDNESDAY, *April 27, 1687.*

In the Council-Chamber. Commissioners present as before.

ABOUT a Quarter of an Hour before the Lords met, Mr. *Bridgman* came to the Vice-Chancellor, and desired to know of him, whether he gave his Answer in Writing only, or whether any Council would appear to argue it; to which the Vice-Chancellor answered, That his Answer was drawing out in Writing, and that he did not expect any Council there that Day. Mr. *Bridgman* replied, The Lords had commanded him to ask these Questions, and would expect to know so much before they began to proceed. When the Delegates were called in, the Lord Chancellor said,

L. Chanc. Mr. Vice-Chancellor, the last Time you were here you desired Time to put in your Answer in Writing: My Lords have indulged you so far, now where is your Answer?

Vice-Chanc. My Lord, here it is —

And gave it to Mr. Bridgman, who, after a Whisper, put it round the Table.

L. Chanc. Read it. —

To Mr. Bridgman.

The Answer of the University and Senate of Cambridge, to the Question, Why they did not admit Alban Francis to the Degree of Master of Arts in the same University, according to his Majesty's Mandatory Letters under his Signet Manual? The Vice-Chancellor and Senate of Cambridge, for, and in Behalf of themselves, and the said University, say,

THAT by the Statute made *primo Eliz.* and entitled, *An Act to restore to the Crown the ancient Jurisdictions over the State Ecclesiastical and Spiritual, and abolishing Foreign Power repugnant to the same;* it is enacted, amongst other Things, That every Person that shall be promoted to any Degree of Learning in any University within this Kingdom, before he shall receive or take any such Degree, shall, before the Chancellor or Vice-Chancellor of the University, take the Oath in the Statute mentioned and appointed; purporting, that he doth thereby testify and declare in his Conscience, that his Majesty is the only supream Governor of this Realm, as well in all Spiritual and Ecclesiastical Things and Causes, as Temporal; that no Foreign State or Potentate hath, or ought to have any Jurisdiction, Superiority or Authority, Ecclesiastical or Spiritual, within this Realm; and that therefore he doth renounce and forsake all Foreign Jurisdiction and Authority, and promise to bear Faith and true Allegiance to the King, his Heirs and Successors, and to his Power assist and defend all Jurisdictions and Authorities granted, united or annexed to his Majesty's Imperial Crown of England. That by the Statute made *quinto Eliz.* entitled, *An Act for the Assurance of the Queen's Royal Prerogative over all Estates and Subjects within her Dominions,* it is likewise enacted, That every Person

Person that shall be admitted to any Degree of Learning in any of the Universities, before he shall be allowed or suffered to take upon him such Degree, shall take the aforementioned Oath before such Person or Persons as shall have Authority by common Use to admit him to such Degrees.

That by the Statute made by his Majesty's Royal Grandfather, King James the First, in the third Year of his Reign, entitled, *An Act for the better Discovering and Repressing of Popish Recusants*, another Oath is commonly prescribed, the Oath of Obedience; by which Oath, is the Person that takes it, among other things, enjoined to swear, that his Majesty is lawful and rightful King of this Realm, and all other his Dominions and Countries; and that the Pope neither of himself, or by any other Means, hath Power or Authority to depose his Majesty, or dispose of him, his Kingdoms or Dominions; or to authorize any Foreign Prince to invade him or them, or to discharge his Subjects from their Obedience or Allegiance to his Majesty, or to give Leave to bear Arms against him; and that he, with true Faith and Allegiance to his Majesty, will defend him to the utmost of his Power. And afterwards, in the Statute made in the ninth Year of his Majesty's said Royal Grandfather, entitled, *An Act for administering the Oath of Allegiance*, in it is enacted, That the said last mentioned Oath shall be taken by the Vice-Chancellor and Principal of Houses in the University, in the Convocation before the Senior Masters, and by every other Person that shall be permitted or promoted to any Degree in Schools, before the Vice-Chancellor for the Time being, in the Congregation-House.

That the Vice-Chancellor, and every Member of the Senate, have taken the said Oath, and the Vice-Chancellor and Senate are entrusted to put them in Execution in the said University.

That the Vice-Chancellor, by his Oath of Office, has also sworn duly to execute his Office, according to the Laws, and cannot admit to any Degree without the Senate.

That the said Statutes were made for the Preservation of Doctrine and Religion, professed by the Church of England, and established by the Laws of this Realm, and of the Prerogative and rightful Power of his Majesty; that upon the Receipt of his Majesty's Royal Letters Mandatory, the same were by the Vice-Chancellor communicated to the Senate; and in order to the admitting the said Alban Francis to the Degree of Master of Arts, the said Oaths were offered to be administered to the said Alban Francis, if he would take the same, but he refused.

That the admitting him without the said Oaths had been contrary to the said Statutes, and a Breach of the Trust in the Vice-Chancellor and Senate reposed, and a Violation of their Oaths; and therefore they could not admit him to the said Degree of Master of Arts: And by humble Application to his sacred Majesty, did, and now again do, humbly desire your Lordships to represent this their Case to his Majesty, that they may not lie under his Majesty's Displeasure upon any Misapprehension thereof. But whether your Lordships will, as a Court, take Cognizance of this Matter, they humbly pray your Lordship's Consideration, since that the taking a Degree of Master of Arts in the University, or the ad-

mitting and refusing to such a Degree, is not any Cause or Matter Ecclesiastical or Spiritual, but of Lay and Temporal Cognizance.

And they further offer to your Lordships, that in the Statute made in the sixteenth of the Reign of his Majesty's most Royal Father King Charles the First, entitled, *An Act for repealing of the Branch of a Statute, Primo Eliz. concerning Commissioners for Causes Ecclesiastical*; and whereby the said Branch is repealed, it is enacted, "That no new Court shall be erected, ordained or appointed within this Realm, which shall or may have like Power, Jurisdiction or Authority, as the High Commission Court then had, or pretended to have; but that all and every such Commissions and Grants, and all Powers and Authority granted, or pretended to be granted thereby, shall be void and of none Effect, as in and by the said Statutes more fully appears.

Which being read, my Lord Chancellor said, Is it sign'd?

Mr. Bridgman. Yes, my Lord.

Lord Chanc. Read their Names. —

Which was done.

L. Chanc. Well, have you any more to say?

Mr. Vice-Chanc. No, my Lord, not at this Time.

L. Chanc. Then withdraw.

All the Company withdrew, and about an Hour and a half after the Court rose; and afterward Mr. Bridgman desired to speak with the Vice-Chancellor and Delegates in the Council-Chamber, to whom he said, That their Lordships had commanded him to tell them, they put off all further Consideration of this Matter till Saturday come Sevensnight, and then they expected their Attendance. Again, Mr. Vice-Chancellor asked him, If Council would be expected to plead on their Answer? He replied, Their Lordships had given him no Commission to say any thing to that. So they all withdrew.

SATURDAY, May 27, 1687.

THIS Day it was publicly discoursed through the Town, that the Lords had received a new Commission; and immediately Lawyers were consulted, whether it were proper to urge that at this Appearance. What could be gathered thereupon, was to this Effect: That it were a good Plea, if it could be well proved, for in receiving a new Commission in the Midst of Process, especially if there be any Alteration in it as to the Extent of their Power, would at least be a good Pretence to begin the whole Cause again, and gain Time; but that it was by no Means safe to alledge the Thing, for a flying Report is no Evidence; and if that Report were false, it might be a great Prejudice to them and their Cause.

Council-Chamber. Commissioners present as before.

Lord Chanc. Mr. Vice-Chancellor, the last Time you were here, you gave in a Paper to my Lords, signed by your self, and several others coming from the University, which consists of several Parts; but there is one Thing I must crave Leave of my Lords to discourse you on, which concerns your self. The Lords took Notice, that you alledge an Oath: That Oath it seems hindred you from obeying the King's Mandate. — Pray what was the Oath?

Vice-Chanc. My Lord, this is a new Question which you were pleased not to put before, and I beg Leave and Time to answer it.

L. Chanc. Why, Mr. Vice-Chancellor, this requires no Time. My Lords, I tell you, took Notice of an Oath you pleaded for your self, and now they desire to know what the Oath is.

Vice-Chanc. I beg I may not answer hastily, but that your Lordships would let me know what Questions you would ask me, and let me answer them in Writing, and by Council.

Lord Chanc. Why did you not consult Council when you took your Oath? I am really concerned for the University of Cambridge, whereof I my self was once a Member, that the Vice-Chancellor, who is the Head, and the Representative of so learned a Body, should come here before the King's Commissioners, and not be able to give an Account of the Oath by which he acted all this time, but desires Council and Time to tell what the Oath is.

Dr. Cook. My Lord, if your Lordship pleases, I think I remember the Words of the Oath.

L. Chanc. Nay, good Doctor, how came you, who never were Vice-Chancellor, and so never took this Oath, to know it better than one that is Vice-Chancellor, and hath taken it?

Vice-Chanc. I cannot call to Mind the very Words of the Oath, but the Substance of it is this, *That I should well and faithfully, prestare, or administrare munus, or Officium Procancellarii.*

L. Chanc. Ay, Munus, or Officium: Well, what then?

Vice-Chanc. And, my Lord, this Office I take to be stated by the Statutes of the University, and the Laws of the Land.

Lord Chanc. Well, and how long has this been the Vice-Chancellor's Oath?

Vice-Chanc. Indeed, my Lord, I am not able to tell you exactly.

Lord Chanc. How long do you think? I will not tie you to any Time.

Vice-Chanc. Ever since I knew what belonged to it; ever since I was Head of a College.

Lord Chanc. How long have you been Head of a College?

Vice-Chanc. Six or seven Years, my Lord.

Lord Chanc. Have not other Vice-Chancellors admitted to Degrees without Oaths, who have taken the Obligatory Oath as you have done?

Vice-Chanc. Indeed, my Lord, I cannot tell; I cannot remember every particular Thing that has been done.

Lord Chanc. Well, because we will keep close to the Question, don't you remember any Master of Arts made without Oaths?

Dr. Cook. Not under the Quality of an University Nobleman, my Lord.

Lord Chanc. Nay, good Doctor, you never were Vice-Chancellor yet: When you are, we may consider you.

Vice-Chanc. The Answer to your Question will depend upon our University Book and Records; and if you'll allow us Time to consult them, we can give your Lordship an Account.

L. Chanc. Nay, look you, Mr. Vice-Chancellor, you have given in an Answer in Writing already, and because there is something in that my Lords would be further satisfied in, they have left it to me to ask you some Questions: I ask you, therefore, if you remember any Master of Arts

who hath been admitted heretofore without these Oaths?

Vice-Chanc. I cannot say, I remember any, my Lord.

Lord Chanc. Did you never hear of one Dr. Lightfoot?

Vice-Chanc. I think, my Lord, I have heard of such a one.

Dr. Cook. My Lord, I beg leave to speak a few Words.

Lord Chanc. Well, Doctor, what is it you have to say?

Dr. Cook. My Lord, Dr. Lightfoot did subscribe.

Lord Chanc. What Subscription do you mean?

Dr. Cook. To the XXXIX Articles; and the First of them is the King's Supremacy.

L. Chanc. Is Subscribing Swearing, Doctor? But Mr. Vice-Chancellor, how many have you admitted by Mandate?

Vice-Chanc. Never but one, my Lord, and he took the Oaths.

Lord Chanc. Do you never admit without Oaths them who have not such particular Letters Patent from the King?

Mr. Stanhope. Never, my Lord.

And as for Dr. Lightfoot, they were aware before of this particular Person's being objected, and therefore had provided an Answer to it.

Mr. Stanhope undertook it, because the Books and University Papers had been committed to his Inspection and Care. In answer, had he been permitted to speak, he had this to offer, *That the Register of Subscribers was then in Court, and had a Paper ready in his Hands to be produced, where Dr. Lightfoot subscribed with his own Hands to the XXXIX Articles, the first whereof is the King's Supremacy; and that he could not refuse the Oath upon a Principle, because the same must have binded his Subscription.* And as a farther Proof, he did offer, they were ready to swear this, *That two Gentlemen, Roman Catholicicks, Servants to the Queen Dowager, did by Virtue of the same Letters from the King, at the Time of his coming to Cambridge, desire their Master of Arts Degree.* Their Names were *Pe-rara* and *Stephens*. These Gentlemen were proposed and granted, but upon Refusal to swear, admitted. Of this they could have produced, *First*, A Testimony upon Oath of a Gentleman then in Court; and besides that, the University Papers and Graces, which shew these Gentlemen's Names, among the Persons passed in the House, but wanting in the List of Subscribers and Commencers. After which they would have referred it to the Court, whether it was probable that the University should admit one of the Queen's Servants without Oaths, and yet refuse two more who had the same Title every way, because they would not take the Oaths; but the Lord Chancellor would not hear him.

Lord Chanc. Nay, look you now, that young Gentleman expects to be Vice-Chancellor too; when you are, Sir, you may speak, but till then it will become you to forbear. Mr. Vice-Chancellor, When was it pray, that you received the King's Letters? the first I mean.

Vice-Chanc. I do not perfectly remember, my Lord; I can't call to Mind the Day of the Month.

Lord Chanc. When were they dated, do you know?

To Mr. Bridgman, my Lord pausing.

Vice-

Vice-Chanc. My Lord, I remember it was *Ash-Wednesday*.

Lord Chanc. And when was it these Letters were published in the Senate?

Vice-Chanc. It was the Seven-night after, my Lord.

Lord Chanc. What's the Meaning of the Delay, Mr. *Vice-Chancellor*? The King's Business used to have a quicker Dispatch.

Vice-Chanc. It was a novel thing, and I was willing to give myself and others Time to consider on it.

Lord Chanc. But when you had read the Letters, why was not the Gentleman admitted?

Vice-Chanc. My Lord, the Senate sent to me, to desire me, that I would forbear admitting Mr. *Francis*, till I had petitioned the King to revoke the Mandate.

Lord Chanc. Why, does the King's Mandate use to be disputed? Did you ever see a Mandate voted in the House, whether it should be obeyed or not?

Vice-Chanc. No, my Lord, usually they are not; but the House sent to me to forbear, for they have not had any of this Nature before.

Lord Chanc. Did you ever know any Mandates of the King's refused by the University before?

Vice-Chanc. After some Pause — Yes, my Lord, several.

Lord Chanc. Pray give us one Instance.

Vice-Chanc. My Lord, one *Tatnell*.

Lord Chanc. When, pray? How long was that ago?

Vice-Chanc. I cannot recollect just the Time, but it was in his late Majesty's Reign; I believe, about fourteen or sixteen Years ago.

Lord Chanc. How was that?

Vice-Chanc. My Lord, the Mandate was given to one *Tatnell*, a Non-conformist Minister, and he refused to Subscribe and take the Oaths; whereupon, my Lord, the University petitioned the King, and represented the Matter to him, and the King was pleased to recal his Mandate.

Lord Chanc. Mr. *Vice-Chancellor*, had not you a Mandate for another Gentleman at the same Time with this, which you refused?

Vice-Chanc. Yes, my Lord, it was to make a Gentleman Doctor of Physick.

Lord Chanc. And he was admitted upon it, was he not?

Vice-Chanc. Yes, my Lord.

Lord Chanc. Did the Senate vote his Mandate?

Vice-Chanc. No, my Lord, they did not.

Lord Chanc. Why should they interpose in the one, and not in the other?

Vice-Chanc. That had no Dispensation, my Lord, for the Oath in it.

Lord Chanc. But however, if they did not vote it, nor do any others of the King's Letters, how do you know their Consent?

Vice-Chanc. My Lord, it is presumed upon their being silent, and offering nothing to the contrary.

Lord Chanc. Ay, we have a Proverb, Mr. *Vice-Chancellor*, Silence gives Consent, but it seems he was admitted immediately, was he not, before you could know whether they consented to it or no?

Vice-Chanc. No, my Lord, he was not admitted till the House desired me to forbear in Mr. *Francis*'s Case.

Lord Chanc. But, as to this Business of the Senate desiring you (my Lords) I hope you will indulge me to speak a little of that; for having been

formerly a Member of that University myself, I think I have some small Remembrance of the Manner of the Proceedings there: Pray, Mr. *Vice-Chancellor*, how was it that you knew their Minds in this Business?

Vice-Chanc. My Lord, the House sent up their Opinions.

Lord Chanc. How, pray? by whom?

Vice-Chanc. The Non-Regents by Dr. *Smoult* the first Day; and Mr. *Billers* the Orator, and Mr. *Newton* the Mathematical Professor, my Lord, the second Day.

Lord Chanc. By whom do you say the first Day?

Vice-Chanc. By Dr. *Smoult*, my Lord, from the Non-Regent House, and Mr. *Norris* from the Regent House.

Lord Chanc. Well: What said these two to you?

Vice-Chanc. My Lord, I don't know the very Words, but it was to this Effect, That I should forbear admitting Mr. *Francis* till the King was petitioned.

Lord Chanc. Is that Dr. *Smoult* in Court?

Vice-Chanc. Yes, my Lord, he is here —

Then he shewed himself.

Lord Chanc. Come, Sir, What was it, I pray you, that you told the *Vice-Chancellor*?

Dr. *Smoult*. I have forgot, my Lord, the Words, but it was to the same Purpose the *Vice-Chancellor* told you just now, that the House desired me to acquaint him they were petitioning, that the Mandate might be recalled.

Lord Chanc. And pray, Sir, who are you, that you should be thought fit to represent a whole House? Why should they choose you rather than any Body else?

Dr. *Smoult*. My Lord, I suppose because I was one of the Seniors.

Lord Chanc. One of the Seniors! If you come to that, why was not the very Senior chosen?

Dr. *Smoult*. I cannot tell, my Lord, they came to me.

Vice-Chanc. My Lord, he is one of our Professors.

Lord Chanc. Nay, when I ask you Questions, they prompt you, and now you prompt them; but I must tell you, Mr. *Vice-Chancellor*, you ought to take an Account of what is done in the House your self, and not from others.

Vice-Chanc. My Place is at a great Distance from the Non-Regent House, and I could not see what was done there.

Lord Chanc. But should you take the Sense of a whole House from one Man?

Vice-Chanc. He came and told me, my Lord, the House was of that Opinion, and I thought I had no reason to question what he said.

Lord Chanc. How loud did he speak when he told you this?

Vice-Chanc. Pretty loud, my Lord.

Lord Chanc. Was it so loud, that all the House might hear it?

Vice-Chanc. No, my Lord.

Lord Chanc. Did you send afterwards to enquire whether he had told you their Opinions true or not?

Vice-Chanc. No, my Lord, I confess I did not.

Lord Chanc. But how came this new Way of giving Opinions; are not the Proctors usually the

the Men that bring the Sense of the House to the Vice-Chancellor?

Vice-Chanc. Not the Non-Regent, my Lord, they are not admitted into that House, nor have at all to do there.

Lord Chanc. Have you any thing else to offer to my Lords?

Dr. Cook. My Lord, if the Answer that we gave in the last Day be not satisfactory, we desire to have Time allowed us to make a farther Defence, and to do it with Council.

Lord Chanc. Have you nothing to say besides?

Dr. Cook. No, my Lord.

Lord Chanc. Nor you Gentlemen? — then withdraw.

After the Vice-Chancellor, and three or four of the Delegates were gone off, and the Crowd was retiring, Mr. Billers, being a Person engaged in carrying up the Sense of the House, would have informed the Court (who seemed under a Mistake) more particularly of the Senate's Proceedings; and how it came to pass that the usual Way of Suffrages was impracticable at that Time.

Mr. Billers. My Lords, I beg Leave to speak one Word.

Lord Chanc. Who are you?

Mr. Billers. My Name is *Billers*, my Lord.

Mr. Bridgman. My Lord, he is one of the Gentlemen that signed the Paper in which was the Answer.

Mr. Billers. I am one of the Persons, my Lord, that signed the Paper in which was the Answer.

Lord Chanc. Nay, hold *Mr. Billers*, give me leave to compare your Memory with *Mr. Vice-Chancellor's* a little; *Mr. Vice-Chancellor* tells me, *Mr. Billers* and *Dr. Smoult* went up both of a Day; then comes *Mr. Billers*, and says, that *Dr. Smoult* and he went up two several Days.

Mr. Billers. My Lord, I could not possibly go up from the House; I do not belong to the Regent-House.

Lord Chanc. Indeed he said so, Sir; indeed he did, my Lords — Did he not? [*To Mr. Bridgman.*]

Mr. Bridgman. Yes, my Lord.

Mr. Stanhope, behind the Bishop of Rochester. My Lord, under Favour, my *Lord Chancellor* is mistaken; the Person *Mr. Vice-Chancellor* told your Lordship went up from the Regent-House the same Day with *Dr. Smoult*, was *Mr. Norris*.

Bishop of Rochester. My Lord, I think your Lordship forgets; it was *Mr. Norris* that went up from the House the same Day with *Doctor Smoult*.

Lord Chanc. Well, Sir, was this that you would say?

Mr. Billers. I was only just acquainting your Lordship what was done, and that there was no other Way —

The Thing Mr. Billers intended to urge, was, That the usual Way of Suffrage could not be practised at that Time; so the other was taken.

Earl of Sunderland. We heard that before.

Lord Chanc. Ay, Sir, we took both what was done, and what was not done; therefore withdraw.

Then all the Company retired, and after an Hour and a Half's Attendance, they were called in again, and the Lord Chancellor pronounced the Sentence upon Mr. Vice-Chancellor in the following Manner.

Lord Chanc. Mr. Vice-Chancellor, the Lords have commanded me to tell you, that they have taken some Time to consider your Answer, and are at last come to a Resolution upon it: My Business is to tell you what the Resolution is, *Mr. Vice-Chancellor.* My Lords consider you have been guilty of an Act of great Disobedience to the King's Commands, and other Crimes and Contempts, and such, that now you appear before us, you have little to say in Excuse of it; therefore as a Mark of his Majesty's and their Lordship's Displeasure, they have thought fit to appoint, that you be henceforth deprived of the Office of *Vice-Chancellor of Cambridge.* They likewise order, that you don't presume, at any Time hereafter, to meddle with any of the publick Business of the University. Likewise, *Mr. Vice-Chancellor,* their Lordships consider you have a Headship of a College; and because the Example of so ill a Man may be a pernicious Consequence to all under your Government, they have likewise thought fit that you be deprived of it, during his Majesty's Pleasure: But because they have a Tenderness for the College, for which all along you have shewed little Regard, my Lords are pleased to appoint, that the Revenues of your Headship shall go to the Benefit of the Society. This is their Lordships Pleasure, and to this they require your Obedience. There are likewise some other Gentlemen that have signed a Paper here, but my Lords expect their Attendance when they fit next, which will be on *Thursday* next; then we shall take them into Consideration.

On *Monday*, *Dr. Peachell* wrote by an *Esquire-Beadle*, who attended him, to desire a Copy of the Sentence; but Answer was returned, The Sentence as yet was not committed to Writing, but verbal only, and so he could not have a Copy; but he repeated the Heads only with this Alteration, That he was suspended his Mastership, and not deprived; which was an Error in the *Lord Chancellor's* delivering it.

The Beginning of the next Week was employed in making Enquiries after the new Commission; the *Hannaper Six Clerks*, and the *riding Six Clerks Office*, knew nothing of it, nor any Court of Record could be directed to. *Mr. Bridgman* did own there was such a Thing, but did not instruct them how to come to the Sight of it. Those that spoke best of the Commissioners, urged the Removal of the *Lord Chief Justice of the King's Bench* to the *Common Pleas*, as a Thing that made a new Commission necessary for rectifying his Title: But a Gentleman, [who pretended to have read it, gave them private Intimations that there were very large Additions, and very considerable Alterations in it at my *Lord Chancellor's* own House. The Servants brought Word, that my Lord would speak with the Person himself that desired to see it, and appointed him a Time; the *Solicitor* went at the Hour, but did not gain Access to my Lord, and so they could not see it at all, for it was *Wednesday Night*, or *Thursday Morning*.

THURSDAY, May the 12th, 1688.

Council-Chamber. Commissioners present as before, the Delegates appear with *Dr. Peachell*.

Lord Chanc. THE last Time you appeared here before us, my Lords thought fit to set a Mark of their just Displeasure upon the

the Vice-Chancellor. Gentlemen, you cannot but be sensible, and so must all the World, how pernicious and obstinate the University has shewn themselves in refusing the King's Commands, and such Commands, I must tell you, that ought to be obey'd.

There was a Time, you may remember Instances, if you do not, I'll turn you to one in the Year 1667, when the Letters were so far from being disputed, that they pass'd for a Law among you, and do this Day stand recorded among the solemn Acts, and publick Statutes of the University. Gentlemen, my Lords consider there is a Difference between the Vice-Chancellor's Case and yours, and therefore did not conclude you, who represent the Senate with him, but have required your Attendance at this Time: They impute the Miscarriage of the Body to the Head Disease chiefly; though neither are you without Fault, for being so much as uneasy under the King's Commands. Gentlemen, I must tell you, my Lords understand very well the sly Insinuations in your Paper, and have commanded me to tell you, That they know upon what Grounds they go, though they do not think fit to descend to Particulars: They know too how far that Authority extends, not only to you of the University, but to the Societies within this Kingdom. Gentlemen, your best Course will be by a ready Obedience to his Majesty's Command for the future, and by giving a good Example to others, to make Amends for the ill Example that has been given you. Therefore I shall say to you what the Scripture says, and rather because most of you are Divines; *Go your way, and sin no more, lest a worse thing come unto you.*

The late King's Letters, mentioned by my Lord Chancellor, Anno 1667, concern the regulating some of the Publick Exercises in the University; the Meaning whereof is this: The King is their Visitor, and whenever there is any thing belonging to the local Statutes and Customs which they think ought to be altered, or any Abuse which should be rectified and redress'd, their way is to beg the King's Royal Injunction in the Case, which they keep upon Record, and obey as a Statute. How good an Argument is this against them, for not obeying a private Mandate, contrary to four known Laws of the Land; and how parallel the Case, is easily discern'd.

As they were drawing off, he call'd them again, and said,

Lord Chanc. Hold, Gentlemen, I know something more to say to you. My Lords require, as a Testimony of your Obedience, that you who represent the Senate, should take Care they have the University Statutes brought to lie before them here.

Dr. Cook. My Lord, we do no longer represent the Senate; our Delegation is determined with the Vice-Chancellor's Deprivation, my Lord.

Lord Chanc. Well, if your Commission be expired, we will give you a new one; we are able to give you a Commission: We suppose you had sufficient Authority for appearing here.

Dr. Cook. Does your Lordship expect that we should attend with the Statutes our selves?

Lord Chanc. No, no, send them up by a proper Officer: You are only to carry a Message from us to the Senate, and tell them what we expect.

Dr. Eachard. In what Time does your Lordship expect them?

Lord Chanc. In a convenient Time, we will not tie you up; but if you be tardy, my Lords will take care to quicken you by an Intimation; I

mean only a Copy, not original Statutes. You are now discharged from any farther Attendance here.

The Delegates, upon the Vice-Chancellor's Deprivation, being no longer capable of acting as Publick Persons, and consequently of deriving any ill Consequence upon the Body they have represented, thought they might venture their own Persons more boldly: Therefore, in order to satisfy the World, they were mighty desirous to bring about a second Hearing of the same Points, which, before the Vice-Chancellor's Sentence, they were not suffered to speak to, and which, when the Vice-Chancellor was asking, they had not an Opportunity of answering so very particular as they could have wish'd, confining themselves to such Questions, all the while, as did not concern the Vice-Chancellor solely and personally, but affected the whole Senate jointly with him: Which Order they had likewise observed in interposing at the Trial. This Answer they had ready to offer in Writing, if that could be admitted; but if not, resolv'd to argue it by Word of Mouth: The Substance of it may be reduced to two Heads:

First, The Business of admitting others, and particularly Dr. Lightfoot, without Oaths. As to *Lightfoot's* Case, what they intended to have urged in Court, you have seen already; but as to others,

I. *That Peers are by the very Act of Parliament of Eliz. exempted from the Oath.*

II. *That all such as the University calls Noblemen, have Time out of Mind enjoyed the Privilege of Peers.*

III. *That under that Quality they never admit any without Oaths.*

IV. *That if at any Time, upon the entertaining of a Prince, or any such Solemnity, any one has slipped out in the Crowd, which they are not conscious of, this is to be imputed to Hurry and Inadvertency, and cannot be parallel to this Case, where the Senate acted with Leisure and Deliberation.*

V. *That even these Degrees, given to Noblemen and Strangers, are Honorary and Complemental, and so different from what the Statute calls Degrees of Learning, and Men use, exercise and make a Gain of their Profession.*

VI. *That supposing never so many to be admitted without Oaths, this they acknowledged to be irregular, and the Breach of a Law in one can be no Precedent for another to follow.*

VII. *That however, they are very fully and particularly assured, no Man was ever admitted, who positively refused the Oaths, which this Mr. Francis did.*

I. *That every Man who is a Member of that, or any other Senate, hath such a Right to propose, debate and advise, as Occasion shall require, and protest against any irregular Proceedings in it.*

II. *That in a Matter contrary to the Laws, and so highly concerning their University and Religion, as the opening such a Gap for the Men of any Perswasion to become Members of their Body and Senate (which every Resident Master of Art is) it had been the greatest Infidelity and Negligence to have sat still.*

III. *That their Suffrage not being ask'd by the common Way, ought not to have been a Bar, because every Man in his Matriculation Oath, obligeth himself to be assisting to the Chancellor and Vice-Chancellor, and to defend the State, Honour and Dignity of the University, according to his Power and Capacity; and this to do Suffragio & Concilio, rogatus & non rogatus.*

IV. *That representing the whole Houses Opinions by a few, is a Practice common to all numerous Congregations, and usual in this, for any single Man, voluntarily to go and address the Vice-Chancellor in Behalf of this whole College, or otherwise.*

V. *That the late King commanded, by his Royal Letters, that all Address to the Vice-Chancellor should be made in the most quiet, decent, and respectful Manner: And this way was thought more conformable to that Command, than the Hurry of every Man applying himself Personally.*

VI. *To give the better Reputation to the Thing, and make it unexceptionable, the Persons sent from the Senate to the Vice-Chancellor, were all Men either of Publick Character in the Body, or the Seniors of their Houses, or some way eminently known in the University; but they being admitted, as you have seen, on Thursday, there was no Opportunity at all of offering a Dispute.*

Animadversions on WEDNESDAY, April 27.

THIS Day the Plea was given in, and the only Thing needful to be remark'd, is, the usual way of demurring to the Court's Jurisdiction, which is commonly either the only, or first Plea, in such Cases: But the Delegates look'd upon themselves as obliged not only to defend their Cause, but to satisfy the World; therefore they were desirous that all People should be satisfied upon what Reasons they acted; and to this Purpose they first insisted upon them, which they did not at all doubt but it would be patiently heard; whereas, if the Court's Jurisdiction had come first, that would, in all Probability, have occasioned the whole Plea to be stifled and over-ruled.

SATURDAY, May 14. 1687.

MR. Atterbury came to Cambridge, with two Orders under the Commissioners Seal; one to the Proctors to proceed in the Choice of a new Vice-Chancellor, and the other to Magdalen-College Fellows: To each of which was annexed a Copy of the Sentence to be fixed upon the School-Doors,

and Magdalen-College-Gates: And on Thursday, May the 17th, Dr. Balderfon, Master of Emanuel-College, succeeded in the Office of Vice-Chancellor.

A Copy of Dr. Peachell's Sentence, as it was fix'd on the Publick School-Doors, and Magdalen-College-Gates.

By his Majesty's Commissioners for Ecclesiastical Causes, and the Visitation of the University, and of every Collegiate and Cathedral Churches, Colleges, Grammar-Schools, Hospitals, and other the like Incorporations, or Foundations or Societies.

WHEREAS John Peachell, Doctor of Divinity, Vice-Chancellor of Cambridge, Master of Magdalen-College, in the said University, has been conven'd before us, for his Disobedience to his Majesty's Royal Letters Mandatory, and other his Complements, and the said Dr. John Peachell having been fully heard thereupon, we have thought fit, after mature Consideration of the Matter, to Declare, Decree and Pronounce, That the said Dr. John Peachell, shall, for the said Disobedience and Contempts, be deprived from being Vice-Chancellor of the said University, and from all Power of acting in the same: And also, that he be Suspended ab Officio & Beneficio of his Mastership of the said College, during his Majesty's Pleasure; and accordingly we do by these Presents deprive him the said Dr. John Peachell, from being Vice-Chancellor of the said University, and from all Power of acting in the same. And we also Suspend him ab Officio & Beneficio of his Mastership of the said College, peremptorily admonishing and requiring him hereby, to abstain from the Function of Master of the said College, during the said Suspension, under Pain of Deprivation from his Mastership. And we also farther Order and Decree, that the Profits and Perquisites belonging to his said Mastership, shall, during the same Suspension, be applied to the Use and Benefit of the said College.

Given under Our Seal, the 7th of May, 1687.



CXL. *Proceedings against St. Mary-Magdalen-College in Oxon. for not Electing ANTHONY FARMER President of the said College, June, &c. 1687.* 3 Jac. II.*.

A Narrative of the Election of Dr. Hough President to St. Mary-Magdalen-College, Oxon, 1687.

THE Presidentship of St. Mary-Magdalen-College, in the University of Oxon. being void by the Death of Dr. Henry Clark, late President of the same, the Vice-President, Dr. Aldworth, gave notice to all the Fellows present in the

Chapel, on Thursday the 31st of March, 1687; where it was unanimously agreed to proceed to the Election of a President, on Wednesday the 13th of April following, at Nine o'Clock in the Morning, in the Chapel: And in order thereto, the Vice-President caused a Citation to be fix'd on the Chapel Door of the said College, signifying the Vacancy, Time and Place of the Election; according to the Direction of the Statutes. But before the Day of Election, being credibly informed that his

Majesty had been pleased to grant his Letters Mandatory in Behalf of Mr. *Anthony Farmer*, they most humbly represented to his Sacred Majesty, in their Petition bearing Date *April* the 9th, That the said Mr. *Farmer* was incapable, by their Statutes, of being President; and therefore did most humbly pray his Majesty to leave them to a free Election, or recommend such a Person to them, as was capable by their Statutes. *Monday, April* the 11th, his Majesty's Letters Mandatory were delivered by the Hands of Mr. *Robert Charnock*, * Master of Arts, and Fellow of the said College, directed to the Vice-President and Fellows of *Magdalen-College* in *Oxon.* requiring them forthwith to elect the said Mr. *Farmer*, and admit him President: Which Letter the Vice-President read in the Chapel of the said College, between the Hours of four and five o'Clock in the same Day, after Evening-Service, before the Fellows of the College, there present, and asked them, Whether they in Obedience to his Majesty's Letters, would forthwith elect and admit Mr. *Farmer* President? Who all agreed, in Consideration to Mr. *Farmer's* not being qualified, and the Danger of Expulsion to any of the Fellows that should be absent from the Election, and that the Time of Election, according to the Citation, was so near, to defer their Answer till *Wednesday* following: Whereupon the Vice-President required all the Fellows to be present in the Chapel the said *Wednesday* Morning at nine o'Clock. All the Fellows being then met, the Vice-President read the Statute *De Electione Presidentis*; and the Statute *5 Eliz.* against corrupt Elections was read also: After which the Vice-President read the King's Letter in Behalf of Mr. *Farmer*, and the second Time demanded an Answer of the Fellows thereto. Their Answer was to this Effect: That having a Petition now lying before his Majesty, they ought not to proceed to Election, till they had received his Majesty's Answer to the same: And thereupon they all agreed (except Mr. *Charnock*) that the Election should be deferred; which was accordingly done, until the next Morning nine o'Clock.

Thursday, April the 14th, at nine o'Clock in the Morning, all the Fellows being met, the Vice-President told them, That the Election of a President had been deferred upon account of their Petition to his Majesty; in answer to which, they had not then received his Majesty's Pleasure; that the next Day was the utmost Time they could defer the Election by the Statutes, and therefore it was necessary they should come to some Resolution: He told them farther, That the King had commanded them to elect Mr. *Farmer*, and asked their Sense therein: Which was unanimous (except Mr. *Charnock*) that the Election should be deferred till the next Morning eight o'Clock; and in order thereunto, the Sacrament to be administered first; and accordingly it was adjourned.

Friday, April the 15th, at nine o'Clock in the Morning, the Vice-President and Fellows being met, Dr. *Thomas Smith* and Captain *Bagshaw*, two of the Fellows, acquainted the rest, from my Lord-President of the Council, That in Answer to their Petition, his Majesty had sent his Letter to the College, *that he expected to be obeyed.* After which, the Vice-President read again the King's Letter to them, and ask'd, whether in Obedience thereunto, they would elect and admit Mr. *Farmer*

President? They answered, That they desired they might proceed to an Election. Then the Vice-President having proposed, whether having received his Majesty's Pleasure in Answer to their Petition, they would make any further Address? The Vice-President, Dr. *Fairfax* †, Dr. *Pudsey*, and Dr. *Thomas Smith*, were for a second Address; but all the rest declared immediately for proceeding to the Election.

Then the Vice-President proposed, whether they would go to an Election *Viva voce*, or by Scrutiny? The Vice-President, Mr. *Thompson*, and Mr. *Charnock*, were for proceeding to an Election *Viva voce*; all the rest were for going to an Election by Scrutiny, except Dr. *Thomas Smith*, who was not for going to Election, until the King should again be petitioned.

This therefore being the Sense of the Majority, That they ought to proceed to the Election of a President, according to the Statutes, and this the last Day limited for Election. In order thereunto, the holy Sacrament was solemnly taken by all except Mr. *Charnock*. Then the Statute *De Electione Presidentis*, and *5 Eliz.* against corrupt Elections, was read by the Vice-President. Every one took the Oath prescribed in the Statutes to be taken, in order to the Nomination of a President (except Mr. *Thompson* and Mr. *Charnock*, who refused it) And the two Senior Fellows were sworn Scrutators in the Scrutiny of the whole Society. For the Nomination of a President, Mr. *Hough* ‡ and Mr. *Maynard* had each of them the major Part of all the Voices; and were accordingly pronounced by the Senior Scrutator, *Nominati in Ordine ad Electionem Presidentis*. Then the thirteen Senior Fellows being met to elect one of these two President; and every one of them sworn according to the Statute; eleven of them elected Mr. *Hough*, who was accordingly pronounc'd President of *St. Mary-Magdalen-College* in *Oxon.* by the Senior Scrutator, in the Presence of all the Fellows: And Mr. *Maynard* was appointed by the thirteen Senior Fellows to present the said President Elect to the Visitor, in order to his Admission. After this, Mr. *Thompson* and Mr. *Charnock* declared *Viva voce* for Mr. *Farmer*, according to his Majesty's Letter.

Saturday, April the 16th, Mr. *Hough*, President elect, was presented to the Visitor || by Mr. *Maynard*, who at the same Time delivered to his Lordship an Instrument under the College-Seal, containing the Proceedings of the Election: After a Sight whereof, Mr. *Hough* was sworn and admitted President by his Lordship, according to the Statutes.

Sunday, April the 17th, Mr. *Hough*, at his return to the College, took the same Oath again before the Society, and afterwards as President took his Seat in the Chapel, at four o'Clock Prayers in the Afternoon.

A Copy of the King's Mandate to the Fellows of Magdalen-College.

JAMES R.

TRUSty and Well-beloved, We greet you well. Whereas we are well satisfied of the Piety, Loyalty and Learning of our Trusty and Well-beloved *Anthony Farmer*, Master of Arts, of that your

* He was afterwards executed for being concerned in the Assassination Plot against King William.

† Afterwards Bishop of Litchfield and Coventry, now Bishop of Worcester.

‡ Afterwards Dean of

|| The Bishop of Winchester

College of St. Mary-Magdalen, We have thought fit hereby effectually to recommend him to you for the Place of President of our said College, now void by the Death of Dr. Clark, late President thereof; willing and requiring you forthwith, upon Receipt hereof, to elect and admit him the said *Anthony Farmer*, into the said Place of President, with all and singular the Rights and Privileges, Emoluments and Advantages thereunto belonging, any Statute, Custom or Constitution to the contrary notwithstanding, wherewith We are graciously pleased to dispense with in this Behalf. And so, not doubting of your Compliance herein, We bid you Farewel.

Given at our Court at Whitehall, the fifth Day of April, 1687, in the third Year of our Reign.

A Copy of Magdalen-College's Petition.

To the King's most Excellent Majesty,
The humble Petition of the Vice-President and Fellows of St. Mary-Magdalen-College in Oxon.

Most humbly sheweth,

WE have been credibly informed, That Mr. *Anthony Farmer*, who was not of our Foundation, has obtained your most excellent Majesty's Recommendation to be President of your Majesty's College, in the room of Dr. *Henry Clark* deceased.

We therefore, with all Submission, as becomes your most dutiful and loyal Subjects, most humbly represent to your Sacred Majesty, That the said Mr. *Farmer* is a Person in several Respects incapable of that Character, according to our Founder's Statutes: And do most earnestly beseech your Majesty, as your Majesty shall judge fittest in your most Princely Wisdom, either to leave us to the Discharge of our Duty and Consciences, according to your Majesty's late most gracious Toleration, and our Founder's Statutes, or to recommend such a Person who may be more serviceable to your Majesty, and to this your Majesty's College:

A Copy of the Lord Sunderland's Letter to the Fellows.

Gentlemen,

THE King being given to understand, That notwithstanding his late *Mandate* sent to you for electing Mr. *Farmer* to be President of your College, you have made Choice of another Person; his Majesty commands me to tell you, He is much surprized at these Proceedings, and expects you should send me an Account of what passed on that Occasion, and whether you did receive his Majesty's said *Letters Mandate*, before you chose Dr. *Hough*. I am,

Gentlemen,

Your Affectionate and Humble Servant,

SUNDERLAND.

The Case of the Vice-President and Fellows of St. Mary-Magdalen-College in Oxon. in their late Election of a President.

UPON Notice of the Death of Dr. *Henry Clark*, late President of St. Mary-Magdalen-College in Oxon. the Vice-President called a

Meeting of the Fellows, in order to appoint a Day for the Election of a new President. The 13th of *April* was the Day prefix'd with Power to prorogue the Election to the 15th, as they should see Cause, beyond which time it was not in their Power to defer the same. This being agreed, a Citation or Premonition was fix'd upon the Chapel-Door of the College, signifying the same; and summoning all the absent Fellows to repair home to the ensuing Election, as the Statute in that Case directs. After this, upon the 11th of *April*, they receiv'd his Majesty's Letter in Behalf of Mr. *Farmer*, requiring them to elect and admit him President: But he having never been Fellow of that College, nor *New-College*, in which are the only Persons capable of being chosen by the Statutes; and wanting likewise such personal Qualifications as are required in the Character of a President, they did not imagine it was, or could be his Majesty's Pleasure, that they should act so directly contrary to the express Words of their Statutes, to which they are strictly and positively sworn: But did humbly conceive they were bound in Duty to believe, that his Majesty had been misinformed in the Character and Capacity of Mr. *Farmer*. And therefore on the 15th of *April*, the last of those Days within which they were confin'd to finish the Election, they proceeded to a Choice; and having first received the blessed Eucharist, and taken an Oath, as the Founder enjoins, to choose a Person so qualified, as is there specified, they did elect the Reverend Mr. *John Hough*, Bachelor in Divinity, who is a Person every way qualified by the Statutes of the said College: And if it shall be objected that his Majesty did in his Letter for Mr. *Farmer* graciously dispense with all the Statutes that rendered him incapable of being elected; and that therefore they might have obeyed without Breach of their Oaths: They humbly beg leave to represent, that there is an express Clause in that Oath, which every Man takes when he is admitted Fellow of the College; wherein he swears, not to procure, accept, or make use of any Dispensation from his Oath, or any Part thereof, by whomsoever procured, or by what Authority soever granted. As to their former Practice, when they have elected in Obedience to the King's Letter heretofore, it has been always in such Cases where the Persons recommended have been every way qualified for the Office by their Statutes: In which Cases they always have been, and ever will be, ready to comply with his Majesty's Pleasure; it not being without unspeakable Regret, that they disobey the least of his Commands. They know how entirely their Welfare depends upon the Countenance of their Prince; nor doth any thing more deeply affect and grieve their Souls, than when they find themselves reduc'd to this unfortunate Necessity, of either disobeying his Will, or violating their Consciences by notorious Perjuries.

A Copy of a Letter to the Duke of Ormond, April the 18th, 1687.

May it please your Grace,

WE the President, and Fellows of *Magdalen-College in Oxon.* sensible of the Benefits and Honour we enjoy under your Grace's Patronage, and how much it imports us to have your Advice in all the Difficulties wherewith we are press'd; having, as we fear, displeas'd his

his Majesty in our Election of a President; do humbly beg Leave to represent to your Grace, a true State of our Case, and hope you will please to inform the King how incapable we were to perform his Commands.

His Majesty was pleas'd, on the Death of Dr. *Henry Clark*, President of *St. Mary-Magdalen-College*, to command us, by his Letter, to elect and admit Mr. *Anthony Farmer* in that Office, a Person utterly uncable of it by our Statutes, as we are ready to make appear in many Particulars; and since we have taken a positive Oath of Obedience to them, and that exclusive to all Dispensations whatsoever; we humbly conceive we could not obey that Command in Favour of Mr. *Farmer*, unless he had brought those Qualifications with him, which our Founder requires in the Person of the President; and being confin'd as to the Time of Election, we have been forced to proceed to the Choice of one, who has approv'd his Loyalty in the whole Course of his Life, and whom we think suitably qualified for the Place. —

May it therefore please your Grace to interpose with his most Sacred Majesty for us, that we may not lie under the Weight of his Displeasure, for not being in a Capacity for obeying his Commands. We know him to be a Prince of eminent Justice and Integrity, and cannot think he will value any Instance of Duty to himself, which manifestly breaks in upon the Obligation of our Consciences. And your Grace's extraordinary unblemish'd Loyalty to the Crown; and that Regard which, we assure our selves, our most honour'd Lord and Chancellor has to the Peace and Welfare of this Place, induceth us to presume your Grace will omit no Endeavours to set before his Majesty the true Reason and Necessity of our Proceedings. That God Almighty protect your Grace, shall be the daily Prayers of,

May it please your Grace, &c.

The Bishop of Winton's Letter to the Lord President of the Council.

My Honour'd Lord,

THE Obligation I have upon me as Visitor of *St. Mary-Magdalen-College* in *Oxon.* occasions this Address: For I am inform'd that great Endeavours are us'd with his Majesty to recommend one Mr. *Farmer*, who is not at present, nor ever was Fellow of the College, to be President of it; which is directly contrary to the Statutes of the Founder (as I am confident some, who promote Mr. *Farmer's* Interest, cannot be ignorant of) And were there not many Persons now actually Fellows, and several who have been (in particular the Bishop of *Man*, and Dr. *Jessop*) very eminent for Learning and Loyalty, and every way qualified according to the Statutes, I should not press your Lordship to lay the Concern of the College (which hath upon all Occasions express'd its Zeal and Forwardness in Defence of the Crown, and, as I particularly know, in the great Affairs of the Succession) before his Majesty; who, I hope, will leave them to their Rules, as the Statutes, which have hitherto (excepting in the Times of Rebellion) been conscientiously observ'd, and which will be the highest Satisfaction to the truly Loyal University, and promote his Majesty's Service, which has always been the Endeavour of,

Your Lordship's most Humble Servant.

A Copy of the Citation to the Vice-President and Fellows, for to appear at White-hall, June the 6th, 1687.

By his Majesty's Commissioners for Ecclesiastical Causes, and for the Visitation of the Universities, and of all and every Cathedral and Collegiate Churches, Colleges, &c.

Complaint having been made unto Us, that the Vice-President and Fellows of *St. Mary-Magdalen-College* in *Oxon.* have refus'd to comply with his Majesty's Letters Mandatory, for electing and admitting Mr. *Anthony Farmer* President of the same College, in the room of Dr. *Clark* deceased, and that, notwithstanding his Majesty's Letters, they have elected Mr. *John Hough* President of the said College: You, and either of you, are hereby required to cite and summon the said Vice-President and Fellows, requiring them, or such of the said Fellows as they shall depute in their Behalf, to appear before Us in the Council-Chamber at *White-hall*, upon *Monday* the 6th of the next Month of *June*, at Four in the Afternoon, to answer to such Matters as shall be objected against them, concerning the Premises; and of the due Execution thereof, you are to certify Us then and there.

Given under Our Seal the 28th of May, 1687.

To THOMAS ATTERBURY,
AND
ROBERT ELDOWS;

Or to either of them.

The Answer of the Vice-President, and other Fellows, of Magdalen-College in Oxon. who were deputed by the said College, to the Question propounded by the Right Honourable and Right Reverend the Lords Commissioners for Ecclesiastical Affairs, viz.

Why they did not obey his Majesty's Letter, requiring them to Elect and Admit Mr. *Anthony Farmer* President of the said College?

THE said Vice-President, and other deputed Fellows, answered and said, That the said College of *St. Mary-Magdalen* in *Oxon.* is a Body Corporate, governed by local Statutes, granted and confirm'd to them by his Majesty's Royal Predecessor, King *Henry VI.* for him and his Heirs and Successors, under the Great Seal of *England*; which are also since confirm'd by several other Patents of others of his Majesty's Royal Predecessors, under the Great Seal of *England.* That by the said Statutes of the College (to the Observation of which each Fellow is sworn) it is order'd, that the Person elected President thereof, shall be a Man of good Life and Reputation, of approved Understanding and good Temper, discreet, provident, and circumspect, both in Spiritual and Temporal Affairs. And at the Time of Election of a President, the said Fellows are bound by the said Statutes to take an Oath, that they shall nominate none to that Office, but such as are, or have been Fellows of the said College, or of *New-College* in *Oxon.* or if they are not actually Fellows at that Time of Election, that they be such as have left their Fellowships in their respective Colleges upon

credible

credible Accounts. And when two qualified Persons shall be nominated at the Time of Election, by the greater Number of all the Fellows, to the said Office of President, the thirteen Seniors also swear that they will elect one of them, whom in their Consciences they think most proper and sufficient, most discreet, most useful, and best qualified for the Place; without any Regard to Love, Hatred, Favour or Fear. And every Fellow, when he is first admitted into his Fellowship in the said College, swears that he will inviolably keep and observe all the Statutes and Ordinances of the College, and every thing therein contained, so far as does or may concern him, according to the plain, literal, and grammatical Sense and Meaning thereof, and, as much as in him lies, will cause the same to be kept and observed by others; and that he will not procure any Dispensation contrary to his aforesaid Oath, or any Part thereof, nor contrary to the Statutes and Ordinances to which it relates, or any of them; nor will he endeavour that such Dispensation shall be procured by any other, or others, publickly or privately, directly or indirectly. And if it shall happen that any Dispensation of this sort, of whatsoever Authority it shall be, whether in general or particular, or under what Form of Words soever it be granted, that he will neither make use of it, nor in any sort consent thereunto. That upon Notice of the Death of Dr. Clark, late President of the said College, the Vice-President called a Meeting of the said Fellows, in order to the appointing a Day for the Election of a new President, and the 13th of April was the Time prefixed, with Power to prorogue the same as they should see Cause, till the 15th, beyond which Time they could not statutely defer their Election; and in Pursuance thereof a Citation or Premonition was fixed upon the Chapel-door of the said College, signifying the same; and by which the absent Fellows were summoned to repair Home, as the Statute in the Case requires. And the said Vice-President and other deputed Fellows farther say, that on the 11th of April aforesaid, they received his Majesty's Letters Mandatory, to Elect and Admit the said Mr. Anthony Farmer President of the said College: But so far as the said Vice-President and Fellows apprehended the Right of Election to be in them, and believed his Majesty never intended to dispossess them of their Rights: And so far as the said Mr. Farmer had never been Fellow either of Magdalen or New-College in Oxon. and had not those Qualifications, which in and by the said Statutes of the College are required in the Character of a President, as they in their Consciences did, or do verily believe; and in regard that they could not comply with his Majesty's Letter, without the Violation of their Oaths, and Hazard of their legal Interest and Property, wherewith they are by their Statutes possessed, and which by their Oaths they are bound to maintain, they represented the same by their humble Petition to his Majesty. And having deferred their Election of a President to the last Day limited by their Statutes, then they proceeded to Election, and having first received the Eucharist, and taken the said Oaths, as the Statutes enjoyn, to choose a Person so qualified as before expressed, they did elect the Reverend Mr. John Hough, B.D. and one of the Fellows of their College, a Person every way qualified to be President, who has been since confirm-

ed by the Bishop of Winton. their Visitor, as the Statutes of the said College direct.

And that they might not lie under his Majesty's Displeasure by their Proceedings, they did, on the 18th of April, make an humble Representation thereof to his Majesty, by his Grace the Duke of Ormond, Chancellor of the University of Oxon. setting forth their indispensable Obligations to observe their Founder's Statutes.

All which Matters the Vice-President, and other deputed Fellows, do humbly offer to your Lordships, and pray to be dismissed with your Lordship's Favour.

This Answer was signed but by five of the deputed Fellows, Dr. Fairfax not consenting to it, who desired their Lordships to hear him apart, and take his Reasons, why he could not subscribe. After the reading of the Answer, the Lord Chancellor Jeffereys being in Hopes he would submit, gave him Leave to speak, saying, *Ay, this looks like a Man of Sense, and a good Subject; let's hear what he will say.* But finding his Mistake, and that Dr. Fairfax chiefly insisted, "That in Ecclesiastical Courts there should be a Liberty given to the Party appeal'd, that he may know what he is accused of; that he desir'd that Libel, and did not know what he was called there for; and that the Matter did not lie in that Court, but in Westminster-Hall." The Chancellor endeavoured to baffle his Plea, by telling him, *He was Doctor of Divinity, but not of Law.* To this the Doctor replied, *That he desired to know by what Commission and Authority they sat:* Which put Jeffereys into such an excessive Passion, as made him cry out, *Pray what Commission have you to be so impudent in Court? This Man ought to be kept in a dark Room. Why do you suffer him without a Guardian? Why did not you bring him to me to beg him? Pray let the Officers seize him.*

Then the Fellows were ordered to withdraw, and after an whole Hour's Debate, the Vice-President was called in alone, and ordered to attend the Court, with the rest of the deputed Fellows, on Wednesday the 23d of the same Month. On the appointed Day the Fellows attended, and gave in the following Reasons against Mr. Farmer.

Whereas the Vice-President, and other deputed Fellows of St. Mary-Magdalen-College in Oxon. have, in their Answer to your Lordships, set forth, that by the Statutes of the said College it is ordered, That the Person to be elected President thereof, should be a Man of good Life and Reputation, and of good Manners and Temper; and likewise, that Mr. Anthony Farmer hath not those Qualifications, which in and by the said Statutes are required in the Character of a President, as they in their Consciences did and do verily believe. They humbly crave Leave to represent to your Lordships some of those Reasons which induced them to such Belief; *viz.*

That Mr. Farmer did misbehave himself in Trinity-College in Cambridge: That he received Admonition from the Matter of the College, in order to his Expulsion; which remains in the Register of the said College, under his own Hand.

That having left Cambridge, he taught School at Chippenham in Wiltshire, under a Nonconformist Minister, without Licence.

That in September, 1683, the said Mr. Farmer was entred into St. Mary-Magdalen-Hall in Oxon. where

where such frequent Complaints were brought against him to the Principal, for his troublesome Humour and unquiet Temper, that, to preserve the Peace of the Society, he was desired to leave the said Hall.

That after his leaving *Magdalen-Hall*, he was admitted into *Magdalen-College*; where discoursing about Religion, he declared, That there was no Protestant but would cut the King's Throat. Notwithstanding which, at other Times he declared to some of the Fellows of the said College, That whatsoever he pretended, he was really a Member of the Church of *England*; and that he made an Interest with some Roman Catholics, only to get Preferment by their Means, and for that Reason was willing to be thought of their Religion.

That at the very Time when his Majesty's Letter came to the College in his Behalf, the said Mr. *Farmer* was at *Abington* in very ill Company, where he continued drinking to Excess two or three Days and Nights together; and amongst other Disorders, was one of those that then in the Night Time threw the Town-Stocks into the River: And that in general, the said Mr. *Farmer* hath had the Unhappiness to lie under an ill Fame, as to his Life and Conversation, as by several Letters and Certificates, ready to be produced, will more largely appear.

Copies of Letters and Certificates delivered to the Lords Commissioners for Ecclesiastical Affairs, June 27, 1687.

I. *Anthony Farmer*, Bachelor of Arts, and Scholar of this College, do confess, That I have behaved my self very unlike a Member of this College, and even a Christian, at the Dancing-School: For which I humbly ask Pardon, and do acknowledge before the Seniority, that I have deservedly received of the Master my first Admonition in order to Expulsion.

Trinity-Col. Camb.
June 11. 1678.

ANTHONY FARMER.

This is a true Copy of *Anthony Farmer's* Admonition, attested by us whose Names are hereunto under-written.

Humph. Babington,
John Hawkins,
Benj. Pulleyn,
John Laughton, } Vice Magist. Deput.

II. THESE are to certify, that Mr. *Anthony Farmer* was Usher to Mr. *Benj. Flower*, a Non-conformist Preacher in the Town of *Chippenham* in the County of *Wilts*, for the Space of Half a Year or upwards, the said Mr. *Flower* keeping School without Licence from the Bishop, and the said Mr. *Farmer* continuing his Usher for the Time mentioned, without any Licence also. Witness our Hands,

Will. Lake,
Will. Loude,
Will. Gale, } Vicar.

III. MR. *Anthony Farmer* was entred of St. *Mary-Magdalen-Hall* in *Oxford*, September, 1683. Where, after he had been some Time, frequent Complaints were brought to me by some of the Masters, that he raised Quarrels

and Differences amongst them; that he often occasioned Disturbances, and was of a troublesome and unpeaceable Humour. Whereupon, that Love and Friendship might be preserved and continued in the Society, as it is used to be, I advised the said Mr. *Farmer* to make Trial if he could live more easily and quietly in some other House. Accordingly he did voluntarily leave the Hall, July the 13th, 1685, and got himself admitted into *Magdalen-College*.

WILLIAM LEVET, Principal.

IV. I Do certify, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen-Hall*, *Oxon.* did say, that Mr. *Anthony Farmer*, Master of Arts, did entice him from his Studies in the University to go to *London*, where he the said Mr. *Farmer* did attempt to draw the said Mr. *Bambrigg* into several Debaucheries, both at Taverns and Bawdy-houses. Witness my Hand,

John Ryland, Master of Arts of *Magd.* Hall.

V. I Do certify, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen-Hall*, did say, That Mr. *Anthony Farmer*, Master of Arts of the said Hall, did receive Money of him and other Gentlemen, publickly to expose unto him a naked Woman; which he accordingly did. Witness my Hand,

Richard Clerk, Master of Arts of *Magd.* Hall.

June 9, 1687.

VI. I Am very willing to justify any thing I have formerly said, relating to so serious a Matter as this is you enquire after.

Mr. *Farmer*, one Night in the Cloister, asked me why I did not get a Commission: I told him truly, I had not Friends to do it for me. He then asked me, what I would do for one? I told him, I would fight for my King, and whatsoever he should command me. He then asked me, if I would fight for the King's Religion? I told him, there would be no Occasion for that, nor would it ever be required of me. He asked me of what Religion I was: I told him a Protestant. And then he said, there was no Protestant but would cut the King's Throat; and that he should lose three thousand Pounds for being of that Religion he intended to be of; which he said was a Papist. This, to the best of my Remembrance, is the full of what he said. If I have omitted any thing, it is my Care not to write more than I would honestly and justly swear to. I am,

S I R,

Your most obliged, and most humble Servant,
JOHN BRABOURN.

VII. IN or about *January* last, 1687, Mr. *Anthony Farmer* declared before us, That the Report of his being a Papist was false; but that he was willing to be thought so, because it might do him a Kindness: That the Reason of his Acquaintance with Mr. *Brent* and Mr. *Walker*, was to get Preferment by their Interest: That he had not forsaken the Protestant Religion; adding, we should call him a Rogue, if ever he did: That he would not make any publick Declaration of this, but would declare it amongst Friends, when and where he pleased.

HENRY DOBSON,
JA. FAYRER,
THO. GOODWIN.

VIII.

VIII. I Do hereby certifie, That *Robert Gardiner*, Porter of *St. Mary-Magdalen-College*, did tell me, that *Mr. Farmer* did very often come into the College late at Night, so much in Drink, that he could scarce go or speak. Witness my Hand, this 9th Day of *June*, 1687.

GEORGE FULHAM.

IX. U Pon *Monday*, *April* the third, *Mr. Farmer* came to the *Lobster* in *Abington* with *Mr. Clerk*, *Mr. Gravener*, and *Mr. Jenynsar*, about eight in the Morning, and staid some time in the House, and went from thence to the Tavern; returned again about eleven at Night, and sat up till one in the Morning: The next Day they went to the *Busb* Tavern and sent for a Quarter of Lamb for their Supper, and there *Mr. Farmer*, *Mr. Clerk*, *Mr. Gravener*, and two Troopers and others, continued till past eleven at Night, and so returned to the aforesaid Place, and sat up till past three in the Morning. This I do assert, was the Company that the said *Mr. Anthony Farmer* kept, and these were the unseasonable Hours. In witness whereof, I am ready to swear, whenever a *Subpœna* shall be sent to me.

GEORGE MORTIMER.

X. MRS. *Mortimer* is ready to assert, That when *Mr. Anthony Farmer* returned to the *Lobster* about eleven at Night, he came much concerned in Drink, and was for kissing the said *Mrs. Mortimer*, which, he being a Stranger, she permitted him to do; but in doing of it, he the said *Mr. Anthony Farmer* put his Tongue in her Mouth, which was such a Rudeness, that she immediately went out of his Company and would not come nigh him any more.

MARTHA MORTIMER.

XI. B Eing in Company with *William Hopkins* of *Abington*, the 12th of *June* last 1687, I heard him declare, That himself, with one *Mr. Farmer* of the University of *Oxon.* and some others, did in a Frolick, at an unseasonable Time of Night, take away the Town Stocks from the Place where they constantly stood, and carried them in a Cart a considerable Way, and threw them into a Pool commonly called *Mad Hall's* Pool. Witness my Hand, the Day and Year above written.

CHARLES PEACOCK.

Some Clauses of particular Statutes to which the Case relates.

I N their Statutes concerning their Election of a President, his Character is thus described; That he must be a Man of good Reputation, and good Life, and circumspect both in spiritual and temporal Affairs.

In the same Statutes the Oath which every Fellow is obliged to take, before he can give his Vote in the Nomination of a President, is this; *viz.*

That he will name one or two of *St. Mary-Magdalen-College*, or of those who have been Fellows there, or have left their Places upon a legal and credible Account: Or that he will name one or two of the Fellows of *St. Mary-Winchester-College*, commonly called *New-College*

in *Oxon.* or of those who have been formerly Fellows there, and have left their Places upon a credible Account. After this, the thirteen Senior Fellows swear, That out of the two thus nominated, they will, with all Speed, elect one to exercise the Office of a President; whom in their Consciences they think most proper and sufficient, most discreet, most useful, and best qualified for it, either without any regard to Love, Hatred, Favour, Fear, &c. as in the fore-mentioned Statute is more largely expressed. —

Part of the OATH which every Fellow takes when admitted.

Item. I Do swear, that I will not procure any Dispensation contrary to my aforesaid Oath, or to any Part thereof, nor contrary to the Statutes and Ordinances to which they relate, or any one of them; nor will I endeavour that such Dispensations be procured by any other or others, publicly or privately, directly or indirectly: And if it shall happen that any Dispensation of this Sort shall be procured, or freely granted or obtained, of what Authority soever it be, whether in general or particular, under what Form of Words soever it be granted, I will neither make use of it, nor in any Sort consent thereto.

So help me GOD.

A Copy of Dr. Hough's Deprivation, by his Majesty's Commissioners for Ecclesiastical Affairs, &c.

W Hereas it appears to us, that *Mr. John Hough*, B. D. hath been unduly elected President of *Saint Mary-Magdalen-College*, in the University of *Oxon.* we have thought fit, upon mature Consideration thereof, that the said Election be declared void, and the said *Mr. John Hough* be removed from the said Presidency; and accordingly we do hereby declare and decree, that the said Election is void; and do remove the said *Mr. John Hough* from the Place of President of the said College.

Given under Our Seal this 22d Day of June, 1687.

A Copy of Dr. Aldworth's and Dr. Fairfax's Suspension.

W Hereas *Charles Aldworth*, Doctor of Laws, Vice-President of *St. Mary-Magdalen-College, Oxon.* and the Deputies, Fellows of the same House, have been conven'd before us, for their Contempt in not obliging his Majesty's Letters Mandatory, for Electing and Admitting *Mr. Anthony Farmer* President of the said College; and the said *Dr. Aldworth* and Deputies having been heard thereupon, We have thought fit to declare, pronounce and decree, That the said *Dr. Aldworth* shall for the said Contempt be suspended from being Vice-President of the said College: And that *Henry Fairfax*, Doctor of Divinity, one of the Fellows of the said College, shall for the said Contempt be suspended from his Fellowship; and accordingly We do hereby Suspend *Dr. Charles Aldworth* from being Vice-President of the said College, and the said *Dr. Henry Fairfax* from his Fellowship in the said College.

Given under our Seal the 22d Day of June, 1687.

A Copy

A Copy of the King's Inhibition to Magdalen-College.

JAMES R.

TRUSTY and Well-beloved, We Greet you well: Whereas We are informed, That a Sentence or Decree lately made by Our Commissioners for Ecclesiastical Affairs, touching an Election in that our College, hath not been obeyed, Our Will and Pleasure is, no Election or Admission be made of any Person or Persons whatsoever, into any Fellowship, Demyship, or other Place or Office in Our said College, till We shall signify Our further Pleasure, any Statute, Custom, or Constitution to the contrary notwithstanding. And so, expecting Obedience herein, We bid you farewell.

*Given at Our Court at Windsor, the Eighteenth of July, 1687, in the Third Year of Our Reign.
By his Majesty's Command.*

SUNDERLAND.

A Copy of his Majesty's Mandate for the Bishop of Oxon. to be President.

JAMES R.

TRUSTY and Well-beloved, We Greet you well. Whereas the Place of President of Our College of *St. Mary-Magdalen*, is now void, Our Will and Pleasure is, and We do hereby authorize and require you forthwith, upon Receipt hereof, to admit the Right Reverend Father in God, *Samuel Lord Bishop of Oxon.* into the said Place of President, to hold and enjoy the same, with all the Rights, Privileges and Profits, Emoluments and Advantages thereunto belonging, any Statute or Statutes, Custom or Constitution to the contrary, in any wise, notwithstanding, wherewith We are graciously pleased, and do accordingly hereby dispense in his Behalf: And so expecting your ready Obedience herein, We bid you Farewell.

Given at Our Court at Windsor, August 14th, 1687, in the Third Year of Our Reign.

By his Majesty's Command,

SUNDERLAND.

A Copy of the Lord Sunderland's Letter to the Senior Fellow, Dr. Pudsey, of St. Mary-Magdalen-College in the University of Oxon. or in his Absence, to the Senior Fellow residing there.

THE King having been pleased by his Letters Mandatory, to require the Fellows of *St. Mary-Magdalen-College*, to admit the Lord Bishop of *Oxon.* President of that College; his Majesty commands me to let you know, That immediately upon the Receipt hereof, he would have you assemble the Fellows, and communicate to them his Majesty's said Letters: And I am further commanded to tell you, That his Majesty expects a ready Obedience to be paid to his Pleasure herein. I desire you would send me an Account of your Proceedings, as soon as you can, that I may acquaint his Majesty therewith. I am,

Yours,

SUNDERLAND.

A Copy of the Bishop of Oxon's Letter to the Senior Fellow of St. Mary-Magdalen-College in Oxon. or, in his Absence, to the Senior Fellow residing there.

S I R,

YOU will receive herewith his Majesty's Mandate to admit me President of your College of *St. Mary-Magdalen in Oxon.* together with a Letter of my Lord *Sunderland's*, pursuant to his Majesty's Commands. I am indisposed, as I have been for some Time, and not in a Condition as yet to travel; and therefore my Request to you is, That upon Receipt of the King's Pleasure, you would do me the Favour to admit me by Proxy (*i. e.*) either the next Senior Fellow under your self, Resident, or either of my Chaplains, *Mr. William Wickens* or *Mr. Thomas Collins*, whom I depute in my stead, which is as valid in Law, as if I were present my self; and is the most usual and customary Practice. And by so doing, you will oblige,

Your very loving Friend, and Brother,

SAMUEL OXON.

O X O N, *September 4th, 1687.*

The Lord *Sunderland* sent an Order to the Fellows of *St. Mary-Magdalen-College*, to attend the King at *Christ-Church*, at Three in the Afternoon. They attended accordingly.

King. **W**HAT's your Name? Are you Dr. Pudsey?

Dr. Pudf. Yes, may it please your Majesty.

King. Did you receive my Letter?

Dr. Pudf. Yes, Sir, we did.

King. Then you have not dealt with me like Gentlemen; you have done very uncivilly by me, and undutifully.——

Here they all kneeled, and Dr. Pudsey offered a Petition, which his Majesty refused to receive, and said,

King. Ye have been a stubborn turbulent College; I have known you to be so these six and twenty Years. You have affronted me in this. Is this your Church of *England Loyalty*? One would wonder to find so many Church of *England* Men in such a Business! Go Home, and shew your selves good Members of the Church of *England.* Get you gone; know I am your King, I will be obey'd, and I command you to be gone. Go and admit the Bishop of *Oxon.* Head, Principal, what d'ye call it, of the College —— [*One who stood by, said President*] I mean President of the College. Let them that refuse it look to it; they shall feel the Weight of their Sovereign's Displeasure.

The Fellows going out of the Lodgings, were called back.

King. I hear you have admitted a Fellow of the College, since you received my Inhibition. Is this true? Have you not admitted *Mr. Holden* Fellow?

Dr. Pudf. I think he was admitted Fellow. But we conceive ——

Mr. Cra. May it please your Majesty, there was no new Election, or Admission, since your Majesty's Inhibition, but only the Consummation of a former Election. They always elect to one Year's Probation, then the Person elected is received or rejected for ever.

King. The Consummation of a former Election! 'twas downright Disobedience; and 'tis a fresh Aggravation. Get you gone Home, I say again; go, get you gone, and immediately repair to your Chapel, and elect the Bishop of *Oxon.* or else you must expect to feel the Weight of my Hand—

The Fellows offered again their Petition on their Knees.

King. Get you gone, I will receive nothing from you till you have obey'd me, and admitted the Bishop of *Oxon.*

Upon which they went immediately to their Chapel, Dr. Pudley proposing, Whether they would obey the King, and elect the Bishop of Oxon? They answered in their Turns, They were as ready to obey his Majesty in all Things that lay in their Power, as any of the rest of his Subjects. But the electing the Bishop of Oxon. being directly contrary to their Statutes, and the positive Oaths they had taken, they could not apprehend it in their Power to obey him in this Matter.

A Copy of the Petition offered at Oxford, September 4th, 1687.

To the King's most Excellent Majesty, &c.

Humbly sheweth,

THAT upon the 27th of *August* we received your Majesty's Letters Mandatory, dated *August* 14th, requiring us to admit the Right Reverend Father in God *Samuel* Lord Bishop of *Oxon.* to be our President; and dispensing with all Statutes and Constitutions to the contrary. It is an unexpressible Affliction to us, to find our selves reduced to such an Extremity, that either we must disobey your Majesty's Royal Command, contrary to our own Inclinations, and that constant Course of Loyalty which we have shew'd in all Instances hitherto upon all Occasions whatsoever, or else break our Founder's Statutes, and deliberately perjure our selves.

For our Founder hath obliged us under Oath, when we came in Fellows, inviolably to observe his Statutes, and one Clause therein enjoins us never to admit or make use of a Dispensation granted by any Authority whatsoever, whereby we may be absolved from the same. In this Statute for the Election of a President, he commands us upon Oath to elect such a Person into the Place of President within fifteen Days after the Vacancy, who either is, or has been Fellow of our own, or *New-College:* Which we represented to your Majesty in our humble Petition, signed *April* 9th, wherein we offered our selves ready to elect any Person capable of the same, who your Majesty should be pleased to recommend; and having waited the utmost Time limited by our Statutes, and receiv'd no Answer to that Effect, we did then, according to the Exigence of our Statutes (having first taken the Holy *Eucharist*, and our several Oaths to that Purpose) nominate and elect such a Person as we in our Consciences did believe to be every way qualified for the Place. By which Act of ours we have conveyed all that Right to him which our Founder hath entrusted us with, and it does not lie in our Power to admit any other. Our Founder in another Statute obligeth us, under the Pain of Perjury, a dreadful Anathema, and eternal Damnation, not to suffer any of his Statutes to be

altered, infringed, or dispensed with, and commands us under the same sacred Obligations, not to execute any Orders or Decree whatsoever, contrary or repugnant to the said Statutes; by which said Statutes and Oaths, we are utterly incapacitated to admit the said Reverend Father in God to be our President.

May it please your sacred Majesty, to give us Leave to lay this our Case, and our selves, with all Submission, at your Royal Feet, most earnestly beseeching your sacred Majesty, to extend to us your humble Petitioners, that Grace and Tenderness which your Majesty hath vouchsafed to all your other Subjects, and not to believe us guilty of any Obstinacy or Undutifulness, Crimes which our Souls abhor; but to receive us into your Majesty's Grace and Favour, the greatest Temporal Blessing which our Hearts can wish.

And your humble Petitioners shall always (as in Duty bound) pray to Almighty God, to bless your Majesty with a long and happy Reign over us, and afterwards to receive you to an immortal Crown of Glory.

A Copy of the Address which the Fellows of St. Mary-Magdalen-College gave to the Lord President of the Council, Sept. 6, 1687; and which was delivered his Majesty at Bath.

WE your Majesty's most humble, and most dutiful Subjects, the Fellows of *St. Mary-Magdalen-College* in *Oxon.* being deeply afflicted with the late Sense of your Majesty's heavy Displeasure, grounded, as we in all Reason humbly presume, upon a most unkind Misrepresentation of our Actions, in relation to an Election of a President into your Majesty's said College; do humbly beg Leave to prostrate our selves at your Royal Feet, offering all real Testimonies of Duty and Loyalty. And as we have never fail'd to evidence both our Principles and Practices to be truly loyal, in Obedience to the Commands of your Royal Brother, and your sacred Self, in Matters of the like Nature; so whatsoever way your Majesty shall be pleased to try our Readiness to obey your Royal Pleasure in any Instance that does not interfere with and violate our Consciences, which your Majesty is studious to preserve, we shall most gladly and effectually comply therewith. A stubborn and a groundless Resistance of your Royal Will and Pleasure, in the present, and all other Cases, being that which our Souls eternally abhor, as becomes,

Your Majesty's most Loyal and most Obedient Subjects, &c.

A Copy of a Letter directed to Dr. Bayly, Fellow of Magdalen-College, Oxon. supposed to be writ by Mr. William Penn.

S I R,

UPON an Inquiry made of your present Fellows of *Magdalen-College*, I am informed that you are a Person eminent in that learned Body, for your Temper, Prudence and good Conduct in Affairs; and therefore very fit to be addressed to by me, who do not send you this to trapan you and your Brethren, but out of a passionate Concern for your Interest, to persuade you either to a Compliance with his Majesty's Letters Mandatory, or to think among your selves of some Expedient to prevent the Ruin of your College, and your selves:

And

And to offer it to his Majesty's Royal Consideration, that the Order for the *Quo Warranto* against the College may be recall'd, before it be too late; for you cannot be sensible how highly his Majesty is incens'd against you, neither can you give one Instance whether ever that Sort of Proceeding was judged against the Crown. Your Cause most think it very hard; but you are not in Prudence to rely on the Goodness of your Cause; but to do what the present Instant of Affairs will permit, and in Patience to expect a Season that will be more auspicious to Persons of your Character. Every Mechanick knows the Temper of his present Majesty, who never will receive a Baffle in any thing that he heartily espouseth; and that he doth this, yourselves have had too late and manifest an Instance, to doubt of his Zeal in the Affair.

Where there are so many Statutes to be observed, 'tis impossible but some must be broken at one time or another; and I am informed by the Learned of the Law, that a Failure in any one Point, forfeits your Grant, and lays your College open to the Royal Disposal.

I could give many other prudent Arguments that might possibly incline you to a speedy Endeavour of putting an end to your Troubles, almost at any rate; but I shall suggest this one thing to you, that your fatal Overthrow would be a fair Beginning of so much aimed at Reformation, first of the University, then of the Church, and administer such an Opportunity to the Enemy, as may not perhaps occur in his Majesty's Reign.

Your affectionate Servant, &c.

The Answer to the afore-mentioned written Letter, dated October 3, 1687.

THE enclosed Paper is a Copy of a Letter, which by the charitable Purpose of it, seems to be writ by you, who have been already so kind as to appear on our Behalf, and are reported by all that know you to employ much of your Time in doing good to Mankind, and using your Credit with his Majesty, to undeceive him in any wrong Impressions given him of his conscientious Subjects, and where his Justice and Goodness have been thereby abused, to reconcile the Persons injured to his Majesty's Favour, and secure them by it from Oppression and Prejudice. In this Confidence, I presume to make this Application to you, desiring your Excuse for not subscribing it: For if you did write the Letter, you know to whom it was directed; and if you did not, I hope your Charity will induce you to make such use of your Light you have by it, into the Affairs of our College, as to mediate for us with his Majesty, to be restored to his good Opinion, as the only thing which is desired by us, who are zealous, above all earthly Things, for his Felicity and Glory.

We are not conscious of ever giving his Majesty any just Offence, as it will appear with you, when you shall have perused the enclosed Papers; and have therefore no reason to fear the issuing out of a *Quo Warranto* against us. And though you are pleased to apprehend it, no Instance can be given of a Judgment against the Crown, upon the Proceeds of that Writ: The Learned in the Law tell me, there is nothing more common, and whereof many Cases are reported by *Kellaway*, from Page 128, to Page 152, of his Book of Reports: And I think I have heard of a Case in *Coke's* ninth Re-

port of the Abbess of *Prata Marcella*, which evinces the same; wherein also there is a Recital of Judgment given against *Roger Mortimer* for the King, upon a *Quo Warranto* in Court of *Eyre*, revers'd for Error in the *King's-Bench*. We hope, though we have many Statutes, it will be found that we have not wilfully transgress'd any of them; for all our present Troubles are derived to us from our Adherence to them, and our Fear to offend God, and blemish our Consciences, by departing from them.

His Majesty is intentionally righteous and just in all his Proceedings; he will never knowingly invade any Man's Property, as he was solemnly pleas'd to declare in his excellent Speech made in Council, on the 6th of *February*, 1684, at his Accession to the Government; which is again repeated in his gracious Declaration for Liberty of Conscience, of the 4th of *April* last past. It is upon his sacred, inviolable, and Royal Word and Promise, we must depend; not doubting but when his Majesty shall be rightly inform'd of our Case, in reference to both his Mandatory Letters to our College, his Anger towards us will be totally extinguish'd. Our Compliance to the first (which was *Mr. Farmer's* Election) would have involved us in the Guilt of manifest Perjury, and the wilful Violation of our Statutes: And we are confident his Majesty would never have granted the second on the Behalf of my Lord Bishop of *Oxon*. if he had known we were then possess'd of a President duly elected according to our Statutes, and confirmed by the Bishop of *Winton*. Our Visitor (as the Statutes require) and if he is thereby invested with a Lay-Freehold under the Protection of his Majesty's Laws, which we cannot undo, or attempt to invade, without subjecting ourselves to Suits at Law, and doing an apparent Injury to the President, who doth not conceive himself to be affected with the Sentence of the Lords Commissioners (to which he was no Party) whereby his Place is declared void, without any Citations, Summons, or hearing of him.

I believe no Instance can be given of a *Quo Warranto* brought against a College or Hall in the Universities, from the first Foundation of them to this Day, or any other Ecclesiastical Corporation: For the Abuses of some Constitutions or Franchises in them, and the Misdemeanors of particular Persons, will not destroy a College: And if the Corporation of a College should be dissolv'd, the Revenues thereof will return to the Founder's Heirs, and not devolve to the Crown. And if our College must be the first Example of that kind, we shall be better justified by the strict Observation of our Statutes (at least to God and our own Consciences) than we could have been by a voluntary and deliberate Breach of them.

It was Loyalty and Conscience, that in the Reign of King *Charles I.* made thirty-four of our forty Fellows, and most of the Scholars of our Foundation, rather quit their Places, and embrace Misery and Ruin, than to submit to the Government of the Usurpers of the Crown. And in *Monmouth's* Rebellion, the same Inducements prevail'd on us to raise a Company at our own Charges, under the Command of one of our Fellows, to engage against him. And we hope that these, and many other the like Instances, which may be given of the Loyalty and Zeal of our Society to the Royal Family, will be received as Evidences thereof, and that our good and gracious Sovereign will

not exclude us from that Liberty of Conscience which he was pleas'd to extend to all his Subjects.

SIR, I am your most affectionate Servant.

Some QUERIES sent to the Fellows of Magdalen-College from Windsor, September 15, 1687.

First, **W**Hether, waving your Election of the Bishop of *Oxon.* you cannot, without Violence to your Conscience, signify to his Majesty, or the above Reverend Bishop, your Willingness to admit the Lord Bishop President of your College?

Secondly, Whether it be not more Interest to the Protestant Religion, to have a suspected Popish President, than to have all the Places of the College refilled, by the King's sole Authority, with Popish Novices and Priests?

Thirdly, Whether you are not under a Mistake, in thinking you should render yourselves more acceptable to the Protestant Nobility and Gentry, by your being turned out of your Fellowships by Injustice and Violence, as you conceive; or rather will not they be very cautious how they receive you into their Families, for fear of giving Offence?

Fourthly, Whether his Majesty, as supream Visitor of the University, cannot place or displace there *ad libitum*; or whether you have a right Notion of the Proceedings which have been practis'd against you? Whether you suppose that the Lords Commissioners proceeded against you as Lords Commissioners, or Visitors? Which Notion, I am sure, will overthrow some bodies Plea and Exception against their Authority.

Fifthly, Whether you acted like Men skilled in Business, when you refused Mr. *Pen's* Mediation, who you may be sure had good Authority for what he did? You could not but know that Man, and therefore must needs be fore-armed against any Wiles that could be offer'd to you. Whether an unanimous Subscription for an Expedient (which indeed I think you ought not to refuse in good Manners, since the King was pleas'd to propose it) presented to his Majesty by Mr. *Pen*, or another Favourite, would prevent the Destruction of the best Foundation in *Europe*?

Lastly, Whether you be not drawn beyond your Knowledge by some hot-headed Advisers, which never consider the present State of his Majesty's Court of Justice?

An Answer to several QUERIES to the Vice-President and Fellows of Magdalen-College in Oxon. sent from Windsor, dated the 25th of September, 1687.

To the First. **W**E cannot, without Violence to our Consciences, and deliberate Perjury, admit any Person to be President of our College, that is not elected thereunto, and qualified according to our Statutes; whereby the Bishop of *Oxon.* is in no Sort capable; nor is there any Memorial in all our Register of any Admission of a President without Election, but of one Dr. *Nicholas Bond*, whose Case was as followeth; *viz.* Upon the Death of Dr. *Lawrence Humphreys*, about the 30th or 32d of Queen *Elizabeth's* Reign, the Queen recommended Dr. *Bond* (being a Fellow of our College) to be elected President. Many of the

Fellows inclin'd in their Judgment to elect one *Smith* (another of the Fellows) and at their meeting for Election, the Contention was so great, that they rose without Electing, and the Obstinacy continued till the Place became laps'd: And there being no Provision in our Statutes to direct us what to do in such a Case, the Queen, by her Letters Patents, constituted the said Dr. *Bond* to be President; and therein declared, That her Majesty being inform'd that the Fellows had neglected to make Election of a President in due time (as their Statutes required) and those Statutes having made no Provision for such an Omission, she, out of her Princely Care for the Place, and Indulgence for those Persons who had been guilty of that Neglect, did, by Advice of the Bishop of *Winton.* their Visitor, constitute Dr. *Bond* their President; with Protestation nevertheless, that she did not thereby pretend to supercede their Statutes, or invade their Right of Election, which was thereby invested in them, but took this Course as the only means left to supply their Defect of Election.

To the Second. We must not make ourselves guilty of deliberate Perjury, for any Considerations whatsoever, both in respect to our Consciences, and that we may not, by such a Breach upon our Statutes, expose our Constitution to a Forfeiture, nor do Evil that Good may come on it.

To the Third. We conceive we shall be more acceptable to all good Men, for acting honestly according to our Consciences, than for voluntarily and unjustly departing from our Right.

To the Fourth. We pretend not to make it a Question, whether his Majesty, by his Authority Royal, as supream Visitor, can grant a Commission for Visitation of any College that has a local Visitor by their Statutes, and are not Royal Foundations: But we are advis'd, that no Commission can be granted under the Great-Seal to Visitors, to place and displace Members of Colleges (whose Places are Freeholds) *ad libitum*, or *discretum*; but they must proceed according to legal Discretion, that is, by the Laws and Statutes of the Land, and the local Statutes of the College: And Places concern'd for the Headships and Fellowships of Colleges, are temporal Possessions, and cannot be impeach'd by summary Proceedings. One Dr. *Thomas Lovney*, President of our College, was deprived in Queen *Elizabeth's* Time, by the Bishop of *Winton.* the legal Visitor thereof, establish'd by Royal Authority, and he appeal'd to the Queen: But by the Advice of all the Judges, it was held, that the Queen, by her Authority, as supream Visitor, could not meddle in it, but he must bring

Westminster-hall, because Deprivation was a Cause meerly Temporal. The King has a great Authority Spiritual as well as Temporal; but no Commissioners can be authorized by the Crown to proceed in any Commission under the Great-Seal or otherwise, but according to Law; in Spiritual Causes by the Canon Law, in Temporal, by the other Laws and Statutes of the Land. And wherein the Proceedings in some Commissions are directed to be *summariè & de plano, &c.*

those Words are to be applied to shorten the Forms of Process, and not for Matter of Judgment: For *Magna Charta* provides for our Spiritual Liberties, as well as our Temporal.

An Account of the Visitation of St. Mary-Magdalen-College in Oxon.

ON October 19th, Mr. *Atterbury*, the King's Messenger, fixed a Citation on the College and Chapel-Doors, requiring the pretended President and Fellows, and other Members of the College, to appear before the Lords Commissioners, Bishop of *Chester*, Lord Chief Justice *Wright*, and Mr. Baron *Jenner*, in the Chapel, at Nine of the Clock on Friday Morning, November 21.

On Thursday the Lords Commissioners came to Oxon. attended with three Troops of Horse, which quarter there.

On Friday-Morning at Nine they went into the Chapel: The President and Fellows thinking they had designed to sit in the Choir, made no Preparation of Seats in the outward Chapel: Upon which their Lordships adjourned to the Hall, where their Commission was then read, which in general, was the same with the former: These three being added to the other Lords Commissioners, and particularly empowered to visit *Magdalen-College* only.

This done, the Names of the President and Fellows were called over, Dr. *Hough* being first called. All in Town appeared (except Dr. *Fairfax*) and Excuses were made for the absent.

Then a Speech was made by the Bishop of *Chester*, and in it his Lordship was severe against Disloyalty and Disobedience. He urg'd, that the Church of *England* taught an unconditionate and unlimited Obedience: He spake of the King's gracious Promises to Archbishops and Bishops, &c. which had deserved Thanks on bended Knees, notwithstanding the *Oxon*. Reasons to the contrary, which they knew best who was the Author thereof. He told them, that it could not be expected, but that the King would give all Encouragement to those of his own Religion, which could be done without Severity and Cruelty, which his Majesty abhorred, and without injuring the Church of *England*, which was at present established by Law: He told them, that this Corporation, as well as others, were the Creatures of the Crown; and that it was Insolence in their local Statutes to spurn against their Maker.

That their Distempers had brought this Visitation upon them, the Consequences of which might be ill to the Church and Universities: That however they might escape in this World, these Sins were to be accounted for above their other Sins in the next. He exhorted them by the Bowels of Christ to consider these Things: He told them, that the Eyes of the World were upon them, and they ought to take Care that their Practices might not influence their deluded Admirers. In short, the whole Design of the Speech seemed to be Promises and Threats, to aim at the inducing them to a Compliance.

The Court was then adjourned till Two in the Afternoon.

In the Afternoon were called over the Names of the Demies, Chaplains, Clerks, Choristers, and College Servants. The President then interposed, desiring Leave to speak before they proceeded any further; which being granted, he told their Lordships, That,

President. THE Time betwixt your Citation and Appearance was so short, that the Society had not Time to advise with the Coun-

cil how to behave themselves on this Occasion; therefore desired of your Lordships a Copy of the Commission, and Time to consider of it.

Bish. Chester. 'Tis upon Record; you may have it above.

Pref. Is it the same the other Lords Commissioners had?

Bish. Ch. Yes, for the most part it is.

Pref. Then, my Lord, I do assure you (and will make Oath, if you please) that I have often endeavoured to get a Copy of it, and could not procure it.

L. C. J. Have you not heard it read, or will you hear it again?

Pref. I am not capable of making a Judgment of it my self; but it is possible there may be Errors and Defects in it, such as the Society may make use of to their own Advantage; and I am confident, it is neither his Majesty's Intention, nor your Lordship's, we should be debarred from it.

A Copy was then denied.

Bish. Ch. Dr. Hough, will you submit to this Visitation?

Pref. My Lords, I do declare here in the Name of my self, and the greater Part of the Fellows, that we submit to the Visitation, as far as it is consistent with the Laws of the Land, and the Statutes of the College, and no further. I desire your Lordships that it may be recorded.

This was twice repeated.

L. C. J. You cannot imagine that we act contrary to the Laws of the Land; and as to the Statutes, the King has dispensed with them: Do you think we come here to act against Laws?

Pref. It does not become me, my Lords, to say so; but I will be plain with your Lordships, I find that your Commission gives you Authority to change and alter the Statutes, and make new ones as you think fit: Now, my Lords, we have an Oath, not only to observe these Statutes (laying his Hand on the Book) but to admit of no new ones, or Alterations in these: This must be my Behaviour here; I must admit of no Alteration from it, and by the Grace of God never will.

Bish. Ch. Do you observe all these Statutes?

Pref. Yes, my Lord, I hope we do.

Bish. Ch. You have a Statute there for Mafs, why don't you read Mafs?

Pref. My Lord, the Matter of this Oath is unlawful; and in such a Case no Man is oblig'd to observe an Oath: Besides, the Statute is taken away by the Laws of the Land.

Bish. Ch. By what Law?

Dr. Stafford. By that which obliges to say Common-Prayer.

Bish. Ch. What, the Act of Uniformity? I have often considered it, and don't remember one Word of Mafs in it.

Dr. Staff. But that obliges us to use the Liturgy of the Church of *England* in all Collegiate Churches and Chapels. And, I hope, my Lords, you do not imagine that we can say Common-Prayer and Mafs together.

Bish. Ch. Do you allow that Act of Parliament can free you from the Obligation of a Statute?

Pref. I do not say but that his Majesty may alter our Statutes, nor do I know but a Parliament may do the same; I dispute not their Power; only this, My Lord, I say, that I, who already have

have taken an Oath to observe these Statutes as they now stand, and am sworn not to admit of any Change or Alteration by any Authority whatsoever [And then turning to the Oath, where they were to observe those Statutes and no other, according to the Literal and Grammatical Sense, &c. and reading it to their Lordships] can obey none: But then those who come after such Limitations and Restrictions are made, are not oblig'd to observe them; and that, my Lords, is our Case, as to the Statutes of the Mass.

Then the Decree of the 22d of June was read, declaring the President's Election null and void.

Bish. Ch. Did you know of this Commission, &c?

Pres. Yes, my Lord, I have heard of it.

Bish. Ch. Why then did you not obey it?

Pres. I was never cited before their Lordships, nor was either heard by them in Person or Proxy; and I think I am the only Instance that is extant, of any Man that was ever deprived of a Freehold, wherein he was legally invested, and of which he was quietly possessed, without being summoned or heard.

Here Mention was made of Dr. Fairfax's Suspension.

Pres. My Lord, he is absent, and if your Lordships give me leave, I have somewhat to say on his Account; your Lordships may please to observe in that Decree, that the Reason given why Dr. Fairfax was suspended from his Fellowship, was, because he had not obeyed his Majesty's Command, in not electing Mr. Anthony Farmer President of the College: Now the Charge of Immorality given in against Mr. Farmer by the College-Delegates was made out, and their Lordships fully satisfied in it, on the 29th of July; notwithstanding which, this Decree for Suspension of Dr. Fairfax was fixed on the College-Gates, August 2d.

Bish. Ch. The King hath for the most part recommended to the Presidentship of this College.

Pres. I am the twentieth President, and only four of that Number have been recommended by the Kings and Queens of England, whereof three were every way qualified for that Office.

Bish. Ch. Who were those?

Pres. My Lord, there was one in the Time of Edward VI. one in Queen Elizabeth's, and two in the late King's Reign.

Bish. Ch. Was there never a one in King Charles the First's Reign?

Pres. Not that we know of.

Bish. Ch. What think you of Dr. Oliver?

Pres. It doth not appear to us, my Lord, that he ever had a Mandate.

Bish. Ch. But it appears to us, and that I will bring you one to swear, that he had a Mandate.

Pres. The Truth is, we have lost the Register of Dr. Oliver's Election and Admission; the Register betwixt the Year 1640, or thereabouts, and sixty, being taken away by those who were turned out of the College at that Time; but I believe, my Lord, we are able to prove that he was elected and admitted according to the Statute.

Bish. Ch. Was Dr. Clark a Statutable Person?

Pres. Yes, my Lord.

Bish. Ch. Do not the Statutes require that he should be in Orders? Was he in Orders?

Pres. My Lord, the Statutes only require that he should be Doctor of Divinity, Physick, Law,

or Master of Arts. There is indeed one Statute, which says, The President or Senior-Fellow should read Prayers upon such certain Days; from whence we conclude, that the Founder suppos'd we might have a President that might not be in Orders; and in such a Case he takes Care that the Senior-Fellow should do his Duty.

Mr. Char. My Lord, will you be pleased to ask Dr. Hough, whether Dr. Clark was married, or not?

Pres. No, Sir, he was a Widower.

Then a Petition was read from the Society to his Majesty, signed the 9th of April, and presented the 10th to the Earl of Sunderland, by the Hands of Dr. Thomas Smith, and Captain Bagshaw, wherein 'twas set forth, that having heard that his Majesty would recommend Mr. Farmer to them, a Person incapable, they did humbly beseech him, either to leave them to a free Election, or to recommend a qualified Person.

Bish. Ch. Was this the Petition?

Answer. Yes.

Bish. Ch. Why then did you not stay for his Majesty's Answer?

Pres. My Lord, We did till the very last Day wherein we are limited to finish the Election; and my Lord Sunderland returned in the King's Name this Answer, That his Majesty expected to be obeyed. Now, my Lord, we did no longer defer the Election, because our Statutes enjoy us within such a Time, and we staid to the utmost: Nor could we choose the Person his Majesty did recommend, knowing him to be so unfit, as we afterwards made him appear to be. The Society was therefore to proceed to the Election of another Person, and did agree on such as you see.

Bish. Ch. A Mandate always implies an Inhibition.

Pres. My Lord, I cannot conceive that.

Bish. Ch. But I can; and if you question it, here's the King's Council ready to argue it.

Pres. My Lord, whilst the Person his Majesty recommends appears duly qualified for the Place, it seems indeed to imply that we should not proceed to the Election of another; but when he is known to be utterly incapable, it seems to be the same as if there were no Letter at all.

Some other Things and Questions less material were put, and then the Court was adjourned to Saturday the 22d, at Nine in the Morning, to the common Room, the Hall being, as they said, too publick and incommodious.

SATURDAY, October 22d, 1687.

As soon as their Lordships met in the common Room, and the Society before them, the first Word was, Withdraw; and after a little Time, the President was called in alone.

Bish. Ch. DO you submit to the Decree of the Commissioners, whereby the Election is declared Null?

Pres. As to that Decree of the Lords above, it is a Nullity in it self from the Beginning to the End, as it relates to me, I never having been cited, nor having ever appeared before them, either in Person or Proxy. Besides, my Cause it self was never before them; their Lordships never enquiring or asking one Question concerning the Legality or

or Statutenbleness of my Election; for which Reasons (as I am informed) that Decree was of no Validity against me, according to Methods in the Civil Law: But if it were, I am possessed of a Freehold, according to the Laws of *England*, and the Statutes of the Society, having been elected as unanimously, and with as much Formality as any one of my Predecessors, Presidents of this College, and afterwards admitted by the Lord Bishop of *Winton*. our Visitor, as the Statutes of the College require; and therefore I can't submit to that Sentence, because I think I cannot be deprived of my Freehold, but by Course of Law in *Westminster-Hall*, or by being some ways incapacitated by the Founder's Statutes.

Bish. Ch. Will you deliver up the Keys of the President's Office, and Lodgings, to the Use of that Person whom the King has appointed your President, as the Statutes require?

Pres. I will immediately do it, if that appears.

Bish. Ch. Turn to that Part of the President's Oath, where he promiseth to submit quietly if he shall be expelled, either for his own Fault, *vel ob aliam Causam*.

Pres. My Lord, that Statute only concerns me, if I am expelled for any Fault committed by me.

Bish. Ch. Vel ob aliam Causam?

Pres. Then, my Lord, to be short, here is no Cause at all.

Bish. Ch. I ask you again, Will you deliver up the Keys to the President whom his Majesty hath appointed?

Pres. There neither is, nor can be a President so long as I live, and obey the Statutes of the College; and therefore I do not think fit to give up my Right, the Keys and Lodgings.

Bish. Ch. We may demand them of you as Visitors.

Pres. My Lords, we never deliver up the Keys to the Bishop of *Winton*. and we own no greater Visitorial than his; he hath the King's Authority. 'Tis by Virtue of a Royal Charter that we live together, and enjoy the Benefit of this Place, that empowered our Founder to give us a Rule, and obliged us by Oath to act suitable unto it: And the Bishop of *Winton*. is hereby constituted to be our Visitor; and all this we own from the King's Authority. The Bishop of *Winton*. is our ordinary Visitor; the King (I presume) our extraordinary. But your Lordships know it hath been controverted, Whether the King can visit a private College or not? The Authority of the President is made by delivering up the Statute-Book, and Keys; and therefore I look upon them as an essential Badge of my Office.

But I humbly beg that I may ask your Lordship one Question.

Your Lordship is pleased to demand of me to give up these Things: Does your Lordship own my Right? For if not, What is it your Lordships would have me give up?

Bish. Ch. No, we look upon you as an Intruder.

Pres. If I am an Intruder, the Bishop of *Winton*. made me one; and I thank God for it. My Lords, the Time we have been allowed for this Appearance, has been very short; but one Day betwixt it and the Citation. We are Men ignorant in the Laws, and I must confess it of my self in particular, that I have endeavoured to give your Lordships a plain satisfactory Reply to such Questions as your Lordships have been pleased to put

to me. It is very probable, that through Ignorance and Inadvertency, I may express my self unwarily. If so, I beseech your Lordship let no Advantage be taken of it; my Intention has been always to express my self with all imaginable Duty to the King, and Respects to your Lordships. If I have done otherwise, I beseech your Lordships Candor in a favourable Interpretation of what I said, that nothing may be taken amiss, where all was dutifully intended. And now, my Lords, thus far have I appeared before you as Judges; I now address to you as Men of Honour, and Gentlemen; I beseech you to represent me as dutiful to his Majesty to the last Degree, as I always will be, so far as my Conscience permits me, to the last Moment of my Life; and when I am dispossessed here, I hope your Lordships will intercede that I may no longer lie under his Majesty's Displeasure, or be frown'd upon by my Prince, which is the greatest Affliction can befall me.

Upon this the President was ordered to withdraw, and after a little Time, he and the Fellows were called in again. Then the Bishop repeated this Question.

Bish. Ch. Dr. Hough, Will you deliver up the Keys, and quiet Possession of the Lodgings, to the Person whom his Majesty has appointed President? [*To which no Answer was returned.*] *The Bishop repeated a second Time,*

Pres. My Lords, I have neither seen nor heard any thing to induce me to it.

Bish. Ch. Dr. Hough, Will you deliver up the Keys, and quiet Possession of the Lodgings, to the Person whom his Majesty has appointed President?

Whereupon the King's Proctor stood up and accused Dr. Hough of Contumacy. Then the Bishop of Chester admonish'd him in these Words, three Times.

Bish. Ch. Dr. Hough, I admonish you to depart peaceably out of the Lodgings, and to act no longer as President, or pretended President of this College.

Which being so done, they struck his Name out of the Book, and admonish'd the Fellows, and others of the Society, that they should no longer submit to his Authority.

SATURDAY, October 22d, 1687.

O X O N.

Dr. Fairfax's Case before the Commissioners.

AT the first Sessions *Dr. Fairfax* purposely absented himself; but *Mr. Atterbury* making Affidavit he was in Town, and that he advised him to appear, the Doctor accordingly did so the next Day. The Doctor being called in alone, and the Doors immediately shut, he begg'd of their Lordships some Company might be let in, because, as all had observed, the Bishop in his Speech, at the opening their Commission, promised to transact every thing in the Face of the World. The Bishop complained of the Crowd. The Doctor then desired to fetch in but two or three, at length but one, and him at the Door, *viz.* the College-Steward, a Publick Notary.

Bar. Jen. You must not think to prescribe to the Court.

Bish. Ch. What's the Cause of your Contempt, in not appearing at either Sessions Yesterday?

Dr. Fairf. No Contempt, my Lord, but for these ensuing Reasons. First, I thought my Suspension above had eased me of that Trouble. [The Doctor tending a Copy of it, which was read by the Commissioners.] The Doctor insisted very much on the Reasons their Lordships at *White-hall* gave for this Suspension; viz. for not obeying his Majesty in electing Mr. *Farmer*, he tending a Copy of Articles made good against him; and yet their Lordships ordered his Suspension to be fix'd on the College-Gates five Days after that famous Hearing. Second Reason for his Non-appearance, That upon the first Day of the ensuing Term, he intended to meet the Lord Chief Justice, at his Court of *King's-Bench*, for Relief against the Sentence, his Fellowship being a Freehold; witness *Coveny's* Case.

Bishop Ch. You will find but little Favour there.

Dr. Fairf. My Lord, in Courts of Judicature, I only expect Justice [and turning to the Lord Chief Justice] I have my self said he, been above four Years in all the Courts of *Westminster-hall*, and found excellent Justice, and I will see how it is now.

L. C. J. You shall have Justice.

Dr. Fairf. But your Lordship may save me the Labour of two Journies and my Charges, by improving your Lordships deserved Interest with my Lords Commissioners there, and get them now to take off my Suspension: It is ill travelling at this time of Year; and besides I am not rich.

Bar. Jen. To sue in *Westminster-hall* requires a Purse.

Dr. Fairf. My Lord, I did not say I was poor.

L. C. J. You must make your Supplication and Submission to the King.

Dr. Fairf. My Lord, they tell me, that this Business lies in your Lordship's Court, and only there (besides the Trouble I am otherwise to give your Lordship) what a Noise will the Cause make that *Dr. Fairfax* is suspended for this very Reason? viz. not obeying the King, in electing *Anthony Farmer*, such a Virtuoso and under Correction, your Lordships are obliged to take off my Suspension, to take off the Shame from that Body, whose Number, by a common Adjunct you your selves have lately encreas'd.

Bar. Jen. We must not endure these Reflections on the Court.

Bish. Ch. But will you submit to this Visitation?

Then *Dr. Fairfax* read a Paper, subscribed by him, dated October the 22d, in these Words: "My Lords, I have been Summoned, and appeared in this Cause before the Lords Ecclesiastical at *White-hall*, with whom your Lordships are now joined in Commission; and then gave in my Answer: I have nothing to add to it, and find no Reason to retract it."

HENRY FAIRFAX.

Bish. Ch. Will you admit of the Bishop of *Oxford*?

Dr. Fairf. I am suspended.

Bish. Ch. Have you done no Collegiate Act since your Suspension?

Dr. Fairf. My Lord, I have gone into the Hall, and laid in my Chamber: I did not think their Lordships, when they suspended me, ever intended that I should not eat, drink, or sleep.

Bish. Ch. If your Suspension was off, would you submit to the Bishop of *Oxford*?

Dr. Fairf. Truly, my Lord, I cannot do it.

Then all the Fellows were called into Court.

The President being withdrawn, the Bishop put the Question to all the Fellows; viz. Whether they would assist at the Admission of the Bishop of *Oxford* to be installed President, by Virtue of the King's Mandate? To which was answered by all the Fellows, to this Effect (except *Dr. Pudsey*, and *Dr. Thomas Smith*, who answered doubtfully, and *Charnock*, that he would assist) That they were under Oaths to the contrary, and therefore could not do it.

Then all were ordered to withdraw; and *Dr.*

Pudsey being called in alone, they asked him concerning the Manner and Form of Installing a President; which he instructed them in.

The Court adjourn'd till two in the Afternoon.

AS soon as they met, a Letter from the Earl of *Sunderland* to *Dr. Pudsey*, was read, dated the 2d of *August*, signifying, that the Society in Answer to his Majesty's Letter, commanding them to admit the Bishop of *Oxford*, agreed unanimously in this Answer, That the Place was full. Their Lordships were pleas'd to ask the Fellows singly, whether that was their Answer? And as many as were there, own'd that it was.

During this Examination, the President came into Court, and having waited until it was ended, and their Lordships, at a Pause, he made his Application to them: 'My Lords, if your Lordships please to give me leave, I would gladly speak a few Words.' They were all pleas'd to put off their Hats, and say he might. Whereupon he said, 'My Lords, you were pleas'd this Morning, in Pursuance to a Decree of the Lords Commissioners at *London*, to deprive me of my Place of President of this College, and to strike my Name out of the *Buttery-book*: I do hereby protest against all your Proceedings, and against all that you have done, or hereafter shall do in Prejudice of me and my Right, as illegal, unjust and null; and therefore I appeal to my Sovereign Lord the King in his Courts of Justice.' Upon which, the Strangers and young Scholars in the Room gave a *Hum*; which so much incens'd their Lordships, that notwithstanding all the Protestations the President and Fellows could make, the President in particular offering to purge himself by Oath, that he was no way accessory to or abetting of it, and declared that he was heartily ashamed and troubled at it; yet the Lord Chief Justice was not to be pacified, but charging it upon the President, bound him in a Bond of 1000*l.* and Security to the like Value, to make his Appearance, at the *King's-bench* Bar, the 12th of *November*. At the same time *Baron Jenner* took Occasion to pun on the President (*Hough's*) Name, saying to him, *Sir*, you must not think to buff us.

After this, was read the Answer the Fellows returned to his Majesty upon his Command to them, upon the 4th of *September*, to elect the Bishop of *Oxford*: The Answer was under the Hand of a publick Notary, subscribed by all the Fellows then present, except *Mr. Charnock*. The Bishop of *Chester* was pleas'd to charge the Fel-

lows of Unmannerlincks, for sending such an Answer to their Prince after such a Manner.

So they adjourn'd till Tuesday the 25th, at Eight in the Morning.

TUESDAY, October the 25th, 1687.

WHEN the Court met, Dr. *Stafford* offered a Paper in Answer to what was objected on *Friday*, that a Mandate implied an Inhibition; which their Lordships having perused, would not suffer to be read publicly, but asked the Fellows whether they would sign it, bidding them to do it at their Peril.

Then the Fellows had Leave to withdraw into the Hall, and not being satisfied that it was necessary to sign a Plea, which their Lordships refused to have argued, they returned the Paper into the Court, subscribed only by Dr. *Fairfax* and Dr. *Stafford*. The latter, after some Debate, desired to withdraw, but Dr. *Fairfax* stood to it.

A Copy of Dr. Stafford's and Dr. Fairfax's Plea.

To the Right Reverend and Right Honourable his Majesty's Commissioners for the visiting St. Mary-Magdalen-College in Oxon.

May it please your Lordships,

ON *Friday* last in the Afternoon you seem'd to insist very much on this; *viz.* That his Majesty in commanding the Fellows of the said College to elect Mr. *Farmer* President, did thereby inhibit them to elect any other Person whatsoever; which has not yet been made appear to be Law, either out of the Books of Civil, Canon or Common Law: Neither is it agreeable to Reason, that a Command to elect a Person incapable, should include in it an Obligation not to elect a Person capable, that being a kind of Contradiction *in terminis*. Yet this being granted, it cannot in the least affect the said Fellows, or invalidate their Election of Dr. *Hough*, notwithstanding his Majesty's Mandate in Behalf of Mr. *Farmer*, who being incapable of the Place, the Fellows cannot be said to be guilty of any Disobedience or Disloyalty, in proceeding to the Election of another Person who was qualified according to Statute, being forced to make an Election. For they are obliged by the Statutes of their College (when call'd together) to elect a President, or any Officer, under Pain of perpetual Expulsion from the College, to meet and make an Election; which Punishment they incur *ipso facto*, who either refuse to meet when so call'd, or being met, to nominate or elect a Person into the Office void, as appears by the Statutes of the said College: *Titulo de numero Scholarium & electione Presidentis*. Now according to the Founder's Direction in the said Statute, on the 15th of *April* last, the Fellows were called together by the Vice-President to elect a President in the Place of Dr. *Clark* deceased, and the Oath desired to be taken before the Election was administered by the Vice-President to them, whereby they are oblig'd to nominate and elect a Person that either is, or has been Fellow of *Magdalen-College*, or *New-College* in *Oxon*. Which Oath, when the Fellows had taken, it was not in their Power to elect Mr. *Farmer*; and yet they were then oblig'd to make an Election, under Pain of per-

petual Amotion from the College; as appears by the forecited Statute. And it cannot be imagined, that his most sacred Majesty did expect that the Fellows should be either perjur'd, or forfeit their Right to their Fellowships, rather than disobey his Command; his Majesty having most graciously declared, that Conscience ought not to be forced, and that none of his Subjects should be molested in the Enjoyment of their Rights and Privileges, &c. Now, that our Proceedings at the Election cannot lay any Imputation of our Disobedience or Disloyalty upon us, will thus be made appear. Either we had the Power to elect a President, or we had not: If we had not, to what End or Purpose did his Majesty command us to elect one? If we had, our Power was either restrain'd to Persons so and so qualified, or we were at Liberty to choose whom we pleas'd: But we could not do the latter, as appears by our Statutes; and therefore we could not elect Mr. *Farmer*, being not invested with any Power to elect a Person unqualified. And if we had so done, our Election would have been null and void in itself, and the Person elected liable to be turn'd out by our Visitor.

As for the Decree of his Majesty's Commissioners (in Pursuance of which your Lordships have admonish'd Dr. *Hough* to recede from the Place of President, and quietly to resign the Keys of his Office, and have his Name struck out of the College-Book) we humbly conceive it to be null and void in self, to all Intents and Purposes, Dr. *Hough* being thereby depriv'd of Freehold for Life (of which he was duly and legally possess'd) without ever being called to defend his Right, or any Misdemeanor objected against him. Wherefore we humbly beg leave of your Lordships, that Dr. *Hough* may be permitted to defend his Right and Title to the Presidentship at Common-Law, before any other Person is put in Possession of the Place.

THOMAS STAFFORD,
HEN. FAIRFAX.

After this, Mr. *Wiggins*, Chaplain to the Bishop of *Oxford*, was called in, who delivered a Paper, empowering him, as Proxy, to be install'd President for his Lord; which being read, together with the King's Mandate for the Bishop of *Oxon*, the Question was put to two or three of the Seniors, Whether they would assist at this Installment? Which they refusing, the Court adjourn'd to the Chapel, where the Bishop of *Chesier* put Mr. *Wiggins* into the President's Stall, where he took the Oath which the Statutes enjoin the President at his Admission, and the Oaths of Allegiance and Supremacy; the latter of which he was ordered to take upon his Knees, which he accordingly did. Then their Lordships conducted him to the Door of the President's Lodgings, where knocking three times, and the Door not being opened, they returned to the common Room, and commission'd *Atterbury*, and a Tiptaff, to fetch a Smith to force it open; which was done, their Lordships being present all this while: None of the Fellows, except Mr. *Charnock*, assisting, or being so much as present at either of these Performances. Then the Commissioners being returned to the common Room, Dr. *Fairfax* desired Leave, at their Leisures, to speak; which was granted.

Dr. Fairf. My Lords, your Lordships have been doing of what I can by no Means consent to.

Bishop Ch. You are big to be delivered of your own Destruction. Will you submit to the Bishop of Oxon. as now installed President, by Virtue of the King's Mandate?

Dr. Fairf. I will not; I cannot; because we have a statutable and legal President already.

Then the same Question was put to the Society, which being a Business of Moment, they deferred Time till the Afternoon to consider it.

Then the Court adjourn'd till Three o'Clock; at which Time the Answer was given in by the Society (except *Dr. Fairfax*, who had given his in the Morning) *That whereas his Majesty hath been pleased, by his Royal Authority, to cause the Right Reverend Father in God, Samuel Bishop of Oxon. to be installed President; we whose Names are hereunto subscribed, do submit, as far as is lawful and agreeable to the Statutes of the College, and no way prejudicial to the Right and Title of Dr. Hough.*

This Answer was accepted, except the last Clause, which the Lord Chief Justice, and Baron Jenner declared, as Judges, to be insignificant, since nothing they could do, could any way invalidate *Dr. Hough's* Title; but left them still at Liberty to be Witnesses for him, or any other way be serviceable to him in the Recovery of his Right. Upon this Assurance, the Society was prevailed with to leave out the last Clause.

Then all were commanded to withdraw: And *Dr. Fairfax* being called in, the Bishop asked him what he meant by his Paper above-mentioned, dated *October* the 22d, and whether he did submit to the Authority of the Court?

Dr. Fairf. As I have denied it above, so I do here.

Then the Court was opened, and the Doctor complained before them all, that he was twice closeted; and being asked, Whether he would obey the Court, and Bishop of Oxon? He plainly denied both. Upon which the Buttery-Book was called for, and the Bishop of Chester commanded his Name to be struck out; and this Sentence passed; *viz.*

Forasmuch as you have denied the Authority of the Court, and refused to obey the Bishop of Oxon. whom the King hath made your President; and taken Commons after your Suspension; We declare your Place void, and command you quietly to depart the College in fourteen Days.

Dr. Fairf. My Lords, all the huge Calamities that have befallen me, are on the sole Account of a religious and conscientious Observation of our pious Founder's Statutes, whose Bread I have eaten almost these thirty Years.

L. C. J. No Speeches: Besides, if you have any Papers, instead of reading them, leave them in the Court.

Then, with much ado, the Doctor prevailed with them to let him read his Protestation, which he left in the Court.

I Henry Fairfax, Fellow of *St. Mary-Magdalen-College*, do under my former Answer heretofore made, and to the Intent it may appear that I have not consented, nor agreed to any thing done against me, and to my Prejudice, I protest that your Sentence given

here against me, is *Lex nulla*, and so far as it shall appear to be aliqua; I do say it is iniqua & injusta; and that therefore I do from it, as iniqua & injusta, appeal to our Sovereign Lord the King, in his Courts of Justice, as the Laws, Statutes and Ordinances of the Land will permit in that Behalf.

Subscribed,

October 25th,
1687.

HENRY FAIRFAX.

This Protestation was over-ruled, and a Copy of the Sentence denied, though most earnestly desired at the Instance of *Dr. Hedges*, and *Mr. Vice-Chancellor*, two Days after.

At the Close of the Sessions, their Lordships declared, that they were very well satisfied with the Answer the Society had given them; and though before they had laid a Libel to their Charge, yet that Night they declared, they had met with nothing from them but Civility, and that they should receive the same from them; that they had shewn themselves Men of excellent Tempers this Day and before; and that they would represent it faithfully Above to their Advantage, and that if it any way lay in their Power to serve them, they should be very ready to do it.

Then they adjourned till *Wednesday Morning*, ordering them to bring in their Answer to the following Questions.

- I. *What Gifts and Provisions have you for Entertainment of Strangers?*
- II. *What is the Value of it?*
- III. *How is it applied?*
- IV. *And where is the Place of Entertainment?*

WEDNESDAY, *October 26th*, 1687.

IN the Morning they made it appear to their Lordships very satisfactorily, that they were obliged to give in Charity-Money, 2 l. 3 s. 4 d. and that besides that, they gave, *communibus annis*, almost 100 l. as appeared by a Paper they then delivered in. Upon this their Lordships were pleased to expatiate upon their generous Bounty and Liberality, saying, the Complaint of this Account was groundless, and that it would induce the King to a better Belief of them in all other Matters.

Then a Petition of *Dr. Rogers*, late Organist, was given in, desiring to be restored, which was read; but several Misdemeanors being proved against him, it was thrown out, and he advised to rest satisfied with 30 l. *per Ann.* which the College had bestowed on him, when they turn'd him out of his Place.

THURSDAY, *October 27th*, 1687.

THIS Morning they received a List of Leases, &c. which had been renew'd two Years last past. *Mr. Charnock*, the new Convert, asked their Lordships, whether those Leases stood good, which had been sealed since *Dr. Hough's* Election? The Lord Chief Justice answered, Yes; for Corporations always stick by their Seals. Then their Lordships perused the College-Registers, and finding nothing in them to object against, they were returned, and the Court adjourned till the Afternoon. At which Time their Lordships told them, That having received no Express from Above, as they

they expected, they would adjourn till *Friday* at Eight in the Morning.

FRIDAY, *October 28th*, 1687.

THE Commissioners being seated, all were commanded to withdraw: Then only the Fellows were called in, and the Bishop of *Chester* said, they had represented them fairly to the King, but his Majesty expected some farther Submission, which they advised them to make, by acknowledging their Contempt to his sacred Majesty in Person, and to his Letters; and that they should promise to behave themselves Loyal for the future; and that they should some Ways own the Proceedings and Legality of the Court, and implore his Majesty's Pardon, and lay themselves at his Feet.

The Fellows making a little Pause, the Bishop of *Chester* told them, they might Word it themselves; or, if they thought fit, *Mr. Tucker* should assist them in a Form. Then all the Fellows withdrew into the Hall, and drew up the following Answer.

May it please your Lordships,

WE have endeavoured in all our Actions, to express our Duty in all Humility to his Majesty; and being conscious to our selves, that in the whole Conduct of the Business before your Lordships, we have done nothing but what our Oaths and Statutes indispensably oblige us to, we cannot make any Declaration, whereby we acknowledge that we have done any thing amiss, having acted according to the Principles of Loyalty and Obedience, so far as we could, without doing Violence to our Consciences, or Prejudice to our Rights (one of which we humbly conceive the Electing a President to be) from which we are sworn upon no Account whatsoever to depart. We therefore humbly beg your Lordships to represent this favourably, with our utmost Duty to his Majesty, whom God grant long and happily to reign.

Upon their Lordships perusing of the Answer, they expressed their Dislike of it, saying, It did not come up to the Address sent to his Majesty at *Bath*, which was read. To this it was replied, That they hoped their Behaviour since had been every way answerable to what they had therein promised. Then their Lordships said, That it did not come up to what they delivered in on *Tuesday*.

Dr. Bayly. My Lords, we have acted conformable to our selves; and truly, my Lords, I cannot possibly confess any Crime.

Bish. Ch. We do not expect of you to confess any capital Crime, only to make some Acknowledgment.

Mr. Fulham. My Lord, we were ordered to address our selves, as having acted in Contempt of his Majesty's Authority, which, my Lord, I look upon as so great a Crime, that on no Account I would be guilty of it. My Lord, we have endeavoured to obey his Majesty to the utmost of our Power, and seeing your Lordships were pleased to accept our Answer on *Tuesday*, I humbly conceive your Lordship's Honour is engaged, that nothing further be required of us.

Bish. Ch. You are a very forward Speaker, and abound in your own Sense.

Mr. Fulb. My Lord, I hope your Lordship will give me leave to speak, when our Fortunes are so considerably at Stake. —

Then *Dr. Bayly* desired of their Lordships to give him Leave to explain what he meant by the Word *submit*, in his Answer on *Tuesday*; because (saith he) I hear your Lordships understood more than was meant, and least your Lordships should go away under a Mistake, by the Word *submit*, in the former Answer, I did not intend any future Obedience to the Bishop of *Oxford*; but meant it in Reference to the King's Authority, inasmuch as I did not oppose or resist the Bishop of *Oxford's* Instalment.

Upon this, a fresh Question was put to the Fellows, Whether they would obey the Bishop of *Oxford*, as their President, *in licitis & honestis*? To which all, except one or two, answered, They could not obey the Bishop of *Oxford* as their President.

Then *Mr. Fulham* was particularly asked the Question.

Mr. Fulb. *Dr. Hough* being duly elected and admitted President, doth thereby obtain a Right, which I am not satisfied he hath any Way forfeited, and therefore can obey no other Person as President.

Bish. Ch. Will you obey the Bishop of *Oxford* as in Possession?

Mr. Fulb. I cannot, because the Bishop hath not lawful Possession.

Then he was asked, wherein?

Mr. Fulb. He hath not Possession in due Form of Law, nor by proper Officers. I am informed that the proper Officers to give Possession of a Freehold, is the Sheriff with a *Posse Comitatus*.

L. C. J. Pray, who's the best Lawyer, you or I? Your *Oxford* Law is no better than your *Oxford* Divinity. If you have a Mind to a *Posse Comitatus*, you may have one soon enough.

Mr. Fulb. My Lords, I intended nothing but Respect to your Lordships, and have endeavoured to speak and behave my self with due Reverence, and I hope your Lordships will put a favourable Construction on what I said.

Then all were commanded to withdraw, and the Buttery-Book was called for, and after that, *Mr. Fulham* was sent for in; and by the Bishop of *Chester* suspended as followeth.

Bish. Ch. *Mr. George Fulham*, We have thought fit to suspend you from the Profits of your Fellowship during his Majesty's Pleasure, for your Contempt and opprobrious Language.

Then they adjourned till *Wednesday* the 16th of *November*, ordering the absent Fellows to be sent for Home against that Time. So they immediately went for *London*.

WEDNESDAY, *November 16th*, 1687.
at Nine in the Morning.

THE Lords Commissioners being sat, the first Thing they did, sent for the Buttery-Book; then called for *Mr. Joyner* and *Mr. Allibone*, and entered them actual Fellows: The former in the Room of *Dr. Fairfax*, whom they had expelled; the latter in Place of *Mr. Ludford*, lately deceased: All Oaths being dispensed with, besides that of a Fellow. That done, the Fellows being called, and Reasons given in for those that were absent, the Bishop of *Chester* spoke a Speech to this effect.

GENTLEMEN,

YOUR many Contempts and wilful Disobedience have occasioned this Visitation, which will end at last in your Ruin. This Society of yours has been long exercised in the Methods of Quarrelling; and testy Mutineers, ever since the Restoration of the late King: You have encourag'd Quarrels among yourselves; Quarrels between yourselves and President; Quarrels, at length, between yourselves and Visitor. For I have often heard your late Visitor complain, that this Society was ever stocked with an unquiet and turbulent Generation. By these Steps, from quarrelling with the President and Visitor, you have at last advanced to the highest Pitch of Insolence, to quarrel with your Prince, and affront his Sacred Majesty. I endeavour'd before, at the opening our Commission, to make you sensible of the Scandal that your Disobedience will bring upon your Religion; how much you Stain and Dishonour your liberal and ingenious Education in this Society.

You cannot but know his Majesty is your supream Ordinary. You cannot but have read in Bracton, who was twenty Years Lord Chief Justice under King Henry III. *Nemo presumat de factis ejus disquirere, ne dum contra factum ejus venire: All Disobedience implies Pride: For no Man can disobey his Governor, but he who thinks himself wiser. The Reputation and Honour of a Prince at home, and his Respect abroad, are chief Standards of a Government. But these Pillars, as much as in you lies, you have endeavour'd to shake. And unless his Majesty's Honour and Right be vindicated by us, He can neither be feared at home, nor observed abroad. Your Punishment must be as publick as your Crime. It cannot be conceived but his Majesty, in Justice, in Honour, in Clemency, and in his Royal Tenderness, could have proceeded otherways than he has done. On the first of April it was published that Dr. Clark was dead: On the Eleventh a Mandamus was directed to you, for choosing Mr. Farmer. On the Ninth you presented a Petition to the Lord President; wherein you laid yourselves prostrate at his Majesty's Feet, representing to him the Incapacity of Mr. Farmer, desiring the Benefits of his gracious Declaration for preserving your Rights and Properties, and beseeching him to nominate another Person qualified according to your Statutes, in the Election of whom you would shew your ready Obedience. So said and so done, Gentlemen, had been very well.*

But immediately after the Delivery of the Petition, you not waiting his Majesty's Answer, proceeded on April the 15th to an Election of Dr. Hough: So that by this Act, which was plainly contrary to his Majesty's Authority, whose Mandate did certainly imply an Inhibition, you directly confronted your former Promises of ready Obedience, and were resolv'd to give the King nothing but good Words: When you had done this, as Men of ill Designs are always in haste, for a Confirmation of it, you immediately went and surpriz'd your Visitor, and by that means persuaded him to confirm Dr. Hough, that very Day he received an Order from the Lord President to the contrary.

Upon this News the King was much amazed, and required an Account of your Proceedings; therefore the Lords Commissioners issued out a Citation; and after hearing the Plea, upon mature Consultation with the Learned of both Lawes, judg'd the pretended Election of Dr. Hough to be void and null, and him to be removed, by an Instrument dated the

which was affixed on the Gate. After this a Mandate was sent on the _____ to you to elect the Bishop of Oxon. Upon which Terms his Majesty was graciously pleas'd to dispense with your Disobedience hitherto. But this being disobey'd, his Majesty in Person, on the 4th of September, sent for you to Christ-Church, and required you immediately to elect the Bishop of Oxon. President. You went straight to the Chapel, a Place one would think have inspir'd more Devotion and Awe of his Sacred Majesty in you; and there contemptuously subscribed and sign'd a Paper, directly thwarting his Majesty's Command. The Ground of your Disobedience you pretend that you could not elect him, whereas you could not but know by a written Mandate, that lay by you, that Admission would have satisfied his Majesty. Conscience, the stale Topick of Rebellion, was here brought to vindicate your petulant and contumacious Behaviour. You pretended that you were oblig'd by Oaths, and I am sorry that at the same Time you forgot that of Allegiance. And indeed there is not a greater Sign of Hypocrisy, than partial Obedience. Had you any Respect to the Father of your Country, and your Mother the Church, you would have sacrific'd your pretended Scruples, as a Peace-Offring to the King. The best of us, I am sure, have Reason to beg God and the King's Pardon. But you, as if his Majesty reign'd by Courtesy, would have a King under you, but none over you. You urg'd the Observance of your Statutes, of which, as it hath appeared, you have not been so constant Observers; when your own Humour prompts you to a Dispensation, then you can readily embrace it; witness but that of being served per Masculos, by which great Scandals have come to this Society by reason of Bastards.

But when the King interposed, in whose Power alone it is to dispense with them, then you presently act according to such Methods as these. None of these Pretences will ease you with wise and sober Men.

This was the only Opposition his Majesty in his Progress receiv'd: Wherever his Sacred Majesty came, he worked a miraculous Conversion, except in Oxford; and so far satisfied every one with the Equity of his Proceedings, that none went away discontented from his Presence, unless it was for this Reason, that they could not enjoy it any longer.

October the 20th, We came down, and upon opening our Commission, I took care to represent to you the Heinousness of your Offence, and to persuade you to a serious Repentance; but all in vain.

For on Saturday Morning we required you to admit and instal the Bishop of Oxford; which all, except three, refus'd: In the Afternoon Dr. Hough having been deprived, and by us commanded to depart the College, came unto us without any leave, but not without great Attendance; Circumstances, I think, much unbecoming a Man pronounc'd expelled; and there enter'd a Protestation against all that we had done, or hereafter should do, as illegal, unjust and null; which he deliver'd not in Writing, but by Word of Mouth; a Thing repugnant to the Nature of all Appeals: And which was worse, without the usual Salvo to his Majesty's supream Power. When he had spoken it, there followed such a tumultuous, seditious and insolent HUM, which if you yourselves had not applauded, or at least consented to, it was impossible but that you would have discovered some of those Mutineers. However, since his Carriage and Language gave occasion to it, 'twas thought fit that he only should be obnoxious; and accordingly he was bound over.

On Tuesday we our selves caused the Bishop of Oxon. to be installed by his Proxy; after which we proposed to you, whether being now installed, you would submit to him in licitis & honestis? To which you gave an Answer under your Hands in the Affirmative. You then also desired of us to represent your Case favourably to his Majesty, giving all Assurance of your Loyalty and Obedience. But this Assurance of Submission lasted not long; for on Thursday, being required of us to subscribe such a Submission to his Majesty as we thought agreeable to your Duty, you required Time to consult of it; and after Deliberation, signed such a Paper, which seemed rather to be a Protestation against your former Submission, than an Acknowledgement of your Crime. Upon this we might justly then have proceeded to an Expulsion: But we thought fit, in Compassion to you, to take a Journey to London, and acquaint his Majesty with your Disobedience and ungrateful Behaviour. His Majesty was extremely amazed that his Clemency should be despised; but yet, to your Comforts be it spoken, his Patience and Goodness extends as far as your Provocations can: But if you still persist in your Obstinacy, those that are too tall to stand, and too stubborn to bend, deserve to be broken. And now, I think, I have said enough to let you know, that the Fig-leaves you have so artificially stitcheed together, are not sufficient to cover your Nakedness. I wish to God you had the same Tenderness for your Concern, as his Majesty's Commissioners have for you. But if you still persist to oppose the Royal Power of the King, We, who are come to vindicate the Right and Honour of his Majesty, resolve to discharge our Consciences and Duties to God and the King, without any Respect of Popularity; that's but the Paradise of Fools, and Scorn of wise Men: And therefore, as for us, we have no more regard to Peoples Dislike, than what they dream. By reason therefore of your late hypocritical Submission, the Commissioners have thought fit, upon mature Consideration, to draw up an Instrument, which shall be read to you, to which, if you shall immediately subscribe, before you leave the Room, we shall leave you to his Majesty's Pardon. And this we expect from you all, except Dr. Tho. Smith, and Mr. Charnock, with whose Behaviour the King is so well satisfied, that he expects no more from them.

Then all the Fellows being called in, their Lordships tendered a Form of Submission to them to be signed. Which take as followeth:

To the King's most Excellent Majesty.

The humble Petition and Submission of the Fellows of St. Mary-Magdalen-College in the University of Oxon. whose Names are subscribed.

WE Your Majesty's most humble Petitioners, have a deep Sense of being justly fallen under your Majesty's Displeasure, for our Disobedience and Contempt to your Majesty, and to the Authority of your Majesty's Commissioners and Visitors: We do in all Humility prostrate our selves at your Majesty's Feet, humbly begging Your Pardon for our said Offences, and promising that we will for the future behave our selves more dutifully, and, as a Testimony thereof, we do acknowledge the Authority of your Majesty's said Visitors, and the Justice of their Proceedings; and we do declare our entire Submission to the Lord Bishop of Oxon. as our President.

To which Paper all (except Dr. Thomas Smith and Mr. Charnock) refused to subscribe.

Dr. Aldworth, as Vice-President, was first called in to sign the Paper which had been read to all the Fellows.

Vice-Pref. My Lords, we desire Time to consider of it, and to give our Answer in Writing.

Bish. Ch. No, you must every one sign, or refuse, as you are called.

Bar. Jem. There is no Answer to be given, but ay or no.

They all moved again for Time, but it was refused.

Vice-Pref. My Lords, this is the first Time of my Appearance before your Lordships, since your sitting here; and therefore I pray to be heard.

My Lords, I am as ready to comply with the King's Pleasure as any Man living; neither do I know, that we have ever in this Place been disobedient to the King, where it was in our Power to obey his Commands. Our Founder in the first Clause of the Oath we take at this Election, has provided, that no one shall be President of his College, but who was bred in it, or in the College where he himself was bred. Now for us who have elected Dr. Hough, a Person qualified according to our Statutes, who has been installed, sworn, confirmed and approved of in all the Ways and Manner prescribed in the Statutes for us; my Lords, to accept and admit of a Stranger, and a Foreigner in his Place, is, to the best of my Understanding, a giving up the Rights of the College to other Uses than the Founder designed it.

Here he was interrupted.

Bish. Ch. Your Statutes are over-ruled by the King's Authority.

Vice-Pref. My Lords, your Lordships sit here as the Visitors; which implies, there are certain Laws and Statutes we are bid to observe, and by which we are to be governed; and if it shall appear to your Lordships, that we have acted conformably to these Statutes, I hope we shall neither incur the King's Displeasure nor your Lordships. The whole Tenour of our Statutes run, That we should inviolably maintain our Rights, and observe the Rules of our Founder; he has laid his Curse upon us if we vary from them. [Here he repeated the Words of the Founder, *Ordinamus sub pena Anathematis, & indignationis Omnipotentis Dei, &c. Item, sub interminatione Divini Judicis interdicimus.*]

Bish. Ch. Are you not to obey the King as well as the Founder's Statutes?

Vice-Pref. My Lord, I ever did obey the King, and ever will: Our Statutes, which we are sworn to observe, are confirmed by several Kings and Queens before and since the Reformation, and as we keep them, are agreeable to the King's Laws both Ecclesiastical and Civil; and so long as we live up to them, we obey the King.

Bish. Ch. Your Statutes were never confirmed by his present Majesty.

Dr. John Smith. My Lord, neither have they been repealed by his Majesty; and what is not repealed is confirmed.

Then their Lordships pressing to sign or refuse, the *Vice-President* said:

Vice-Pref. My Lords, I'll then deal plainly, in regard to my Oath and the Statutes, to the Right of all our Successors and of Dr. Hough, whom I believe to have been as fairly elected, and as legally possessed as ever any since the Foundation of the College: I cannot submit to the Bishop of Oxon. as President.

So he was ordered to withdraw.

Then the same Question was put to all the other Fellows singly, who all refused to sign the Submission, except Dr. Tho. Smith and Mr. Char-

Charnock, who were not pres'd, for the Reason above.

Mr. Thompson being called in to sign the Paper, said :

Mr. Thompson. My Lords, I have been always obedient to his Majesty's Commands; I was not concerned in the Election of *Dr. Hough*; I voted for *Mr. Farmer*, and am ready to submit to the Bishop of *Oxon*.

Bish. Ch. Did you not put your Hand to this Petition? Is not this you Hand?—Read the Petition—[*It was read*]—In which the Fellows desired his Majesty, to nominate any qualified Person, and to retract his Mandate granted for *Mr. Farmer*.

Mr. Thompson. My Lord, I conceive the Petition not to be disobedient. We had not yet received the Mandate; as soon as it came, I humbled my self.

Bar. Jen. Then why can't you humble your self again; is there any Hurt in it?

Mr. Thompson. This Paper requires me to own my Disobedience to his Majesty: I am not conscious of any, and therefore I cannot subscribe.

After a short Time, all who refused to sign the Submission were called in, and by Sentence of their Lordships, expelled the College for Contempt, &c. (except as before.) After Sentence, all that were expelled spoke to this Effect: 'My Lords, we profess all Duty to the King, and Respect to your Lordships, but must beg leave to declare; That we think our selves injured in your Lordships Proceedings, and therefore protest against them, and shall use all just and legal Ways of being relieved'.

After a short Time, an Instrument was fixed on the College-Gates, in these Words:

By his Majesty's Commissioners for Ecclesiastical Causes, &c. particularly authorized and empowered to visit St. Mary-Magdalen-College in the University of Oxon.

Whereas, in our Visitation of the said College, it appeareth unto us, That Doctor *Charles Aldworth*, *Dr. Alexander Pudsey*, *Dr. John Smith*, *Dr. Thomas Bailey*, *Dr. Thomas Stafford*, *Mr. Robert Almond*, *Mr. Manwaring Hamond*, *Mr. John Rogers*, *Mr. Richard Strickland*, *Mr. Henry Dobson*, *Mr. James Bailey*, *Mr. John Davies*, *Mr. Francis Bagshaw*, *Mr. James Fayer*, *Mr. Joseph Harwar*, *Mr. Thomas Bateman*, *Mr. George Hunt*, *Mr. William Cradock*, *Mr. John Gillman*, *Mr. George Fulbam*, *Mr. Charles Pennyson*, *Mr. Robert Hyde*, *Mr. John Yerbury*, *Mr. Robert Holden*, and *Mr. Stephen Wilks*, Fellows of the same College, have been severally guilty of Disobedience to his Majesty's Commands, and obstinately contemned his Royal Authority, and do still persist in the same: We have thought fit, upon mature Consideration thereof, to Declare, Pronounce, and Decree, That the said *Dr. Charles Aldworth*, &c. and every of them, be deprived and expelled from their respective Fellowships. And we do by this our Sentence and Decree, Deprive and Expel them of and from their said several and respective Fellowships.

Given under our Seal, this 16th Day of November, 1687.

WHITE-HALL, December 10, 1687.

HIS Majesty's Commissioners for Ecclesiastical Causes, and for visiting all Cathedral and Collegiate Churches and Colleges, &c. met this Day; and taking into their Consideration all that had passed in the Business of *St. Mary-Magdalen-College* in *Oxford*, and the contemptuous and disobedient Behaviour of *Dr. John Hough*, and several of the Fellows of that College, throughout the whole Proceeding, their Lordships declared, decreed and pronounced, That *Dr. Hough*, *Dr. Charles Aldworth*, *Dr. Henry Fairfax*, *Dr. Alexander Pudsey*, *Dr. John Smith*, *Dr. Thomas Bailey*, *Dr. Thomas Stafford*, *Mr. Robert Almond*, *Mr. Manwaring Hamond*, *Mr. John Rogers*, *Mr. Richard Strickland*, *Mr. Henry Dobson*, *Mr. James Bailey*, *Mr. John Davies*, *Mr. Francis Bagshaw*, *Mr. James Fayer*, *Mr. Joseph Harwar*, *Mr. Thomas Bateman*, *Mr. George Hunt*, *Mr. William Cradock*, *Mr. John Gillman*, *Mr. George Fulbam*, *Mr. Charles Pennyson*, *Mr. Robert Hyde*, *Mr. Edward Yerbury*, *Mr. Henry Holden*, and *Mr. Stephen Wilks*, should be incapable of receiving, or being admitted to any Ecclesiastical Dignity, Benefice or Promotion: And such of them who are not yet in holy Orders, were adjudged incapable of receiving or being admitted into the same. All Archbishops, Bishops, and other Ecclesiastical Officers and Ministers within the Kingdom of *England*, being required to take Notice of the said Sentence and Decree, and to yield Obedience thereunto.

THE 17th of *January*, 1687, being the Day that the thirty Demies of *Magdalen-College* were, by Summons from the Bishop of *Oxon*. the new President commanded to appear before him; and none appearing, *Mr. Charnock* the new Vice-President, called for the Buttery-book, and struck out the Names of *Mr. Holt*, *Mr. Adams Senior*, *Mr. Vesey*, and *Mr. Brabourn* Masters of Art; *Mr. Hyde*, *Mr. Woodward*, *Mr. Fulbam*, *Mr. Watkins*, *Mr. Stacy*, *Mr. Sherwin*, and *Mr. Kenton*, Bachelors of Art; *Mr. Cross*, *Mr. Busb*, and *Mr. Wells*, Under-Graduates: Which Fourteen were then resident in the University, and three more, who escaped Expulsion at that time.

Afterwards, when the King had certain Intelligence of the Prince of *Orange's* Design, viz. *October 12*, 1688, he ordered the Bishop of *Winchester*, Visitor of *Magdalen-College*, to settle that Society regularly and statutablely; accordingly, *October 16*, the Bishop of *Winchester* caused a Citation to be fixed on the Gate of the College, to recal *Dr. Hough*, and the former Fellows of that Society, by the Second of *November* following; but an Account coming that Post of the Prince of *Orange's* Fleet being disabled by a Storm, the Bishop was recalled to *London*, and the Restoration of the College put off: But when it appeared that the Fleet was ready to sail again, then the Business of the College was resumed, and effected *November 24*.

CXLI. *The Trial of Philip Standsfield, Son to Sir James Standsfield of New-Milns in Scotland, for the Murder of his Father, and other Crimes, Feb 6, 1687. 4 Jac. II.*

CURIA Justiciaria S. D. N. Regis, tenta in pratorio Burgi de Edinburgh, Sexto die Mensis Februarii 1687, per Nobilem & Potentem Comitem Georgium Comitem de Linlithgow, Dominum Livingstoun, &c. Justiciarium Generalem totius Regni Scotie, & honorabiles viros Dominos Johannem Lockhart de Castle-hill, Davidem Balfour, de Forret, Rogerum Hodge de Harcase, & Johannem Murray de Drumcairn, Commissioners Justiciarie dicti S. D. N. Regis. Curia legitime affirmata.

INFRAN.

Philip Standsfield, eldest lawful Son to Umquhile Sir James Standsfield of New-Milns, Prisoner within the Tolbooth of Edinburgh, Indited and Accused at the Instance of Sir John Dalrymple Younger of Stair, his Majesty's Advocate for his Highness's Interest: That where notwithstanding by the Law of God, the Common Law, Law of Nations, Laws and Acts of Parliament of this Kingdom, and constant Practice thereof, the expressing of malicious and seditious Words to the Disdain of his Sacred Majesty's Person, and Contempt of his Royal Government, such as drinking or wishing Confusion to his Majesty, is High-Treason, particularly by the 2d Act. 2d Sess. Par. 1st King Charles II. of ever glorious Memory: The Plotting, Contriving or Intending Death or Destruction to the King's Majesty, or any bodily Harm, tending to Death or Destruction, or who shall by Writing, Printing, or other malicious Plotting, and advised Speaking, express and declare such their treasonable Intentions, after such Persons being legally convicted thereof, they shall be deemed, declared and adjudg'd Traitors: And the Cursing, Beating, Invading, or Assassinating of a Parent by a Child, above the Age of sixteen Years, who is not mad and furious, is punishable by Death, and Confiscation of Moveables: And of all other Murders, Paricide is the most atrocious and unnatural; and Murder under Trust, is punishable as Treason with Forfeulture of Life, Land and Goods, and particularly by the 20 Act. 1st Sess. 2d Par. King Charles II. The King's Majesty and Estates of Parliament, considering how great and atrocious a Crime it is for Children to beat or curse their Parents, and how the Law of God hath pronounced just Sentence of Death against such as shall either of these Ways injure either of their Parents; therefore the King and Estates of Parliament did Statute and Ordain, That whosoever, Son or Daughter, above the Age of sixteen Years, not being distracted, shall beat or curse either their Father or their Mother, shall be put to Death without Mercy. And sicklike by the 51 Act. 11 Par. King James VI. It is Statuted and Ordained, That the Murder or Slaughter of whatsoever of the Leidges, where the Party slain is under the Trust, Creati, Assurance, and Power of the Slayer, all such

Murder or Slaughter to be committed in time coming, the same being lawfully tried, and the Person dilated found guilty by an Assise thereof, shall be Treason, and the Person found culpable shall forfealt Life and Goods; as in the said Laws and Acts of Parliament at more length is contained. Nevertheless it is of Verity, that the said Philip Standsfield shaking off all Fear of God, the Bonds and Ties of Nature and Christianity, Regard and Obedience to the said Laws and Acts of Parliament, did dare and presume to commit the said horrid and detestable Crimes, in swa far as, upon the first, second, third, or one or other of the Days of the Months of June, July, August, or September last, by past, one or other of them, he did, within the Houfe and Kitchen of New-Milns, call for Ale to drink some Healths, and in the Presence of John Robijson, then his Father's Servant, Agnes Bruce, likewise his Father's Servitrix, and several others, he did, as a most villanous and avowed Traitor, presume and dare to begin a Health to the Confusion of his Sacred Majesty, his native Sovereign, and did drink off the same, and caused others in his Company to do the like. And sicklike Sir James Standsfield of New-Milns his Father, having caused Educate and bring him up Decentlie, and in Plenty conform to his Rank and Quality, and having left no means unessayd for his Literature, Education and Subsistence; yet he being a profligate and debauched Person, did commit, and was accessory to several notorious Villanies, for which, both at home and abroad, he was apprehended and detained Prisoner, as in the Marshalsea-Prison in Southwark, in the publick Prisons of Antwerp and Orleans, and several other Places: And though his Father, out of natural Compassion to him, did cause release him out of these Prisons, in which he was so justly confined, he no sooner had his Liberty, than he of new invented and went about his villanous Practices and Debauches: And his Father at last perceiving that nothing could reclaim him from these and the like Proceedings, having signified his Inclinations to disherish him, and in order thereto, having disponed his Estate in Favours of John Standsfield his second Son; the said Philip did thereupon conceive, harbour and entertain an hellish Malice and Prejudice against the said Sir James Standsfield his Father, and most barbarously did declare, threaten and vow at several Times, that he would cut his Throat: And particularly upon the first, second, or third, or remanent Days of the Months of the Year 1680, within the Houfe of James Smith in Nungate or Haddingtoun; and upon the first, second, or third, or one or other of the Days of the Months of January, February, March, and remanent Months of the Year 1687, within the Houfe of James Baikbie Fermorer in New-Milns; and within his Father's own Houfe of New-Milns, and in the Houfe of William Scot there; and upon the first, second, third,

third, or one or other of the Days of the Months of *January, February, March*, and remanent Months of the Year of God 1683, 1684, and 1685 Years, when he was both in *Brussels* and *Breda*, and several other Places, both in *Holland* and *Flanders*, and in Prisons, within which he was detained in the City of *London* and *Soutbwork*, or upon one or other of the Days, of one or other of the Months of the saids Years, or either of them most wickedly, unnaturally, and bitterly rail upon, abuse and curse the said Sir *James Standsfield*, his natural and kindly Parent. And being transportied with Rage and Malice, he did, contrary to the Light and Tyes of Nature, nor once, but often, and frequently curse his Father, by bidding, and praying the Devil to take him, and the Devil rive him. God damn him, and swear, if he had a Sword, he would run it through him, and if ever he came to *Scotland*, he would be avenged upon him. And particularly upon the Day of *November* last, which was the last Time his Father went to *Edinburgh*, he did most impiously, and unnaturally imprecate God let him never return, and God let him never see his Face. And frequently when he saw his Father's Diet taken to him, he used to say, God grant he may choak upon it; and at other Occasions, when his Father refused to eat, he was in use to say, God let never more be in his Stomach than was in it then. And upon the first, second, or third, or one, or other of the Days of the Months of *September, October, or November*, last by past, or one or other of them, his Mother being recovered out of a Swound, and having said to him, *Philip*, ye will shortly want your Mother, which will be a gentle Visitation to Sir *James* your Father. To which he did answer: By my Soul, my Father shall be dead before you, Mother; and about eight Days after, he upon the like Occasion d.d renew the same Words: As also he was in use to declare, that though at present he had neither Cloaths nor Money, yet shortly (and no body did think how soon) he would be Laird of all, and then would use other Persons as they did him now: And at other times declared, that before *Christmas* he would be Laird of all; which Curses and Imprecations, he the said *Philip Standsfield*, by a continual Habit, used, and repeated these several Years by past; and lately, some few Months or Weeks before his Father's Murder. And not satisfied therewith, the said *Philip* did proceed to that Degree of unnatural Cruelty, and malicious Spite and Enmity against his Father, that upon the first, second, third, or one or other of the Days of the Months of *January, February, March*, and remanent Months of the Years of God, 1680, 1681, 1682, 1683, and 1684 Years, or one or other of the Days, of one or other of the Months, of one or other of the saids Years, he did attempt to assassinate, and offered Violence to his Father's Person, and did chase and pursue him upon the King's Highway at *Lothian-burn*, and did fire Pistols upon his Father: And likewise upon one or other of the Days of one or other of the Months, of one or other of the Years of God above specified, he did attempt to assassinat his Father for his Life, at *Culterallors*; and did fire Pistols upon him: And his Father being afraid of his Life, and under the Apprehension of Violence, from the cruel and bloody Hands of the said *Philip*, his unnatural Son, he did, to several Persons both of Quality and entire Reputation, declare, that the

said *Philip* his Son, had both attempted to assassinate, and offered Violence to his Person, and that he was devising and contriving his Death. And the said Sir *James Standsfield* his Father, having upon the Day of *November* last, gone from the City of *Edinburgh*, to his own Houle of *New-Milns*, and about ten o'Clock at Night, or thereby having gone to his own Chamber, in order to his Rest, and being alone in the Room, under the Credit, Trust, and Assurance of the said *Philip* his Son, and his own Servants within his own Family; the said *Philip* did consult, and advise, and correspond with some other Persones, within and about the Houle for the Time, to assassinat and cruelly murder his said Father, and perticularly with *George Thomson* in *New-Milns*, and *Heles Dickson* his Spouse, and *Janet Jonsoun* Spouse to *John Nicols*, there, in the Houle of the said *George Thomson* many Times, particularly the *Saturday's* Night immediately preceding the Murder, where he cursed his Father, and said he should shortly make an end of him, and be Master of all: And accordingly he and they did murder and strangle him in his Bed-chamber, and in the dead Time of the Night, did carry and transport him from the said Room, to the Water, near by the House, and laid his Body down upon the Water-side, and tied a Stone about his Neck, to make him sink in the Water; and before he was thrown therein, he went back with his Accomplices to a little Kiln near by, and consulted and advised, whether it was more fit to throw him in the Water with the Stone about his Neck, to make him sink, or to take away the Stone, least when he should be found, it might thereby appear that the Stone had been tied by some other Hand than his own; and at last resolved to take away the Stone, and throw his Body in the Water, which they returning, did accordingly: And some Persons being accidentally lying in the Houle at the Time, they did hear a Noise of many Tongues and Voices, to their great Terror and Amazement; and the next Morning very early, some of the Servants in the Houle having come to the Room where his said Father did lie, and having missed him out of the Room, gave Notice thereof to some others of the Servants. He declared that he had been seeking him about the Water-pools; and a Noise and a Cry having arisen, Search and Enquiry was made for his said Father (and by him seemingly amongst the rest) And after some Time his Body was found in the Water hard by his own Houle, and being dead, and his Neck broken before he was thrown in the Water, his Body did neither sink to the Ground, nor receive Water (as all drowned Bodies are in use to do) and he knowing where his Father's Body had been put, went on the Sabbath-Morning directly to the Place where his Body was in the Water, and stood a considerable Space on the Water-side, directly opposite to the Body, with his Eyes fixed on the same, before his Body was found or known to any others than the Murtherers; and when *John Topping* (a Stranger) passing that way, and ignorant of the whole Matter, or that Sir *James* was amissing, called to him, and asked, who that was in the Water? He made no Answer, but went away from that Place strait to *New-Milns*, and gave no Intimation to him, or any other Person what he had seen in the Water, but appeared surprized when his Body was found there by other Persons; and his Father's Body being taken out of the Water, the same was, by his Order, carried

to a dark Out-houſe; and though he was deſired by the Friends and Servants preſent, to ſuffer his Father's dead Body to be carried to his own Houſe, and kept therein, and not to be buried till his Friends in *Edinburgh*, and elſewhere, and Phyſicians in *Haddingtown*, or near by, might ſee the ſame. Yet he reſuſed fo to do, and cauſed bury the dead Body of his Father privately, and in haſte. And the Noiſe having ſpread abroad, that his Father had been barbarouſly murdered by him, and his Accomplices, Order was given by theſe in Authority, to cauſe open the Grave, that Phyſicians and expert Chirurghions might inſpect his Body, and make Report anent the Truth of the Matter: And accordingly, by the Report of the ſaid Chirurghions who inſpected the Body, it did appear, that his ſaid Father was cruelly ſtrangled and murdered, and not drowned, and that he had been caſt in the Water of Purpoſe to conceal the ſame. And when his Father's dead Body was ſighted and inſpected by Chirurghions, and the clear and evident Signs of the Murder had appeared, the Body was ſewed up, and moſt carefully cleaned, and his neareſt Relations and Friends were deſired to liſt up his Body to the Coffin: And accordingly *James Row*, Merchant (who was in *Edinburgh* in the Time of the Murder) having liſted the Left-ſide of Sir *James* his Head and Shoulder, and the ſaid *Philip* the Right-ſide, his Father's Body, though carefully cleaned, as ſaid is, fo as the leaſt Blood was not on it, (did according to God's uſual Method of diſcovering Murders) blood aſreſh upon him, and deſiled all his Hands, which ſtruck him with ſuch a Terror, that he immediately let his Father's Head and Body fall with Violence, and fled from the Body, and in Conſternation and Confuſion, cryed, *Lord, have Mercy upon me!* and bowed himſelf down over a Seat in the Church (where the Corps were inſpected) wiping his Father's innocent Blood off his own murdering Hands upon his Cloaths. By all which it is manifeſt, that he did moſt traiterouſly expreſs his Hatred and Malice to his Majeſties ſacred Perſon, by wiſhing and drinking to his Confuſion, and cauſing others to do the ſame. And likewiſe, that he did not only unnaturally curſe, invade, attempt to aſſaſſinate or beat his ſaid Father, but under Truſt and Assurance, barbarouſly and treaſonably did ſtrangle, kill and murder him in manner forſaid, and is Actor, Art and Part of the forſaid Crimes, or one or other of them, which being found by an Aſſyſe, he ought to be puniſhed for the treaſonable Crimes above ſpecified, with forfeaſture of Life, Land and Goods, and for the other Crimes above-mentioned, Capitally, and with the Pains of Death and Confication of Moveables, to the Terror and Example of others to commit the like hereafter.

P U R S U E R S.

Sir *John Dalrymple*, younger, of *Stair*, his Majeſties Advocate.

Sir *George Mackenzie*, Advocate.

P R O C U R A T O R S in Defence.

Sir *David Thoirs*,

Sir *Patrick Hume*,

Mr. *William Moniepenney*.

Mr. *William Dundas*.

The Pannal's Procurators produced two Warrants of Privy Council, commanding them to compear and plead the Pannal's Defence.

V O L. IV.

SIR *Patrick Hume* for the Pannal (always denying the Indytment, and whole Members and Qualifications thereof) alleadges, That as to the firſt Part of the Indytment, in relation to the drinking an Health to the Confuſion of his ſacred Majeſty, as it is moſt calumnious, fo it is not to be ſuppoſed, that any Man in his right Wits would have been guilty of ſuch a Thing: And it is poſitively offered to be proven, that at, or about the Time libel'd, and ſeveral Times before and after, the Defender did moſt heartily and cheerfully in ſeveral Companies drink the King's Health, and upon all Occaſions he was ready to teſtify his Loyalty to the King, and particularly the Time of the Invaſion by the late Duke of *Monmouth* in *England*, where he did enter himſelf voluntarily a Souldier in the Earl of *Dumbarton's* Regiment, and continued in the King's Army till the Rebels were defeat, and the Voluntiers diſmiſſed.

As to the ſecond Part of the Libel, in relation to the Pannal, his alleadged committing, and being guilty of, and acceſſory to many notour Crimes abroad, and being detained Priſoner in *London*, *Antwerp*, *Orleance*, &c. and that he vented and entertained Malice againſt his Father, and that he declared many times that he would cut his Throat, and that he did rail againſt, and curſe his Father, by many Imprecations.

It is answered, *primo*, That it is abſolutely deny'd, that the Pannal was guilty of, or acceſſory to any notorious Crime abroad, or put in Priſon upon that Account, nor is there ſo much as any Crime condeſcended upon.

2. The Defender could not conceive any Prejudice againſt his Father, upon the Account of diſpoſing his Eſtate to his ſecond Son; for he knew nothing thereof till after his Father's Deceafe, that one *Alexander Ainslie* told him that his Father had made ſuch a Diſpoſition.

3. As to the pretended Expreſſions, that the Defender ſhould have had of Railing, Curſing, and uſing Imprecations againſt his Father, in ſo far as the ſaymen are libel'd to have been done Abroad, in *England*, *Holland*, or other Places, he cannot be lyable to the Puniſhment inflicted by the Law of this Kingdom, becauſe when a Party commits a Crime in another Nation, he is only to be puniſhed according to the Law of the Place where the Crime was committed, and not according to the Law of the Nation where he is a Subject, or has his Dwelling: As is clear by the Common Law, Authentick *Cod. Ubi de criminibus agi oportet. Qua in provincia quis delinquit, aut in qua pecuniarum aut criminum reus ſit, ſive de terra, ſive de terminis, ſive de poſſeſſione, ſive de proprietate, ſive de hypothecca, aut de alia qualibet occaſione, vel de qualibet re fuerit reus, illic jure ſubjaceat, quod jus eſt perpetuum*. In that Nation where any Perſon commits a Crime, or is lyable to answer upon any account whatſomever, he is to be judged by the Law of that Place, which is eſta- bliſhed as a perpetual Law; and *Mattheus de Criminibus*, in his Title, *De Pœnis*, is expreſs of the ſame Opinion.

4. As to all thoſe pretended Expreſſions of railing, curſing, and threatning, libel'd, that were before *March*, 1685, the Defender is ſecured by the Act of Indemnity, by which all Crimes are indemnified, preceeding that Time, againſt the Government and Laws.

5. As to any pretended Expreſſions of railing and curſing ſince that Time, they being

but Injuries alledged done to the Father, he might and did remit the samen, in so far he did not challenge and pursue the same in his own Time; and this is clear from the Common Law, *Carpzov. Part. 2. Quest. 65. Actio autem injuriarum nec activè nec passivè in Hæredes transit, etiamsi mortuus illatas injurias ignoraverit. Institut. lib. 4. tit. 12. par. 1. de perpetuis temporalibus action. Leg. 10. par. 2. ff. si quis cautionibus in judicio sisten. And leg. 13. ff. de injuriis, injuriarum actio neque heredi neque in heredem datur:* As also it is a Principle in Law, that *disimulatione tollitur injuria*; and if it could be made appear, that the Pannal had any such Expressions, the Father did dissimulat and pass from the same, in so far as by a Letter, dated in June last, written by the Father to the Pannal, he orders him to take in his Chamberlain Accompts of the Rents of his Lands, and of any Money he had received from the Tenements, or for the Corns sold, and that he expects he will do the same exactly, and recommends to him, to be careful of all his Affairs, and subscribes himself to be his loving Father. By which it is evident, that all former Differences (if any were) betwixt them, were then taken away.

As to the third Part of the Indytment, in relation to the several Acts and Qualifications insisted upon; to infer, that the Defender had Accession to his Father's Death: It is answered, (*primo*) That the Indytment, in so far as it is founded upon the 51. *Act. Par. K. Ja. VI.* in relation to the Murder under Trust, which is declared to be punishable as Treason, is not relevant: Because the Father cannot in Law be said to be under Trust and Assurance of the Son, and that Act of Parliament takes only Place in Cafes where a Man is invited to his Neighbour's House, or of an Traveller being in an Inn, and that he be murdered under that Trust; and the same Act of Parliament being founded on in the Cafe of *Swinton*, who killed his Wife, in the Year 1666, the Indytment was restricted to simple Slaughter. And in the Cafe of *Master James Oliphant*, in the Year 1665, the Lords of the Session found, that a Son's killing his Mother, was not Murder under Trust, and so he was not punishable by that Act of Parliament, as guilty of the Crime of Treason.

2. The Acts and Qualifications condescended on to infer the Defender's Accession to his Father's Death, are but very remote and uncertain; for as to that Expression, That the Defender is alledged to have threatned his Father's Death, it is the Opinion of all Lawyers, who have written upon the Subject, that that is but a very remote Presumption. And as *Carpzovius* expresses it, *Part. 3. Quest. 121. Numb. 51. Quod est indicium admodum periculosum, quippe cum homines sepe nil minus faciant quam quod minus exequantur & iracundia agitata minus de crimine perpetrando sepe jactet, ipso tamen animo fervore paulo post discusso, cobibeat manus, & abstineat a facinore illo quod forsitan ab alio postea committitur.* And *Paris de putco* gives an Instance in his *Traictat de Syndicatu* upon the Word *Tortura*; and *Boverius*, That a Woman seeing a Person going by her Window, against whom she had a Prejudice, and that another having a Hatred against her, and hearing that she had threatned to cut off that Persons Legs, the Party that did hear the Woman use the Threatning, did the Thing; upon which the Woman that did threaten, being challenged, and put to the Torture, did confes; yet thereafter it was found, that

she was altogether innocent, and that another had done it.

3. As to the pretended Acts of the Defender's alledged pursuing, and invading his Father, and firing Pittols at him, at *Lozbian burn* and *Culteralors*, in *Annis* 1683, and 1684. As it is most groundless, so, if need were, it could be made appear by the Persons who were in Company with him at that Time, that the Defender and his Father were then in entire Friendship all alongst the Journey, and he was so far from making any such Attempt, that it can be made appear, that the Defender did behave himself towards his Father with all the Submission and Respect that became a Son to have to his Father: But as to these, and all other Acts, preceding *March*, 1685, the Defender is secured by the Act of Indemnity; and as the Defender cannot be pursued for any Crime preceding that Time, neither in Judgment nor out with the same, they in effect being no Crimes, being taken away by the Act of Indemnity, they cannot be so much as made Use of as Qualifications or Aggravations, to infer another Crime posterior thereto.

4. As to that pretended Qualification, that when the Defender did touch his Father's dead Body after it was taken out of the Grave, the Corps did bleed.

It is answered, That this is but a superstitious Observation without any Ground either in Law or Reason. And *Carpzovius* relates, *Part 3. Quest. 122. Numb. 31.* That several Persons upon that Ground had been unjustly challenged, and that he in his own Experience had seen a dead Body bleed in Presence of the Person who was not guilty; as also that he has seen the Body not bleed in Presence of the Person that was guilty. And *Mattheus de Criminibus*, is of the same Opinion, *Tit. 16. de Questionibus, Numb. 12. de Sanguine perro de Cadavere profuente quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falsa sint; ratio vero idonea nulla reddi possit, non putaverim indicium ad torturam sufficiens esse; non enim sapientis Judicis est incerto experimento credere quod certa ratione diviendum est.* And the Truth is, the Occasion of the dead Body's bleeding, was, that the Chirurgions that came out to visit the Body, did make an Incision about the Neck, which might be the Occasion of the bleeding; and also the very moving of the dead Body, when it was taken out of the Grave, and out of the Coffin, might occasion the bleeding; especially seeing the Body did not bleed for some time after, which certainly was made by the Motion, and by the Incision: As also a further Evidence, that it could not be the Defender's touching the Body, the Chirurgions did likewise touch the Body as well as he, and several others present; so that the bleeding could no more be ascribed to his touching, than the touching of the other Persons present.

5. As to the other Articles lybel'd, relating to the pretended Murder, they are but meer Stories, and the Truth is, and it is offered to be proven, that the Defender having gone to his Chamber and Bed the Night before his Father's Death, he did not stir out of his Bed, nor out of the Room, till the next Morning that *John Robertson* his Father's Servant came to his Chamber, where he was in Bed, and told him, that he had been in his Master's Room, and that he could not find him. Upon which the Defender immediately arose, and put on his Cloaths, and went

went out to see where his Father was. And shortly after Word being brought him by some Persons in the Town, that they did see his Father's Body lying in the Water, and it being generally concluded by all, that he had thrown himself in the Water, and the Body being taken out, and laid in a low Room, it was thought fit by all the Neighbours about, that he should be buried the next Day.

6. The Particulars lybel'd, to infer the Defender's Accession to his Father's Death, being but remote and uncertain Conjectures, it is a certain Principle in Law, that *ex præsumptionibus & conjecturis nemo criminaliter condemnari potest*, especially as to a Capital Punishment: As is clear from the Common Law, *Leg. 5. Digest. de pœnis, sed nec de supplicationibus debere aliquem damnari, satius enim est Impunitum relinqui facinus nocentis quam Innocentem damnari*. And which is the Opinion of all Lawyers, writing upon the Subject: As *Bartol*, upon the foresaid Law, and *Farin. Part. 3. Oper. Crim. Quest. 86.* and the Lawyers by him there cited. And *Muscard de prob. Conclus. 2.23.* lays it down as a certain Conclusion, *quod Argumenta quantumcunque arguentissima, etiamsi essent talia quæ mentem indicantis adeo coactarent quod aliud credere non possit, non tamen sufficerent ad condemnationem pœne corporalis sed duntaxat pecuniariæ.*

7. The Presumptions and Qualifications lybel'd, cannot be sustained even to infer an Arbitrary Punishment: Because they may, and are taken off by other Presumptions, that either the Father was not murdered, but that in a Frainzie, or melancholy Fit, he had thrown himself in the Water: Or, at least, if he was murdered, that the Defender had no Accession thereto, and the Presumptions descended upon in Behalf of the Defender, leid the Presumptions contained in the Inditement, are these. That it is notourlic known, that his Father was subject to melancholy Fits, and that in the Year 1679, the Time of *Botwell-Bridge*, it is offered to be proven, that he was in a Fit of Distraction; and at another Time in his House at the *Netber-bow*, he was going to throw himself out over the Window, if one *Thomas Lindall* had not come in at the Time and pulled him back by the Legs, when his Body was half out at the Window. And some few Days before he went out of *Edinburgh* last, he came to *George Sterling*, Chirurgion, and desired him to draw Blood of him, for a Distemper in his Head, which he refused, unless he had Advice from a Physician. As also a Day or two before he went out of the Town, he was seen reading upon the Book of *Burton's Melancholy*. And that Day when he went out of the Town in Company of Mr. *Bell* the Minister, and *Aiton*, Merchant in *Edдингton*, they observed him to be melancholy, disordered, and more troubled than ordinary; or if it could be made appear, that the Father was murdered, yet it cannot be presumed that the Defender had any Accession thereto, or that he would have committed such an Act against the very Ties and Light of Nature. As also it appears by the foresaid Letter, written to the Defender by his Father, that they were in entire Friendship; as also when the Surmise went Abroad, that his Father had been murdered, if he had been conscious to himself that he had any Accession thereto, he would have certainly fled the Country, and gone away. But he was so far from

that, that upon the first Rumour of it, he came presently into *Edinburgh*, and several Days thereafter, it being told him, that he was suspected to have Accession to his Father's Death, he came voluntarily and entered himself in Prison, that he might undergo the strictest and severest Trial: Which alone is sufficient, if it were no more, to take off all the Presumptions lybel'd, and to convince the World of the Defender's Innocence; and it being a Principle in Law, that *una præsumptio rollit aliam*, the Presumptions adduced for the Defender ought to be preponderat, *Muscard. Conclus. 1205.* is positive, *That præsumptiones quæ sunt pro reis prævalent*. As also that *præsumptio affectionis naturalis prævalet contrariis præsumptionibus*. So that upon both these Considerations, the Presumptions alledged for the Defender ought to be sustained, to take away the Presumptions lybel'd, and to free him from the Crime.

His Majesty's Advocate answers, That the Libel consists of three Articles, (*Primo*) Treason, by the Pannal's drinking the King's Confusion, and by the Murder under Trust. 2°. The cursing of a Parent. 3°. The Qualifications inferring the Pannal's Accession to the Murder of his Father.

As to the first, it cannot be denied, but that the drinking or wishing Confusion to his Majesty, is the highest Act of Contempt, Malice, and Disdain to his Royal Person; and as the Relevancy of this Article is not expressly contraverted, so the Atrocity of the Act, and the forcing others to do the same upon the common Grounds of Law, does clearly infer Treason, and it cannot be expected, that such extravagant Words should either be express'd, or particularly provided against by any Law in express Terms; but the Nature of the Words in express Terms of our Law discharging all Speeches to the Disdain of his Majesty, the Contempt of his Authority, do clearly and naturally comprehend the Words lybel'd, and by the common Law, *Ad leg. jul. Maj. crimen læsæ Majestatis ad exemplum legis scriptæ est vindicandum*.

And whereas it is pretended, that these Words were inadvertently said, and that it appears by the Tract of the Pannal's Life, and his Readiness to engage in his Majesty's Service, that the Words could not be deliberate and malicious. It is replied, That it is offered to be proven, that the drinking Confusion to the King, was openly and plainly propos'd; and that the Pannal did deliberately send out for Ale to drink certain Healths, and that this Health to the King's Confusion was the first or second, and that it was no Lapse or Mistake in the Expression; but that he forced others to pledge and drink that same Health. And the Malice and Disloyalty is evident, by the Health's Subsequent; *viz. Antichrist's, &c.* and it is not at all relevant (after the reiterate and deliberate expressing of these Words) that he had retract'd or drank the King's Health; for a Crime once committed, is not retract'd or taken off by such inconsistent and unsequential Speeches; but to shew the Sense the Pannal had of the Importance of his own Words, the Pannal being informed, that some of the Persons present had divulged his having drunk the King's Confusion, the Pannal did conjure them to Secrecy, and did menace the Witnesses with a great Kane, that he would beat and brain them if ever they told it.

Whereas it is answered in general, as to all Crimes committed without the Kingdom, that they cannot be cognosed or punished here: It is replied, That as to all Crimes against Nature, or the Law of Nations, as every Party is competent to be an Accuser, so every Judicature is competent; and therefore as to the Crimes of Treason, or cursing of Parents, wherever committed, they are punishable by the Justices: But because in relation to the Crimes committed Abroad, there is not positive Probation, but Declarations and Testimonies; therefore as to these Crimes, his Majesty's Advocate does not insist on them as distinct Crimes *per se*, but as Qualifications, Documents, and Evidences of the habitual Debauchery, and unnatural Malice express'd by the Pannal against his Father for a Tract of many Years.

Whereas it is answered, That as to all Crimes preceding 1685, they are taken off by the Indemnity: It is replied, The Indemnity 1685, is no general Indemnity, neither as to Persons nor Crimes, but particular Crimes are remitted, and particularly enumerat without any general Clause: And as cursing of Parents is not particularly enumerat, so by the Nature of that Crime, it cannot be included or comprehended in any general Indemnity: And the Words of the Act of Parliament, 20 *Act. 1. Par. K. Ch. II.* bears expressly, *That the Cursers of Parents shall be put to Death without Mercy.* So that a general Act of Indemnity, or Mercy, without a special Remission, could not include this Crime, which, as the Act of Parliament bears, is expressly against Nature, and the Law of God: And by the Opinion of all Lawyers, general Indemnities do not extend to all Crimes; but these Crimes which are called in Law *Crimina excepta*, are never intended to be indemnified, nor such Crimes, where the Interest of Parties is more than the Interest of Publick Justice, and in all former and general Indemnities, Murder and other Crimes are particularly excepted with a general Clause, excepting all such Crimes as use not to be comprehended in general Acts of Indemnity: So that this so horrid a Crime, wherein the Parent was more interested than the Publick, neither was, nor could be comprehended under a general Indemnity: As also that restricted, limited Indemnity, bears expressly an Exoneration for all Persons below the Degree and Quality of an Heretor, Wodfetter or Burgess; and whether the Pannal were an Heretor or not, yet it cannot be said, that he is below the Degree and Quality of a Wodfetter or Burgess; and therefore the Act of Indemnity is of no use to him.

Whereas it is answered, That Sir *James* was reconciled with the Pannal, and wrote kind Letters to him, whereby, *dissimulando*, former Injuries were taken off: It is replied, That Injuries are only taken off *dissimulando*, which are not atrocious, but never specifick Crimes, wherein the Discharge or express Renunciation of the Party injured cannot liberat *à vindicta publica*, the Punishment of Crimes, especially in Capital Punishments, belonging to the Magistrat; and the privat Party has not the sole Interest, nor can dispense with Capital Punishments: But the Letter founded upon, does not in the least infer the Party's Forgiveness or Dissimulation of the Injury. And a Father ordering his Son to call in for Chamberlain Accompts, without empowering him to

discharge the same, is not the least Evidence of Confidence in his Son, much less a remitting of his Crime.

As to the second Article, in relation to the Cursing, it is positively offered to be proven, not in single Acts, but by a Tract and Habit of cursing his Father in the most abominable Termes imaginable.

As to the third Article, in relation to the Murder, that this Matter may be clear, & *ut constat de Corpore delicti*, these undoubted Qualifications are offered to instruct, that Sir *James Standsfield* was murdered and strangled, and that he did not drown himself. 1. It is offered to be proven by the Minister, that was that Night in the House, that long after ten o'Clock at Night, and that Sir *James* had retired to the Chamber, where he lay alone, the Minister heard the confused Whispers, Murmurs, and Noise of several Persons, both Men and Women, which affrighted him, and that he heard the Noise go away by the back-side of the Houle, which leads directly to that Pool where Sir *James* his Body was thrown in the Water.

2. Sir *James*'s Body was found swimming above the Water, and albeit it appeared by the Ice upon the Top of his Cloaths, that he had been several Hours in the Water, yet there had no Water entered in his Body; which is a Demonstration, that he was dead before he was thrown in the Water; for a Person thrown alive into Water, drawing in of Air and Respiration, being in the Water, he must draw in Water; and if the Person draws in as much Water as fills his Concavitie, he becomes heavy, having so much more Weight of Water, and therefore he sinks: But if a Person be thrown dead into the Water, when the Clap of his Throat is shut, the Water cannot enter, and there being so much Emptiness, the Body is light, and supported by more Parts of Water, than the Gravity of the Body can depress.

3. There being several Chirurgions and others sent out by Order from Authority to take up and inspect the Body, to see whether there was any Evidence of Strangling, or other Symptoms of Murder upon the Body; it did appear to all these Persons, who did depone before a Committee of the Privy-Council, That from the one Jugular Vein to the other round the Neck, there was a Tumour of congealed black bruised Blood, three Inches broad, and that there was congealed Blood in the Throat; upon which Matter of Fact, the College of Physicians have given an unanimous Testimony in Writing, that Sir *James Standsfield* was strangled, and not drowned: And the Deaconry of the Chirurgions being convened, have emitted a Declaration in Writing, concurring and agreeing with the Report of the Physicians: So that it is as clear as the Light of Day, that Sir *James Standsfield* was murdered.

2. For the Qualifications, that the Pannal was the Murderer, or accessory to the Murder of his Father, these clear Evidences are offered, which makes his Crime without possibility to be palliat or denied. 1. It is notorious, that the Pannal is a most debauched, vitious, pernicious Person, and has been Prisoner, or condemned to die in all the Places or Societies he ever haunted. He entered a Soldier in the *Scots Regiment*, where he was condemned to die at *Treves*, but made his Escape; and his being in Prison, in
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the *Marſhalſea-Prifons*, *Orleanſe*, and *Bruffels* (which make the Circuit of his Travels) are not denyed; and his profligat Life and conſtant Drunkenneſs, ſince he came to the Priſon, is offered to be proven by the Keepers: And as it is unneceſſary to trace all his Debauches; ſo there is one material Point offered to be proven, That upon the leaſt Provocation, either by Man or Woman, the Pannal uſed to ſwear by horrid Oaths, that he would take their Lives, though he ſhould die in the *Grasſ-mercat* for it.

3. Sir *James Standſfield* for theſe Debaucheries having diſheriſhed the Pannal, and diſponed his Eſtate to his ſecond Son; it is poſitively offered to be proven, That in the *Nungate of Haddington*, in *James Smith's Houſe*, the Pannal being told, that his Father would diſheriſh him, he with horrible Oaths vowed to cut his Father's Throat.

And whereas it is answered to this Qualification, That the ſaying that a Son would cut a Father's Throat, is but a remot Circumſtance: It is replied, That the Law, and all Lawers do agree, That *Mine præcedentes & damnum ſequuntur*, is a moſt pregnant Qualification of that Party's Crime, eſpecially where the Threats were to cut a Father's Throat, which of itſelf was ſo horrid and unnatural a Villany, that it cannot be doubted he who durſt vow it, wanted but an Occaſion to act it. And it is acknowledged, that though this be the cleareſt Preſumption, yet *per ſe*, it is not full Probation: For though the Son had both vowed, and reſolved, yet by an Accident he might have been prevented; but the Preſumption at leaſt lays the Burden, that except the Pannal could condeſcend, and document, that ſome other Perſon killed his Father, he muſt be reputed the Murderer.

2. It is offered to be proven, That Sir *James Standſfield*, who was a Perſon of eminent Sobriety and Veracity, did declare to ſeveral Perſons, that his unnatural Son had attempted his Life, and offered Violence to his Perſon, and particularly, that he had purſued him on Horſeback, and fired Piſtols on him; and that ſame *Friday* before Sir *James* was murdered, he did declare that it was not his Debts, or any thing under Heaven that troubled him, but that his Son and Family were plotting and contriving his Deſtruction, and the next Night he was murdered.

3. It is offered to be proven, That the Pannal's Mother declared, That her Son had vowed to be his Father's Death, and that he was a vindictive Perſon, and that ſhe did apprehend he had murdered him. So as to this Article, there is a Concourse of the Pannal's own Oaths, to murder his Father, and of his Father and Mother's Declarations, that he had attempted, and was ſtill plotting the ſame.

The ſecond Qualification is, that, that *Saturday-Night* Sir *James Standſfield* came home, the Pannal would not come where his Father was, either to Supper, or Prayer; and being expreſly deſired by ſeveral Perſons, to go to his Father, and ſpeak with him; he declared (that ſame Night he was murdered) he could not endure to ſee, or look upon his Father; and he had been all that Day cloſt with *Thompson* and his Wife, and *Janet Johnſon*. So after ten Hours at even, after the Family was gone to Bed, he came out to *Thompson's Houſe*, which is hard by the Gate, and there in Preſence of *Thompson*, his Wife, and *Janet Johnſon*, he declared that his Father would neither give him Money, nor Cloaths, and curſed his Father,

and declared that he would ſhortly make ridd of him, which agrees with what he had ſeveral Times ſaid in other Companies, that he was to be Laird before *Chriſtmas*; and that he was ſhortly to be Maſter of all, and none could think how ſoon. As alſo, ſhortly before Sir *James's* Death, the Pannal's Mother falling in Swound, it was ſaid to him, *Philip*, ye will ſhortly want your Mother; to which he answered, *By God*, his Father ſhould be dead before her: And eight Days after, his Mother falling again ſick, he repeated the ſame Words; whereby it is evident the Murder was deliberate and determined.

3. On the *Sunday Morning*, before Sir *James's* Body was found, *Philip* came to the Miniſter's Chamber, and told him that his Father was gone out in the Night, and that he had been ſearching for him about the Pools, and Water-side; and when the Miniſter reproved him for making ſuch Inſinuations againſt his Father, he laughed at him, and went away to the Pool, and ſtood looking upon his Father in the Water, but made no Diſcovery; and thereafter a Stranger coming by upon the Highway likeways, ſeeing Sir *James's* Body in the Water, he came back and diſcovered the Matter; at which *Philip* ſeemed ſurpriſed, and told that he had ſeen his Father's Body in the Water before, but he did not think fit to be the firſt Discoverer, which ſhews, that he was conſcious of his own Guilt; otherways upon the firſt Sight of his Father in the Water, he would have gone to him; but on the contrary, he never laid a Hand upon his Father's Body, either to pull him out of the Water, or to carry him into the Houſe, for the Dread of ſome extraordinary Diſcovery, and did not allow the Corps to be brought within his Father's Gates, but cauſed carry the Corps to the Wake-Miln, where, to cover the Appearance of Strangling upon his Body, he entrusted *Janet Johnſon* with the Care of wounding him, who was known to be a Perſon ſo odious to Sir *James*, that he could not ſee her for her Baſeneſs with the Pannal, and ſhe did acknowledge, that ſhe had not been for three Quarters of a Year within the Houſe before; and yet this infamous Strumpet, who has been tortured by order of the Privy-Council, as acceſſory to the Murder, was chiefly intruſted to ſee the naked Body, and the Cloaths put on!

4. The Pannal did reſuſe to ſend for a Chirurgeon, and to let his Father's Body be ſighted, though the Miniſter and others did expreſly demand it; and the *Engliſhmen* in the Manufactory, who were acquainted with the Crowner-Laws, they made a Mutiny ament the Burial, till the Corps were ſighted; yet the Pannal cauſed bury the Corps that ſame Night without ſhewing them.

The Corps being raiſed by Order, and Inciſion being made, whereby the Strangling did clearly appear, and the Corps being dreſſed clean, and Linnen put on, there did appear no Blood; but to take off Suſpition, the Corps were liſted up, and the Night-Cap being wrong put on, it was altered and changed, and thereafter the Corps were laid down without any Blood upon the Linnen; and the Pannal (who to this time had never touched his Father's Corps) being required to aſſiſt to liſt the Body into the Coffin, having taken his Father by the Right-side of the Head with his left Hand, *James Row* bearing the left, the Pannal's Hand was altogether bleeding, as if his Hand had been put in a Veſſel of Blood; which, notwithstanding of all his impudent Reſolution

lution to the contrary, had that horrible Impref-
 sion, and Conviction upon him, that he let his
 Father's Head fall to the Ground, and cryed out,
O God, and run away and went to a Desk in the
 Church, where he lay groaning and in Confusion,
 but durst never return to touch the Corps; and
 as there can no natural Reason be given, but an
 ordinar and wonderful Providence of God, in this
 kind of Discoveries of Murder; so the Fact was
 never more evident, and sure: Though Half a
 Dozen of Persons were bearing the Corps, no
 Man's Hands were bloody but the Pannal's, and
 the Corps being two intire Days in the Grave,
 in that Weather and Season, the Blood by the
 Course of Nature was become stagnat and con-
 geal'd; so that the former tossing and lifting of
 the Corps, and even the Incision itself had oc-
 casioned no such Effusion, but only some Water
 or Gore; but upon the first Touch of the Pan-
 nal the Murderer, there appeared Abundance of
 liquid florid Blood: And though this *per se* might
 not be sufficient, and as *Mattheus* is cited, it
 should not infer Torture; yet *Mattheus* acknow-
 ledges that most Part do sustain this, as a violent
 Presumption oft times experimented; yet in his
 Opinion it is not sufficient for Torture, because
 Torture being in itself a Punishment, it cannot
 be used, except where there is *semiplena probatio*,
 or where the Conscience of the Judge is satis-
 fied, as to the Truth of the Crime, and therefore
 uses an extraordinary Course, to extort a Con-
 fession, which proves that this Presumption is
semiplena probatio per se, according to their own
 Grounds.

And whereas it is alledged, that capital Punish-
 ment cannot be inferred from Conjectures, but
 from clear and positive Testimonies; it is an-
 swered, that the *Lex ult. Cod. de probationibus*,
 clearly states that Probation is either, *Testibus ta-
 bulis instrumentis documentis & indicis*. And *Mat-
 theus* states a particular Title upon this single Que-
 stion, *Cap. 6. Titulo 15. de probationibus*, and does
 most positively determin that Crimes are to be
 proven *Documentis, Argumentis & Indiciis*. And
 it is most evident, that the Probation which arises
 from the Nature of the Thing, which is incapa-
 ble to be sophisticate, or imposed upon, as Wit-
 nesses may be, that kind of Probation is the surest,
 because it is always the same, and admits no Va-
 riation. It's true, and it is acknowledged, that *Ar-
 gumenta & Indicia* must be *clara & evidentialia*, and
 Probation being *Quod facit fidem Judicis*, every
 Man's Experience tells him, that the Complica-
 tion and Conjunction of so many evident Qualifi-
 cations, though none of them *per se* were sufficient,
 yet being all of them joined, it induces a greater Cer-
 tainty, than two Witnesses positively deponing up-
 on the Fact. And therefore the Evidence of the
 Probation belongs to the Inquest, and the Rele-
 vancy that these Articles conjoin'd, or any Part
 of them, are sufficient to infer the Crime, belongs
 to the Judge.

As to the Presumptions offered for the Excul-
 pation of the Pannal, they are not at all rele-
 vant; for though so horrid a Murder is not to
 be presumed against Nature, yet being proved,
 or so strongly evinced, it does but conclude the
 Pannal's greater Guilt: And suppose that Sir
James Standsfield was formerly Melancholy, and
 had been Frantick in the Year 1679, yet it is
 known he recovered his Health, and was of a
 compos'd, sedat Temper of Mind for many Years

thereafter, and was as capable and diligent about
 his Affairs, these many Years, as he had been
 formerly, and was so considered and employed
 by the wisest Men in the Kingdom; and at the
 Time of his Death there was no Sickness, or re-
 turning of Frenzie upon him, but all that Week
 he had composedly done his Affairs; and did up-
 on the *Saturday*, when he went Home, discourse
 rationally upon all the Subjects that occurred:
 But it being so clearly documented and proven
 that he was strangled, it is a ridiculous Conceit,
 and there remains no Possibility that after he was
 strangled, he walked out and drowned himself.
 And as to that Presumption, that the Pannal ren-
 dered himself Prisoner, it was indeed suitable to
 the rest of his Impudence, and he did not ren-
 der himself till after the Order to apprehend
 him was intimate to him, when he could not
 escape, and when he was under Observation;
 and there did not want Project in fixing upon
 this Impudence when he could not escape, as
 a Qualification of Innocence, that he would
 render.

*Sir David Thoires without Repetition of the Replies
 made by his Majesties Advocat, doth make his
 Duply to the foresaids Replies, and every Member
 thereof, in order as follows; viz.*

TO the first, Anent the treasonable Words,
 the Pannal's Procurators oppon their former
 Answers, and the Act of Parliament whereupon
 that Part of the Ditty is founded, being only in
 order to such treasonable Speeches advisedly spo-
 ken. The constant Tract of the Pannal's Life,
 in drinking his Majesties good Health at all Occa-
 sions, and offering to adventure his Life in his
 Service in the last Rebellion, sufficiently demon-
 strats, that if any such Expression did escape the
 Pannal, as it is denied, the same was only rash
 and unadvised, and not deliberate and advised, as
 is required by the Act of Parliament, to infer the
 Pains lybelled; and the Qualifications added by my
 Lord Advocat, bearing, that the Pannal did con-
 jure the Persons then present to Secrecy, demon-
 strats that the Pannal was *ex incontinenti* heartily
 sorrowful and penitent for the same. And it's
 clear by that excellent Law of the *Cod*, the Words
 whereof are, *Si quis Imperatori maledixerit, si ex
 insania miserando, si ex temeritate, & petulantia
 temnenda, si ex animo injuriandi ad principem re-
 mittendum*, which demonstrats, that by the Com-
 mon Law, such an rash and unadvised Expres-
 sion was never to be laid hold on to infer a capi-
 tal Punishment, where the Person alledged, Ex-
 presser thereof, was not otherways suspect of Dis-
 loyalty.

2. Repeats the Defence as to Crimes alledged
 committin abroad, and it were against Reason and
 Equity, that Persons for one and the self-same
 Crime, should be subject to the Punishments of
 several Jurisdiccions, where the Punishment of the
 saids Crimes are different: But seeing my Lord
 Advocat declares he hath no Probation for these
 alledged Crimes, but Certificats and Affidavits,
 they cannot be obtuded as a Part of the Libel, be-
 cause the saids pretended Certificats and Affidavits,
 are neither insert in the Libel, or given out to the
 Pannal, and all Crimes are to be proven *testibus*,
non testimoniis; and if the Custom of Affidavits
 should be introduced in this Court, all Pannals
 (how innocent soever) might be murdered, by be-
 ing

ing deprived of their unanswerable Objections against the Granters of these Affidavits, &c. and therefore they cannot be sustained as a Qualification to load the Pannal, or make the Inquest have a prejudicial Opinion of him.

3. As to my Lord Advocat's Reply anent the Act of Indemnity, the former Defence and Act of Indemnity is opposed, and bears expressly Murders, Robberies, Slaughters, and all other Crimes committed against his Majesty, and Laws of the Kingdom, either by Word, Writ, or Deed; which undoubtedly excludes all alledged Crimes said, done, or committed by the Pannal before that Time; and this Favour, & *gratia principis*, is to be ampliat and extended, and not restricted, and all his Majesties Judges and Officers of State are commanded to sustain the same, according to the most ample Interpretations for the Pannal, that the Words will allow.

4. The Pretence that the Pannal was of the Quality of a Burger, or a Baron, is most irrelevant, the Pannal having no visible Fortune at the same time; and as my Lord Advocat himself acknowledgeth, no Expectation of any Fortune whatsoever: So that if Barons, Burgers, Life-renters, Woodsetters, and likewise these who have nothing in Possession at the Time, shall be secluded from the Benefit of that Indemnity, it is scarce intelligible to whom, and for what Cause the same was granted. 5. And as to that Part of the Reply, bearing, that this was a privat Injury, and so not comprehended within the Act of Indemnity, the former Defence is opposed, and all Pretence of privat Injury was taken away by Dissimulation or Death.

As to the Pretence that the Reconciliation can be no Defence against the Lybel, as to *vindicta publica*, and that the Letter whereupon the Defence is founded doth not import a Dissimulation; it is duplyed, That the Act of Parliament being an Comminatory Law, and principally intended in Favours of Parents, the same was never yet made use of, and it were very hard to make use of the same to deprive a Parent of his Child, for any rash or passionate Expression; especially, where upon Repentance the Father had remitted the Injury; but the Father being in Effect Judge of the Injury, his remitting the same ought at least to affoilzie the Child from any capital Conclusion. And as to the alledged habitual Cursing, the same is denied, and the former Defence founded upon the Act of Indemnity, is repeated and opposed, and the Lybel is opposed, which doth not bear habitual Cursing, but particular Acts at particular Times.

And as to the Qualifications alledged by my Lord Advocat, for clearing that the Defunct Sir James Standsfield was murdered, the Pannal is truly sorry, that for his own Defence, and for clearing of his own Innocence, his Lawyers should be necessitated to plead any thing relating to his Father's Infirmities, or Way and Manner of his Death. But it is duplyed, That the whole Presumptions adduced by my Lord Advocat are allanery fallacious Conjectures, and can neither be *separatim*, or complexly relevant to infer any such thing, because, 1. That the Minister did hear a whispering Noise, and was thereby terrified, his Terror and Consternation having (as he himself pretends) put him in a Disorder and Confusion, he was thereby rendered incapable to observe or judge of any thing that happened. 2. That the Body was swimming above Water, imports nothing, the Defunct hav-

ing a great Coat of thick Cloth about him, which was sufficient to keep him floating above. 3. The Pretence that there was no Water in the Defunct's Body when the Chirurgions visited the same, imports nothing, because the Defunct's Body having been several times stirred before that time, by which the Water might have run out, as it actually did (in case there was any Water within it.)

4. Albeit where a Man is drowned unwillingly, and endeavours to breathe, so long as he can, his Breathing may suck in the Water: Yet if a Man intend to drown himself, he will certainly endeavour all Means for quick Dispatch of himself, and thereby keep in his Breath; and the keeping in of the Breath after that Manner was sufficient, both to keep the Body floating, and the Water from coming in.

5. To put the Matter beyond all Question, the Defunct was laying in the Water a considerable Space from the Bank; and albeit the Ice was not so strong as to have carried a Child, yet the Ice was whole and entire betwixt the Defunct and the Bank, which demonstrats, that the Defunct had jumped in from the Bank, to that Place where he was lying. 6. As to that Pretence, that there was Blood about the Defunct's Neck, all lapper'd and bruised before Incision was made, the Defunct being pulled out of the Water, by an great Cleik, the touching of the Neck with the Cleik, when his Breath was just gone out, was sufficient to have made the Blood where that Part was, to lapper and congeal. 7. As to the Declarations of the Physicians and Chirurgions, they are only Declarations *ex auditu*, and upon Report of one or two Chirurgions, and hath no Foundation, but the Ignorance or Knowledge of the saids two Reporters; neither can any such Declarations be obtruded against the Pannal, because not given out with the Lybel: But whatever may be inferred from these Presumptions, whether the Defunct was murdered or not, the same does not concern the Pannal, unless his Accession to the Murder were instructed, as is impossible it can be.

As to the Qualifications alledged by my Lord Advocat, for fixing the Murder, or Accession thereto upon the Pannal; it is duplyed to the first, That the Pannal's alledged vitious Life, and the Story at *Treves*, his being drunk in Prison, and threatning to cut Throats upon small Provocations, the same are extrinsick to the Libel, and cannot be respected. 2. As to the alledged Threatning used in *James Smith's* House, the Lybel is opposed, bearing these Expressions, to have been used in the Year 1684, or some Year preceeding; and therefore the former Defence founded upon the Indemnity, is repeated, and opposed. And whereas my Lord Advocat pretends, that *mine precedentes cum damno sequuto*, is sufficient either to fix the Guilt upon the Person who used the Threats, or at least to burden him with the Probation, that another committed the Crime. It is duplyed, 1. That my Lord Advocat's Position is absolutely denied, unless he can instruct some other positive Accession against the Pannal; and these pretended Threats being taken away, not only by the Act of Indemnity, but likewise by Dissimulation, which is not only offered to be inferred from the Letter made Mention of in the Defence, but likewise by the Defunct's owning, receiving, intertaining, furnishing, and providing for the Pannal, in every thing suitable as his eldest Son, the same doth undoubtedly take away all Pretence that can be founded

founded upon threatening, so many Years preceeding; and by no Law can the Pannal be burdened to prove who were either Actors, or in Accession to his Father's Murder.

As to the second Qualification bearing, that the Defunct said to several Persons, that the Pannal offered to invade him (denying the same) the Father's Assertion could not infer a Crime against the Pannal, unless the Crime it self were otherways proven by Witnesses, and the same is libel'd to have been said by Sir James before the Act of Indemnity. And Sir James's other Assertion, that he was in Trouble, for Fear of Prejudice from his Family, cannot infer a Crime, especially against the Pannal; and far less can it be proven by the Relict and the other Son, who in Sir James's Apprehension were designing Mischief against him, and for their own Vindication, they would certainly depon partially against the Pannal. And the same is repeated against the other Expressions alledged spoken by the Mother; and Witnesses cannot be received to prove what another Witness said.

As to the Pretence, that the Pannal refused to sup with his Father the Night before his Death, It is dplyed, the Pannal was not at all in use to sup, except on *Sundays-Night*. And the Pannal had no Kindness for the Minister, because he and others of his Gang had endeavoured to keep up Discord betwixt him and his Father.

As to the alledged Bleeding of the Corps, the former Defences are opposed; and albeit the Pannal did help to lift his Father's Corps before the Incision, yet no Blood did appear till long thereafter that the Incision was made, and the Pannal did fall to grip that Part of his Father's Head where the Incision was. So that the Blood falling from the Wound, can neither be a Ground nor Presumption for Guilt; and though the Pannal was surpris'd to see his Father's Blood, yet the same did only proceed from natural Duty and Affection, and not from any Apprehension of Guilt. And these Qualifications being all libel'd and debated upon, it is humbly desired for the Pannal, that the Lords of Justiciary would give a separat Interloquitor upon every particular Qualification.

Sir Patrick Hume for the Pannal adds, That as to the Point of Treason, It is offered to be proven, that it was when he was drunk, and after Cups, and is so presumed, especially it being, as it is acknowledged by the Libel, in a drunken Company.

2. As to the Act of Indemnity, it is extended to all Crimes except the Archbishop's Murder, and *exceptio firmat, regulat, &c.* And the Act bears not that Clause excepting other Crimes, which uses to be excepted.

3. As to the Qualifications condescended on in my Lord Advocat's Answer, either they are libel'd, and so opposes the former Answer; and if they be not libel'd, they cannot be considered as Qualifications.

4. Whereas it is alledged, that the Pannal was in use to threaten to cut Throats, when in Passion, the Argument is retorted, for though he threatened, nothing followed; and so his Threatnings were but *verba jactantia*.

5. As to the Citation out of *Mattheus*, that Parties may be punished upon Presumptions, it is answered, that the Case there stated is where the Person who committed the Slaughter was apprehended in the Place where it was committed,

That he was all bloody, and with a bloody Sword, answerable to the Wound, and that he became pale when he was apprehended, and that he had made no Answer, but in Terror fled away; which are such Acts as do evidently make appear the Slaughter, and could admit of no other Construction; but that cannot be pretended in this Case, where all the Presumptions are remote and extrinsick, and even in the Case instanced by *Mattheus*, and others of that Nature, they are only to take Effect in order to an Arbitrary, but not a Capital Punishment, which is the Opinion of all Lawyers who ever wrote upon the Subject, and particularly *Muscard, de prob. conclus.* 123. Numb. 20, and 31. where the Question is stated, *An plures presumptiones conjunguntur?* in order to infer a capital Punishment: And he concludes in the Negative, as a general Conclusion by all Lawyers, but only to infer an arbitrary Punishment.

As to the bleeding of the Body, it is offered to be proven, that the Pannal touched his Father's Body before the Incision, and it did not bleed.

The Lords, Justice-General, and Commissioners of Justiciary, having considered the Libel, pursued by his Majesties Advocat against *Philip Standsfield* the Pannal: And the first Part thereof, anent the Treason libel'd, they find the same as it is libel'd, relevant to infer the Pain of Treason.

And as to the Pannal's cursing of his Father, mentioned in the Indytement; They find these Expressions, or either of them, *viz.* The Devil take him, the Devil rive him, God damn him, relevant to infer the Pain of Death: And repells the Defence founded upon the Act of Indemnity, and finds the Pannal is not under, or below the Quality therein specified.

As to the Pannal's murdering of his Father mentioned in the Indytement, they found the Libel as it is libel'd and qualified relevant to infer the Pain of Death, and remits the same with the Qualifications libel'd to the Knowledge of the Assise, and allows Witnesses to be led for the Pannal's proving his Father to have been melancholy the Day before the committing of the Murder, and remits to the Assise to consider the Import thereof, if it be proven, and repells the whole other Defences proponed for the Pannal.

The Lords continues the Dyet against the said *Philip Standsfield*, till to Morrow at Two of the Clock in the Afternoon; and ordains him to be carried back to Prison, and the Witnesses and Assises to attend, ilk Person under the Pain of 200 Merks.

Edinburgh, the seventh of *February*, 1687.

Philip Standsfield, Prisoner, being this Day entered on Pannal, dilated, indyted and accused for the treasonable drinking of the King's Confusion, cursing his Father, and for the cruel and unnatural murdering of him in Manner mentioned in this Ditty.

The Interloquitor above-written was this Day read again in Presence of the Pannal, and the Assises after-named, *viz.*

William Bailly of *Lamingtoun*.

James Glen, Stationer.

Alexander Reid, Elder, Goldsmith.

Charles Charters, Merchant.

David Hepburn of *Humbly*.

Edward Gillespy, Merchand.
Robert Sandilands, Merchand.
Samuel Moncrief, Merchand.
Thomas Lendall, Merchand.
James Cleiland, Merchand.
Hepburn of Beinsoun.
William Paton, Merchand.
George Braithwood, Stabler.
John Marsbal, Merchand.
Alexander Edgar, Chirurgin in *Haddingtoun*.

The Affize lawfully sworn, no Objection of the Law in the contrary.

His Majesty's Advocat for Probation adduced the Witnesse deponing, *viz.*

John Robertson, late Servitor to Sir *James Standsfield* of *New-Milns*, aged twenty-four Years, unmarried, purged of Malice, Prejudice, Hatred, Ill will, and partial Counsel, and solemnly sworn, Depones, A little time before Harvest last, the Pannal being in the Kitchen of *New-Milns*, in the deceased Sir *James Standsfield*'s House, where the Deponent was likewise present, he saw the Pannal, *Philip Standsfield*, take a Cup of Ale, and heard him say, there is the Pope's Confusion, the Antichrist's, the Chancelour's, and the King's Confusion, and put the Cup to his Head, and drank a little, and then gave it to *Samuel Spofforth*, and commanded him to drink it on his Knees; depones, that there were likewise besides *Samuel Spofforth*, *Jeremy Smith*, *Agnes Bruce*, and *Elspeth Jameson*; and depones, that *Philip Standsfield*, the Pannal, was not drunk at the time; depones, that at the naming of the several Confusions above-mentioned, he still drank a little of the Cup; and this is the Truth as he shall answer to God: The Deponent further depones, that he said to the Pannal, after the drinking of the said Confusions, that it was Treason, and he answered, ye Dog, what are you concerned; ye do not understand to whom ye speak.

Sic subscribitur, JOHN ROBERTSON.

Agnes Bruce, Servant to the deceased Sir *James Standsfield*, aged twenty-four Years, unmarried, purged and sworn, depones, That a little before Harvest last, she being in the Kitchen of *New-Milns* with *Philip Standsfield*, the Pannal, she saw him take a Cup of Ale, and drank the Confusion of the Pope and the King, and heard him bid *Samuel Spofforth* sit down on his Knees and drink the same, which accordingly he did; after this the Deponent went up Stairs, and knows no more what past at that Time, but heard they drank more Confusions. Depones, that about a Week after it being talked in the House, that he had drank the Confusions aforesaid, he said to the Deponent, God damn him, if he knew who divulged it, he would be their Death: And this is the Truth, as she shall answer to God. Depones she cannot write.

Sic Subscribitur, LINLITHGOW.

Samuel Spofforth, late Servitor to Sir *James Standsfield* of *New-Milns*, aged 19 Years, unmarried, purged and sworn, depones, That a little before Harvest last, the Deponent was in the Kitchen of *New-Milns* with *Philip Standsfield*, the Pannal, where he heard him drink a Confusion to the Pope, Antichrist, and the King, and to the Devil; and the Pannal prest the Deponent to drink the same Confusions upon his Knees. Depones, *John Robertson*, *Agnes Bruce*, *Jeremy Smith*, and *Elspeth Jameson* were all likewise present at that time, and that these Confusions were drunk sever-

rally: And this is the Truth, as he shall answer to God.

Sic subscribitur, SAMUEL SPOFFORTH.

John Robertson, above design'd, being re-examin'd, purged and sworn, depones, That the Deponent being at *Morum-Castle* after Harvest last, in order to give a Call to a Minister, the Deponent having met with *Philip Standsfield*, the Pannal, he said to him, Ye are a wife Lad; if ye have subscribed that Bond, the Devil take him, and particularly the Devil take his Father, and named his Father. Deponed, that at another time, in the midst of Harvest last, the Deponent and Sir *James Standsfield*, the Pannal's Father, being going to *Smeitoun* with a Minister, the Pannal asked him, where he and his Father was going? and the Deponent answered, that he was going to *Smeitoun* with his Father; and the Pannal, *Philip Standsfield*, said, Devil, let never one of them come back again, Horse nor Man. Depones further, That several times, and frequently, when the Deponent has been seeking the Pannal to come to Dinner with his Father, the Pannal's ordinar Answer was, the Devil dame him, and you both, and Devil rive him, for I will not go to him, and if he had a Sixpence a Day, he would not go near him, for his Father girned upon him like a Sheeps-head in a Tongs, and that he has heard him say sometimes, God damn his Father: And this is the Truth, as he shall answer to God.

Sic subscribitur, JOHN ROBERTSON.

William Scot, Clothier in *New-Milns*, aged thirty Years, married, purged and sworn, depones, That betwixt *Michaelmas* and *Martimafs* last, the Pannal, *Philip Standsfield*, having come to the Deponent's Shop, and asked for some Tobacco, the Deponent said to *Philip*, his Father would not let him want for Money to buy Tobacco; and the Pannal, *Philip*, said, the Devil take him and his Father both, for there never came an honest Man out of *Yorksfaire*. Depones, his Wife was present with him, when that Discourse past. Depones he cannot write. And this is the Truth, as he shall answer to God.

Sic subscribitur, LINLITHGOW.

Agnes Bruce, above-design'd, being re-examin'd, purged and sworn, depones, That she did hear the Pannal usually vow and swear he would kill any Person that offended him; and that the Pannal did haunt much with *Janet Johnson*, *George Thomson* and his Wife, and that he went frequently out of his Father's House after Supper to these Persons; and further depones, that she has heard the Pannal frequently curse his Father, and bid the Devil damn him, and rive him, and swell him; and that she has frequently heard him expres his Hatred and Abhorrence of his Father, and that he could not abide to see his Father. Further depones, that the Monday at Night before Sir *James* came to *Edinburgb*, the last time he was in it, being about a Fourtnight before his Death, the Deponent was ordered to call the Pannal to his Mother, after he was gone to his Chamber, and that accordingly he did it; and when the Pannal came down, the Deponent left him with his Mother alone; and when she was without the Door, she heard him say to his Mother several times, *God damn him, if he did it not*; and desired his Mother to take a good Heart, for as long as he had, she should not want. Depones, she knows not what he meant by these Words, but knows there had been a little Quarrel betwixt Sir *James* and his

his Lady that same Night. Further depones, that on *Tuesday* thereafter, when Sir *James Standsfield* was going into *Edinburgh*, she did hear *Philip Standsfield*, the Pannal, say in his Mother's Chamber (his Father not being present) God let him never return, God let him never see his Father's Face again, the Devil go with him, the Devil rive him, and take him away; and that there was no body in the Room at the Time, but the Pannal and his Mother, and the Deponent was at the Door. Further depones, that about a Month before, Sir *James* having reproved the Pannal, upon the Occasion of an Account given in by *William Anderson*, Brewer, she did hear the Pannal say, in his Mother's Chamber, (Sir *James* not being present) God damn him, if he should not do ten times worse, and that he could not endure to see his Father's Face, and that he had hated his Father these six or seven Years. Further depones, that about a Fourth-night or twenty Days before Sir *James* his Death, it being said that *Philip* was to go to Town with his Father, she heard him say, he would be hang'd e'er he went with him; let him go, the Devil go with him, and let him never return; and this likewise in his Mother's Chamber, and in her Presence. Depones, the Pannal did ordinarily shift Occasions of being in his Father's Company. Depones, that the *Friday* before Sir *James* his Death, she knows the Pannal and *Janet Johnstoun* were a considerable Time together in the Pannal's Chamber, where the Deponent heard *Janet Johnstoun's* Tongue, but doth not know if *George Thomson* and his Wife were with them. Depones, that on the *Wednesday* before Sir *James* his Death, *Philip* having cursed some of the Servants, the Deponent said to him, God be thanked, he was not their Master; and that he answered her with an Oath, she knew not how soon he might be their Master: And further depones, that she thought Sir *James* not so merry as his ordinar the Night before his Death, but that he conveyed Mr. *Bell* to his Chamber, and thereafter came down to his own; and the Deponent having desired to speak with Sir *James*, his Servant, *John Robertson*, told her she could not, because his Chamber-Door was shut, and he was gone to Bed; and that she did then see Light in his Room, and when she was going away, found the Hall-Door, which was without his Chamber-Door, shut, and that the Hall-Door was not usually closed in the Night time, except Sir *James* had done it himself, and which he did but once in two or three Nights. Depones, that on the *Saturday's* Night when Sir *James* came Home, he did go to his Ladies Chamber, where he stayed not a Quarter of an Hour, and that his Lady fell a quarreling of him for going to another House before he came there, and that the Deponent came out of the Chamber, and knows not what more past there. Depones, the next Morning, when Sir *James* was mist, the Deponent went into his Room to put on a Fire, and found the Bed better spread up than it used to be, and the Curtains more drawn about it, and the Candle, which usually was at the Bed-head, she found it standing on a Chair at the Bed-foot. And further depones, that when the Defunct's Body was bringing up to the House, the Deponent would have had him brought to his own Chamber; but *Philip* swore that the Body should not enter there, for he had not died like a Man, but like

a Beast. Depones, that the Body was then put in the *Walk-Miln* (but knows not if *Philip* caused do it) and that the Body from that was brought to a Cellar within the Clois, where there was very little Light. Depones, that she did not see any Water come out of his Mouth, and that when the Deponent lifted up the Linnen-sheet, which was over him in the Cellar, some of them caused let it down again, for it was not fit to let the Body be seen. Depones, that *Janet Johnstoun* was present with the Body in the Cellar with the rest, and though it was known that neither Sir *James* nor his Lady would look upon her for a good Time before, nor was she openly seen about the House, yet that Morning she went to the Ladies Chamber, as soon as the Body was taken out, and the Deponent was present and saw her come in, and well enough taken with. Depones, she heard *Philip*, after his Father's Death, Greet and Cry, but saw no Tears. Depones, immediately after his Father's Body was found, he would have forced his Father's Chamber-Door, it being shut; but the Key being gotten, it was opened, and he entered in, and first took his Father's Gold and Money out of his Pocket, and then got the Keys, and searched the Cabinet; and that within an Hour after his Father was brought from the Water, he got the Buckles of his Father's Shoes, and put them in his. Depones, that on the *Monday* after Sir *James's* Death, the Lady and *Janet Johnstoun* having quarrelled together about some Remains of the Holland of the Woonding-sheet, *Philip* came down out of his own Chamber, and the Deponent heard him say to *Janet Johnstoun*, Hold your Peace, when I command you, for he would reward her well for the Kindness she had done to him at that time. Depones, that when the Order came from *Edinburgh* to raise the Corps again, the Deponent did meet *George Thomson* the Taylor, and perceived him shaking and trembling, and asked him what troubled him? And that his Answer was, he heard the blackest News that ever he heard in his Life, for Sir *James's* Body was to be raised again, and said he would see no more in the House of *New-Milns* for the World, and carried the Mournings to his own House. Depones, she knows nothing of false Keys made use of about the House, only she heard the Lady say, that there were. Depones, *Philip* had no lock-fast Place in the House, except a little Coffer, and that it once being opened, the Deponent did see several Keys within it, and that he offered once the Key of one of the Rooms to the Deponent, but the Deponent took it not, because she had the ordinar Key of the Room. Depones, that *Philip* was in use to ly alone, but that after his Father's Death, he would not ly in a Room alone at *Mew-Milns*, and that he declared to the Deponent, that he was afraid to be alone in a Room, either Night or Day, and that he slept not the Night after his Father died, and that he should not go into the Room where his Father lay, if once he had the Cabinet out of it. Depones, that a short time before Sir *James* died, the Lady having fallen in a Swond, and the Deponent having told *Philip* of it, *Philip* came to his Mother's Chamber, and that his Mother told him then, that he was like in a short Time to lose his Mother; and that he answered, in the Deponent's hearing, that his Father should be dead first: And depones, that some few Days thereafter, in his Mother's Chamber again, and in the Deponent's

hearing, he renewed the same Words with an Oath: Further depones, that two Nights after Sir *James's* Death, the Lady told to the Deponent, that something then came in her Mind which he had heard, to wit, that *Philip*, before he went to *London*, when he was in his Pomp, having heard that Sir *James* was to give his Estate to his second Son, in the House of *James Smith* in the *Nungate*, had vowed to kill his Brother, and the like, or little less to his Father; and that thereafter, when they were coming into *Edinburgh*, the Lady renewed again to the Deponent the same Words, and added, what if they should put her Bairn in Prison? And this is the Truth, as he shall answer to God. Depones she cannot write,
Sic subscribitur, LINLITHGOW.

John Shand, sometimes Servitor to Sir *James Standsfield*, aged 43 Years, unmarried, purged and sworn, depones, That a little after *Philip Standsfield*, the Pannal's Marriage, the Pannal and Deponent being in *James Smith's* House, in *Nungate of Haddingtoun*, the Pannal did expostulat with the Deponent, that his Father dealt too narrowly with him, he being then married; and the Deponent told the Pannal that his Father was in Straits, and exhorted him to be dutiful to his Father; thereafter the Pannal said, if I knew my Father would give his Estate to my Brother *John*, I would cut his Throat; and the Landlord of the House being by, and present, and surprized, cried out, *God preserve me, what means the Man!* the Landlord understanding by the Word *His*, his Father: And though the Deponent took the Expression in the same Sense as *James Smith* did, yet the Deponent endeavoured to excuse it, by saying it was not his Father that he meant, but his Brother, or his Man *Donald*; and the Pannal being present, said nothing for clearing of the Expression; whereupon the Deponent went away, and left the Pannal, and could not endure to stay longer in his Company: Depones, the Night before Sir *James's* Death, being the *Friday*, the Deponent was with Sir *James* in his Chamber, in *Edinburgh*, where the Defunct was reading a Sermon-Book, and appeared to be sad, and said to the Deponent, I have no Comfort in my Wife and Family. And this is the Truth, as he shall answer to God.

Sic subscribitur, JOHN SHAND.

Mr. *Roderick Mckenzie*, Advocate, being solemnly sworn and purged, depones, That about eight Dayes before Sir *James Standsfield's* Death, the Deponent and he having met in the Parliament-Clois, the Defunct invited him to take his Morning-Draught. And when they were gone to Mr. *Sheil's* House, the Deponent perceiving him to be in some Concern, the Deponent asked him, what troubled him? The Defunct answered, that he had no Satisfaction at Home: Whereupon the Deponent said, that People reported that he was partly the Occasion of it, having disherished his Son the Pannal, and acquainted him therewith: And the Defunct answered, ye do not know my Son, for he is the greatest Debauch in the Earth: And that which troubles me most is, that he twice attempted my own Person: And this is the Truth, as he shall answer to God.

Sic subscribitur, ROD. MCKENZIE.

Archibald Dunbar, Merchand in *Edinburgh*, aged 26 Years, married, purged and sworn, depones,
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That the Deponent having met with the deceast Sir *James Standsfield* at *Culter*; but he does not remember positively the Time, but it was either in the Year of this King's Parliament, or the Harvest before; and Sir *James* and the Deponent, and some other Company being in an Room, Sir *James* was discoursing of his Son's Undutyfulness, and within a little while having heard a Shot at the Utter-door of the House, and the Deponent and others offering to go out to see what the Matter was, Sir *James* was unwilling to let them, lest they should come to hazard. And thereafter having heard another Shot, they did offer to go down again, and Sir *James* still dissuaded them, and said, that it might be his distracted Son *Philip*. And they having enquired if he was in the Country, and how he came to fear any harm from him, Sir *James* said, he believed he was in the Country, and that in his going South, he had followed him to *Lothian-burn*, and shot two Pistols, first one, and then another at him; and if it had not been that Sir *James* was well horsed, and his Son *Philip* upon a Work-Horse, he had killed him. And *Samuel Menzies* having said, he was sure there could not be Ball in them; Sir *James* said, he had gotten too many Proofs of his Son's Unnaturality to him, that he had no will to be in his Reverence. Depones, that Sir *James* all that Night went not to Bed, and the Deponent sat up with him, and conveyed him into *Edinburgh*. And this is the Truth, as he shall answer to God.

Sic subscribitur, ARCHIBALD DUNBAR.

Mr. *William Clerk*, Advocat, purged, and sworn, depones, That having frequent Occasions to be with Sir *James Standsfield*, and he having desired him to draw a Disposition of his Estate to his Son *John*, Sir *James* did complain of his Son *Philip's* Undutyfulness to him: And the Deponent having dissuaded him to do it, since his Son *Philip* might be reclaimed; Sir *James* said, no, for he had no Expectation of it; for when he was at the *Lead-bills*, there was some Pistol shot at him, which he was sure came from his Son *Philip*. And this is the Truth, as he shall answer to God.

Sic subscribitur, WILLIAM CLERK.

Mr. *John Bell*, Minister of the Gospel, aged forty Years, *Solutus*, purged and sworn, produces a written Declaration signed under his Hand, upon what he knows relating to the Murder; and depones the same is Truth, as he shall answer to God.

Sic subscribitur, JOHN BELL.

Follows the Tenor of the said Declaration.

The Declaration of Mr. *John Bell*, in answer to several Interrogatories proposed by his Majesties Advocat before the Lords of the Committee of the Council.

Inprimis, I declare, that at Sir *James Standsfield's* earnest Desire, I went from this Town with him to *New-Milns*; and that by the Way I discerned nothing but sound Judgment, and Reason in Sir *James*, for his Discourse was both rational and pertinent, and that both at Supper that Night, and after Supper, his Discourse was rational, and his Carriage most civil, and was pleased to accompany me to my Chamber, and sat with me there (as I supposed) until it was about ten o'Clock at Night, discoursing pertinently, and to good Purpose.

2. I declare, that having slept but little, I was awakened in Fear by a Cry (as I supposed) and
 being

being waking, I heard for a Time a great Dinn, and confused Noise of several Voices, and Persons sometimes walking, which affrighted me (supposing them to be evil wicked Spirits) and I apprehended the Voices to be near the Chamber-door sometimes, or in the Transe, or Stairs, and sometimes below, which put me to arise in the Night, and bolt the Chamber-door further, and to recommend myself by Prayer, for Protection and Preservation to the Majestie of God: And having gone again to Bed, I heard these Voices continue, but more laigh, till within a little Time they came about to the Chamber-Window; and then I heard the Voice as high as before, which encreased my Fear, and made me rise again to look over the Window, to see whether they were Men or Women; but the Window would not come up for me, which Window looked to the Garden, and Water, whither the Voices went on till I heard them no more, only towards the Morning I heard walking on the Stairs, and in the Transe above that Chamber where I was lying.

3. I declare, that I told the Women who put on my Fire in my Chamber that *Sabbath-Morning*, that I had rested little that Night, through Dinn I heard; and that I was sure there were evil Spirits about that House that Night.

4. I declare, that about an Hour after Day, *Philip* came to my Chamber, and asked if Sir *James* came to that Chamber this Morning, and told me that he had been seeking him upon the Bank of the Water: Unto which I replied, I have not seen your Father; but what mean ye by the Banks of the Water? Whereupon *Philip*, without answering, went down Stairs immediately, and within a little Time I followed to see what he meant; and having gone without the Gate, and up the Cawley that leads to the Manufactory, one came running, and said, they had found Sir *James* lying in the Water: Whereupon I was stricken with such Astonishment, Fear, and Trembling, that I could go no further, but returned trembling to the Chamber; and having sitten down on the Bed-side, I said to an honest Man, who accompanied me, this is the saddest Day that ever I saw: My Affrightment in the Night was terrifying to me, but this is more grievous. And having gone to an honest Man's House, where I took Horse that Morning, I said, if the Majestie of God did ever permit the Devil and his Instruments to do a honest Man wrong, then Sir *James Standsfield* has received Wrong this last Night, which the Lord will discover in his good Time.

5. I declare, that after my return from *Morum*, that *Sabbath-Evening*, *Philip* told me that he had advertised several Friends at *Edinburgh*, and that he was expecting the Commissary amongst others that Night: Whereupon I commended what he had done, in sending for such intelligent Persons, and that for two Reasons (1.) because it was necessary his Father's Body should be sighted; (2.) because they could advise him about his Burial. *Philip* answered, that he was seen by these that took him out of the Water. But I replied, that was not enough, for the Murder committed was either a violent Murder, or a distracted Murder; and having described what a distracted Murder was (upon *Philip's* relating some Distemper his Father had been in some Years formerly) I said, that I conceived no Person could come to such a high Act of Frenzie, to do such a Thing, but it would be known on him many Hours, yea

some Days before; but I could testifie, that Sir *James* was in his right Reason at ten o'Clock; wherefore I inclin'd to think it was a violent Murder committed by wicked Spirits; and so advised that the Corps might be sighted by the nearest Physicians and Friends, and the honest Men living in that Town: Nevertheless, they went and buried Sir *James* that Night, without either acquainting me, or several honest Persons who lived in the Place. Mr. *John Bell* depones his above written Declaration is Truth, as he shall answer to God.

Sic subscribitur,

SLINLITHGOW,
JOHN BELL.

Sir *Robert Sinclair of Steinfoun*, purged and sworn, depones, Sir *James Standsfield* being at the Deponent's House, told the Deponent, that he regreted that his Son *Philip* had mispent his Time and Money; and when he came home from *London*, he was ashamed to tell how he came on him in his Chamber at *London*; and this is the Truth, as he shall answer to God.

Sic subscribitur,

RO. SINCLAR.

James Murehead, Chirurgion, aged 32 Years, married, purged and sworn, depones, That after the Deponent and *James Craufurd*, Chirurgion, had opened the Corps about the Neck, and sewed it up again, and removed the foul Linnen, and put on again the clean Linnens, in doing whereof they were obliged to shake the Body to and fro, and move the Head back and forward, the Deponent desired that the Friends might lift the Body, and put it in the Coffin, and that the Pannal, having come and lift up the Head, he did let it fall upon the Table suddenly, and that it made a considerable Noise at the falling, and that the Pannal retired back quickly, rubbing his Hands on his Breast, and crying, *O God! O God!* and some such other Words; and that the Deponent being astonished thereat, looked to the Corps, and as the Pannal did take away his Hand from it, did see it darting out Blood through the Linnen, from the left Side of the Neck which the Pannal touched, and that the Deponent was amazed at the Sight, partly through the darting out of the Blood, and partly through the Apprehension he had of the Murder. Depones, he saw no body touch the left Side of the Defunct's Head the Time it bled, but the Pannal. Depones, that as soon as the Deponent recovered out of his Amazement, he cryed to the Boy, to give the Pannal some Triacle-Water, which he did; but depones he did not see *Philip* the Pannal return again to the Body of his Father. Depones, when the Deponent and the other Chirurgion were putting on the clean Linnens, and stirring and moving the Head and Craig, he saw no Blood at all. And this is the Truth, as he shall answer to God.

Sic subscribitur,

JAMES MUREHEAD.

James Murehead, and *James Craufurd*, Chirurgions, give in their Report and Declaration in Write, anent the Murder of Umquhile Sir *James Standsfield*, which they renewed upon Oath, in Presence of the Justices and Assifers, and whereof the Tenor follows:

Edinburgh, Decem-ber 1, 1687. { *November 30, 1687.* We viewed the Corps in *Morum* Church.

We, under Subscribers, *James Craufurd* and *James Murehead*, Chirurgions in *Edinburgh*, having Order from Sir *John Dalrymple*, his Majesties Advocate, to go to *Morum*, and there to take up the Corps

of Sir *James Standsfield*, and to sight and view the same exactly, and, if need were, to open up the Body, and to consider whether there appeared any Evidence of Wounds, Bruises, or Strangling upon the Corps, besides what might have happened by his falling or drowning in the Water, &c. In Obedience thereto, we caused take up the said Corps, and in Presence of *Philip Standsfield*, *Mr. Andrew Melvil*, Minister of *Morum*, *James Hamilton*, Writer to the Signet, *James Row* and *Alexander Campbell*, Merchants in *Edinburgh*, *Umpbray Spurway*, *James Dick*, *James Mitchell*, and *John Robertson*, Indwellers in *New-Milns*, and some others, having with all possible Exactness viewed the Corps, we observed the Face a little swelled, and inclining to a dark reddish Colour, some Fulness of some capillarie Veins in the Pallat of the Mouth towards the Uvula, as also a large and conspicuous Swelling, about three Inches broad, of a dark red or blae Colour, from one Side of the Larinx round backwards to the other Side thereof; we observed the Jugular Veins on both Sides the Neck very large and distended, and full of Blood; there was a large Swelling under and betwixt the Chin and the Cartilago Scutiformis; there was also a little Scratch below the left Mandibula, which had ranked the Cuticula, and made some little Impression on the Cutis: Having made Incision from the Chin down about the Larinx, and cross upon the Swelling of the Neck, we found a greater Laxness and Distance (as we think) than ordinary betwixt the Cartilago Scutiformis and Os Hyoides; we found the Tumour on the Neck, containing bruised, like dark or blackish Blood; the Jugulars, when cut, bled considerably, especially that on the left Side.

Having opened his Breast, we found the Lungs distended to the filling up their Capacities, but free of Water; his Stomach, Liver, &c. were all in good Condition; we found no Water within the Corps; the Corps had no Smell at all; the Breast, Belly, Privy-Parts, &c. were all well coloured, there was no Swelling in his Belly, nor any thing by ordinary to be seen on his Head. This we attest, and subscribe with our Hands.

Sic subscribitur,
 { JAMES CRAUFURD,
 JAMES MUREHEAD.

Edinburgh, December 6, 1687.

In Presence of the Lord Archbishop of *Glasgow*, Lord *Tarbat*, President of Session, Advocate, and Castlehill:

James Murehead, and *James Craufurd*, Chirurgions, being solemnly sworn in the Presence of the Committee of Council, depone, That the written Report ament the Body of the Deceist Sir *James Standsfield* is true, according to their Skill: And this is the Truth, as they shall answer to God.

Sic subscribitur,
 { JAMES CRAUFURD,
 JAMES MUREHEAD,
 JOHN GLASCOW,
 J. P. D. C.

Edinburgh, February 7, 1687.

In Presence of the Justices and Assifiers.

James Murehead, and *James Craufurd*, Chirurgions, being solemnly sworn, depone upon the Truth and Verity of the above-written Declaration in all Points.

Sic subscribitur,
 { JAMES CRAUFURD,
 JAMES MUREHEAD,
 Linlithgow.

Follows the Chirurgions of Edinburgh their Opinion ament the said Murder.

WE, under Subscribers, Chirurgions in *Edinburgh*, having fully considered the Report made by *James Craufurd*, and *James Murehead*, concerning the Condition of the Corps of Sir *James Standsfield*, and though it be not usual to declare more than Matter of Fact, yet in Obedience to your Lordships Commands, where ye desire to be informed, if these Symptoms, found upon the Body, do import Drowning or Strangling; we humbly offer our Opinion, so far as our Art or Experience will allow. And whereas the Report informs us, that there was found a Swelling, and preternatural Redness in the Face, a large conspicuous Tumour, about three Inches broad, of a dark red, or black Colour, from the one Side of the Larinx round backwards to the other Side thereof, a large Swelling betwixt the Chin and the Cartilago Scutiformis, the Jugular Veines, on both Sides very large and distended; and when Incision was made downwards, betwixt the Os Hyoid and Larinx was observed a Laxness, and Distance between the Os Hyoid and the Cartilago Scutiformis, Incision was made cross alongst the Tumour, it was found full of bruised Blood; the Jugulars likewise, when opened, yielding a considerable Quantity of Blood, especially on the left Side, no Smell or Corruption appearing in any Part of the Body. It is very probable these Parts have suffered some external Violence, which hath made them appear so far different from their natural Figure and Colour, and could not be caused by Drowning simply. As to the other Part of the Report, the Breast and Belly being opened, the Lungs found distended, the Bronchi full of Air, without any Water, nor any Water found in the Stomach or Intestines, a Body, when drowned, being generally found to have much Water in it, with other Circumstances of the Report considered, gives just Ground to think he was not drowned. This we subscribe at *Edinburgh*, the 3d Day of *February*, 1687. *Sic subscribitur*,

JOHN BALLIE, Deacon, WIL. BORTHWICK,
 GEORGE STIRLING, THOMAS EDGAR,
 JAMES CRAUFURD, JAMES MUREHEAD.

Follows the Report of the College of Physicians, Edinburgh, February 6, 1687.

THE College of Physicians, being assembled at the Desire of his Majesties Advocate, to consider a Report made by some Chirurgions, concerning the Body of the late Sir *James Standsfield*, and to give their Opinion, whether by the said Report, there is any just Ground to believe, that the said Sir *James Standsfield* was strangled or drowned? And they have accordingly considered the said Report. They are of Opinion, supposing the Verity of the said Report or Declaration, that there is sufficient Ground to believe, that the said Sir *James Standsfield* was strangled, and not drowned. In Testimony whereof their Presents are subscribed by Sir *Andrew Balfour*, President of the said College. *Sic subscribitur*, A. BALFOWR, P. C. R. M.

Umpbray Spurway, Clothier at *New-Milns*, aged 50 Years, *solutus*, purged and sworn; depone upon the Truth and Verity of his own Declaration given in by him, which is all written, and subscribed with his own Hand, and consists of two Leaves of Paper, written on all Sides, which is Truth, as he shall answer to God.

Sic subscribitur, UMPHRA Y SPURWAY.
Follows

Follows the Declaration of Umphray Spurway, Englishman.

I *Umphray Spurway of New-Milns, Clothier,* being summoned to appear before the Lords of his Majesty's Privy-Council in *Edinburgh,* the 6th of *December 1687,* to declare my Knowledge of what I had seen, and heard, relating to the Death of *Sir James Standsfield of New-Milns,* did then and there declare before the saids Lords, as hereafter followeth: And after declaring what I had to say, was commanded to commit to writing my said Declaration, under my own Hand, which I the aforesaid *Umphray Spurway* do hereby humbly offer to the above-said Lords of his Majesty's Council, subscribing the same with my own Hand.

About six Weeks before the Death of *Sir James Standsfield,* after Night I went to pay my Respects to *Sir James,* as I usually did when he was at *New-Milns,* at which time I found him not so free for Discourse, nor so pleasant as at other times: Inſomuch that I used that Freedom with him, to *Quere* the Reason why his Honour was so melancholy? Who, with a great Sigh, wringing his Hands together, with Tears trickling down his Cheeks, said, *Mr. Spurway,* I have great Cause for it; I have born my own Burden, without complaining to others, but I have a very wicked Family, and it's very sad, that a Man should be destroyed by his own Bowels; but let me be never so sparing in my Expence, both at home and abroad, yet they at home of my Family consume me; condescending on some Particulars, of some extravagant Sums of Money, monethly brought in to him, that his Family had expended besides what he allowed for them, which was very sufficient: But that which grieved him most was, that his youngest Son, whom he had some comfortable Hopes of, and upon whom he had settled his Estate upon, his just Debts being first payed, and that to the Knowledge of his Son; but now he was frustrated of his Hopes of that his Son too; for his eldest Son had debauched his youngest Son, who had several Times of late come in drunk, as the other: This he declared to me with very great Grief of Heart. But the *Saturday's-Night* after *Sir James,* and a Minister, one *Mr. Bell,* came to *New-Milns* from *Edinburgh,* I came in at the House of one *James Marr,* where I saw *Sir James* and *Mr. Bell* sitting by the Fire, before he had been at his own House, which I wondered at, having never known the like done by him before; but since, I have had my Thoughts, that he had a Fear upon him (good Gentleman) of going to his own House; but having sat some time with him, he desired *Mr. Marr* to send one of his People at his House, to know, if they had kindled a Fire for him; and upon the Return, the Messenger gave this Answer: *May it please your Honour, your Fire is kindled for you;* upon which *Sir James,* and the Minister arose, and took their leave of *Mr. Marr;* and I also accompanied *Sir James* and the Minister half the Way toward his Home, and so took my leave of him, wishing his Honour a good Night. But the next Morning, being *Sabbath-Day,* after the Light well appeared, one *Agnes Bruce* came at my Chamber-door, and knocked. I went and opened the Door. Says she, *Sir, Sir James is gone out of his Lodging-Room this Morning, and we have sought all the Rooms of the House for him, but cannot find him.* She goes off, I im-

mediately followed her, and when I came out of my Door, I met with *Mr. Philip Standsfield,* and *James Dick.* *Mr. Standsfield* declares to me, *Lord, Mr. Spurway, what should be the Cause of this Man's Discontent, that he should thus leave his Lodgings, and walk out? To which I replied, Sir, do you wonder the Cause of his Discontent, who never gave him Content, but had been the Cause of grieving him, from one to the other of them, ever since I knew the Family?* But he turned his Back upon me, and made no Reply at all; however I went at *Sir James's* House, but could not procure the Keys of neither of the Gardens, and I sent abroad of *Sir James's* Servants, and of my own, some on Horseback, and some on Foot, to inquire after him: At last a Servant of mine, one *William Bowman,* found him in the River, a little be West the Town. I went at the Place, and saw him lying about two Yards, or eight Foot from the Brink of the River, lying upon his Belly, just at the Top of the Water, as it were floating, only his Coat and Westcoat loose about him, and a Shirt on him that I saw. I saw the Place at the Brink of the River, where some one had stood all beaten to mash with Feet, and the Ground very open and mellow, although a very hard frosty Morning; so I gave Order to some to get a Ladder, and to set one End into the River, as near the hinder Part of *Sir James* as they could, and the other End of the Ladder to fall at the Top of the Brae, which was very steep, and so they might get him out easily; so I came away from the Place, and desired *Mr. Marr* to see the Body landed, declaring that I would go home, and write to *Mr. George Hume,* Merchant in *Edinburgh,* of the sad Sight which I had seen, desiring him to communicate the same to my Lord Advocat, with Desire to know by the Messenger his Lordship's Pleasure, what of Advice or Direction he would be pleased to give concerning it, and it should be followed: But the Messenger that I sent, after he had delivered my Letter to *Mr. Hume,* and Order given by Commissary *Dalrymple* how to proceed further with the Body of *Sir James,* which Order was directed to myself by a Letter, which when I read the Letter, the Contents was: That I should endeavour to procure two or three discreet Persons of *New-Milns* to myself, and we together view the Body of *Sir James;* and if we found no Grounds to believe that his Person had been wronged by others, that then with all speed he should be buried, and that as privatly, and with as little Noise as could be: But this Letter, which was the Commissary's Order to me, was sent by the Hand of one *James Mitchel,* Kinsman to *Sir James;* for that Horse that the Express rode on to *Edinburgh,* was taken out of the Stable, where he was let up: And one *Mr. Patrick Smith,* the Brother-in-Law of *Sir James Standsfield,* mounted on him to come for *New-Milns:* So that my Express was thereby disabled to bring me the Answer of my Letter; and the said *James Mitchel,* who brought my Letter, came home at the Place by Nine of the Clock that *Sabbath-Day* at Night, and gave an Account of the Letter that he had for me; but they dissuaded him from bringing it me, so that I had it not till three Hours after *Sir James* was buried. But upon *Monday Morning,* I arose about three or four of the Clock; and coming out of my House, I saw great Lights at *Sir James's* Gate, which occasioned my going down to

to see what the Matter was; and as I went, I met with one *William Robinson*, coming up of Home; I asked what the Meaning was of these Lights, and of the Horses that I then saw at Sir *James's* Gate? Who answered me, That Sir *James's* Corps were brought out at the Gate, and that they were carrying it at *Morum*, to be buried, having received Orders from my Lord Advocat for that Purpose. At which I returned to my Houfe, thinking it very strange thus to proceed without having had the Corps viewed by some Person, as I well knew was customary in *England* in such Cafes. The next Step, to my Remembrance, was, That upon the *Tuesday* Night following, after I was in Bed, one Mr. *Alexander Campbell* in *Edinburgh*, with one Mr. *James Row*, and an Gentleman, one Mr. *Hamilton*, with two Chirurgions, came at my Houfe, and caused me to rise out of my Bed, showing me an Order, which they had from my Lord Advocat, for the taking up again the Body of Sir *James Standsfield*, and commanded me to make ready to go with them; and having seen the Order, readily submitted thereunto, and when coming upon the Place at *Morum*, caused the said Grave to be opened, and the Coffin taken up. It was carried into the Church, and there opened; and as soon as Sir *James's* Grave-Cloaths were taken off him, and all his upper Parts uncovered, home to his Privy-parts, methought his Face looked not as I expected, nor as others had insinuated, that were at the dressing of him at first; for they said, that his Body and Face was very fair and fresh; but I found his Face, at first View, of another Complexion, being blackish, with some Strakes of red, like standing, or rather frangled Blood; and under his left Ear I saw a Swelling home to his Throat, of a blackish red Colour. After this I saw the Chirurgions opening his Body, beginning at the Top of his Chin, and so down to the Pit of his Stomach, and then cut his Skin on both sides his Throat, towards each Ear, and coming at the Place near his left Ear, that I saw swoln, I there saw of corroded or congealed Blood, lying a Lump of a great Thickness, and two or three Inches long, which proved to me he had been strangled: And one Thing more I observed, that when Mr. *Murehead* put off his Cap at first from his Head, in slipping it back, Sir *James's* Eye-lids opened, and his Eyes appeared, but his Eye-lids much swoln, and very red, which did also prove to me a Symptom of Strangling.

This being done, and his Breast opened, so that his Intrals appeared, and to me seemed in good Order, and no Appearance of Water in his Body, neither then, nor when first he was taken out of the River: The like, I think, has not been ever known by any Man that cast himself, or that has been cast into a River alive, and not to have his Body full of Water; nor that ever a dead Man should lie at the Top of the Water, where no running Stream is, but a still Water, of about five Foot deep: But to me in this it shewes, that as God is a Wonder-working God, so he has in this shoven no less, to convince Men, that this worthy Gentleman murdered not himself, but was murdered.

But my last Observation was of a Wonder more, that the Lord did show, when the Chirurgions had caused the Body of Sir *James* to be by their Servants sewen up again, and his Grave-Clothes put on. A Speech was made to this

purpose; It is requisit now, that those of Sir *James Standsfield's* Relations, and nearest Friends, should take him off from the Place where now he lyes, and lift him into his Coffin. So I saw Mr. *James Row* at the left Side of Sir *James's* Head and Shoulder, and Mr. *Philip Standsfield* at the right Side of his Head and Shoulder; and going to lift off the Body, I saw Mr. *Philip* drop the Head of his Father upon the Furn, and much Blood in Hand, and himself flying off from the Body, crying, *Lord, have Mercy upon me! or upon us!* wiping off the Blood on his Cloaths, and so lay himself over a Seat in the Church, some supposing that he would swarff or swoun away, called for a Bottle of Water for him. After this we went for *Morum-Castle*, where Mr. *Philip Standsfield*, my self, and several others, stayed until it was Day: In which time I challenged Mr. *Philip* for his Unkindness to me, by his not inviting me to accompany the Corps of his Father, when first buried, knowing the Intimacy that there was betwixt his Father and my self; and that of all the People in or about the Town, his Father delighted in no one's Company as in mine; and that he did not give me Notice of his Burial, that I might do my last Office of Love and Service to him, by accompanying his Body to his Burial-place; I took it very ill from him. So then Mr. *Philip* swore, that he had sent two of his Servants to invite me, but if those damn'd Rogues would not do it, what could he help it? and yet did declare, as is proved, and as himself since confess'd before my Lord Advocat, that he would not invite me, assigning this as his Reason, supposing that my self and *James Marr* had been Instruments of setting his Father against him, which was a false Suggestion. All which Particulars I have before the Lords of his Majesties honourable Privy Council declared: So, by their Command, I have in this Sheet of Paper written it over with my own Hand, and do hereby subscribe my Name, the sixth of *December*, 1687.

Sic subscribitur, per me, UMPHRAY SPURWAY.

Edinburgh, the 7th of *February*, 1687.

In Prefence of the Justices and Assisers, *Umpfray Spurway* owns his Declaration above written to be Truth in all Poynts; as he shall answer to God.

*Sic subscribitur, UMPHRAY SPURWAY.
LINLITHGOW.*

James Mitchel, Nephew to the deceas'd Sir *James Standsfield*, aged twenty Years, unmarried, purged and sworn, depones, That about twenty Dayes before Sir *James Standsfield's* Death, being in Company with *Philip*, the Pannal, he heard the Pannal say, that if his Father did dispone his Estate by him, he would kill him, though he should die in the *Grass-Mercat* for it. Depones, that several Times about a Month before Sir *James's* Death, he heard the Pannal say, that little Thought the People had how soon the Pannal would be Laird; and when he was, he would then ride in their Skirts that had been ill to him. And this is the Truth, as he shall answer to God.

Sic subscribitur, JAMES MITCHEL.

John Topping in *Monkrig*, aged twenty-five Years, married, purged and sworn, depones, That upon the *Sabbath-Morning* after Sir *James Standsfield's* Death, the Deponent coming from *Monkrig* to
New.

New-Milns, by the side of the Water, he discovered a Body floating, and saw *Philip Standsfield* looking to that Place of the Water where the Body was, and the Deponent asked the Pannal, whose Body that was in the Water? and the Pannal made no answer; and when he came to *New-Milns*, he heard that Sir *James's* Body was found in the Water. Depones, he saw the Body taken out of the Water, and went alongst with it, near to the *Walk-Miln*, but observed no Water come from the Body. This is the Truth, as he shall answer to God. Depones he cannot write.

Sic subscribitur, LINLITHGOW.

James Dick, in *New-Milns*, aged forty-seven Years, married, purged and sworn; depones, That the Pannal, *Philip Standsfield*, and the Deponent, being at *Morum*, after taking up of the Corps, and discoursing about the finding of the Body in the Water, the Deponent said to the Pannal, that he saw something in the Water, when they were searching after Sir *James*, but he did not suppose it to be Sir *James's* Body, and the Pannal said, I saw him before any of you. Depones, that he saw the Body after it was taken out of the Water at the Brink of the Brae, and went alongst with the Body a Piece of the Way, and observed no Water come from the Mouth. And this is the Truth, as he shall answer to God.

Sic subscribitur, JAMES DICK.

His Majesties Advocate desired that *James Thomson*, Son to *George Thomson* in *New-Milns*, and *Anna Mark*, Daughter to *Janet Johnson*, Spouse to the said *James Thomson*, might be examined as Witnesses against the Pannal, for proving his Accession to his Father's Murder. And the Procurators for the Pannal having alledged, that the foresaid Persons were but Children, and so not by Law capable to be Witnesses, the Boy not being above thirteen Years of Age, and the Girl not above ten Years.

The Lords Justice General, and Commissioners of Juristicity, refused to receive them as Witnesses; but in regard the Persons on the Inquest earnestly desired the said *James Thomson* and *Anna Mark* might be examined, ament their Knowledge of the Pannal's Accession to the foresaid Murder, they allowed the forenamed Persons their Declarations to be taken for clearing of the Assise. And accordingly the said *James Thomson* being examined in Presence of the Justices and Inquest, declared as after follows; That *Janet Johnson* came to *George Thomson's* House betwixt nine and ten at Night, and *Philip Standsfield*, the Pannal, came there shortly thereafter; and the House being dark, the said *Philip* gave the Declarant a Turnor to buy a Candle, which he did in the neighbouring House, and after the Declarant returned with the Candle, his Mother ordered him to go to his Bed, which was in the same Roun, and beat him because he did not presently obey. Declares he heard one come to the Door, and enquire for *Janet Johnson*, and desire her to come home, and give her Child suck. Declares, he knew by the Voice that the Person who came was *Aynes Mark*, the said *Janet's* Daughter, and that *Janet* ordered her to go away, and she should follow her. Declares, she stayed a considerable Time thereafter, and the said *Thomson's* Wife was desired to go for a Pint of Ale, and *Philip* took out a handful of Money

to see if he had any small Money, and finding he had none, the Ale was taken on upon *Truit*. Furder declares, that the said *George Thomson* and his Wife, and *Janet Johnson* did stay together, and whisper softly a considerable Time. Declares, he heard *Philip Standsfield* complain that his Father would not give him Money, and pray the Devil take his Father, and God damn his own Soul, if he should not make an End of his Father, and then all would be his, and then he would be kind to them. Declares, *Philip Standsfield* and *Janet Johnson* went away about Eleven, and shortly after his Father and Mother came to the Bed where the Declarant was lying cross the Bed-foot; and the Declarant in the Night-time perceived his Father and Mother rising out of the Bed, and going out of the House, and that they stayed a considerable Time away, about an Hour and an half, or two Hours, and that the Declarant was perfectly awake when they went and were away, and he wondred what they were going about. Declares, his Mother came in first, and came softly to Bed, and within some time after his Father came in, and put a Stool to the back of the Door, without locking it, for the Lock made always a great Noise when they locked the Door, and the Declarant's Father called to him whenever he came in, but the Declarant made no Answer, that it might be thought he was sleeping; and his Mother asked, what had stayed his Father? And thereupon his Father and Mother did fall a discoursing of several things, and particularly the said *Philip* said, that the Deed was done, and that *Philip Standsfield* guarded the Chamber-door, with a drawn Sword and a bendet Pistol, and that he never thought a Man would have died so soon, and that they carried him out towards the Water-side, and they tyed a Stone about his Neck, and leaving him there, came back to the little Kiln, and reckoned whether they should cast him in the Water with the Stone about his Neck or not, and whether they should cast him in far in or near the side, and at length they returned and took away the Stone from about his Neck, and threw him in the Water. Declares, his Father said, that yet he was afraid, for all that, that the Murder would come out, and his Mother answered, Hout, Fool, there is no Fear of that; it will be thought he has drowned himself, because he will be found in the Water. Declares, when Sir *James* was missed in the Morning, the Declarant's Mother said to his Father, Rise quickly, for if ye be found in your Bed, they will say, that ye have a Hand in the Murder. Declares, the Coat and Wastecoat which were upon Sir *James* when he was found in the Water, were sent to *Thomson's* House, and *Thomson's* Wife said to her Husband and *Janet Johnson*, in Presence of the Declarant, that she was affrighted to see the said Coat and Wastecoat, for she thought that some evil Spirit was in it, and desired her Husband to send it away, which he would not: And further, that his Mother said to her Husband, in the Declarant's hearing, that she was affrighted to be in the House alone after Night fell; and, accordingly, when ever her Husband went out, she went out with him, which was not her ordinary. Declares, the said *George Thomson* did go into *Edinburgh* several Days before the Declarant's Mother was brought in, and she did immediately after he came into *Edinburgh* send away Sir *James's* Coat and Wastecoat, and that she was never in her own House

after Night, since her Husband came in, but did lie in *Janet Johnstoun's* Houfe.

Sic subscribitur, LINLITHGOW. I. P. D.

Anna Mark, Daughter to *Janet Johnstoun*, declares, that on the said *Saturdays-Night Philip* came up to her Mother's Houfe, and sent for *George Thomson* and his Wife, and thereafter he sent her to see if Sir *James* was come Home; declares, that she saw *Philip*, with his Hat off, give a low Salutation to *George Thomson* when he came up to him; and when she returned and told that Sir *James* was come, *Philip* did take a drink, and runs down to *New-Milns*; that about eleven o' Clock that Night, her Good-father sent her to seek her Mother, and that she found her Mother with *Philip* in *George Thomson's* Houfe, and that her Mother bad her go Home, and she would come after her, and that her Good-father thereafter, finding her Mother did not come, sent her for *Margaret Iles* to give Suck to the Child, and went Home again; but that her Mother did not come long after that, as she thinks, about two in the Morning, and that she heard her Good-father say, Bitch and Whore, where have you been so long? And she answered, Wherever I have been, the Deed is done, and then went to Bed; and that after that, she heard them speak together, but could not know what they said: She declares also, that her Mother said, she was still feared, and would not abide alone, nor lie alone in the Bed, but said, she was afraid.

Edinburgh, February the 7th, 1687.

The said *Anna Mark* being examined in Presence of the Assise and Justices, declares affirmative, conform to the above-written Declaration in all Points.

Sic subscribitur, LINLITHGOW, I. P. D.

Sir George M'kenzie's Speech to the Inquest.

Gentlemen of the Inquest,

I Am glad to see so strong and universal a Propensity for Justice in my native Country, that every Man upon first hearing this Death, concluded it a Murder, and trembled lest it should not have been discovered. Every Man became Solicitor in it, wished to be of the Inquest; and ardent Prayers were generally put up to Almighty God for this End, with as much Earnestness as uses to be for removing general Plagues. And the Almighty, in return of those, did first make so clear Impressions on all Mens Spirits of *Philip's* being the Murderer, that he had fallen by these: But his divine Majesty, who loves to see just things done in a legal Way, furnished thereafter a full Probation in an extraordinary Manner, whereby we might not only convince our selves, but all such as are not wicked enough to have been the Authors. You will discern the Finger of God, in all the Steps of this Probation, as evidently as *Philip's* Guilt; and this extraordinary Discovery has been made, as well to convince this wicked Age, that the World is govern'd by divine Providence, as that he is guilty of this Murder. He is accused before you for three Crimes, *Treason*, the *Cursing of his Father*, and the *Murdering him*: Crimes in great Affinity, and naturally subservient to one another; for to pray Confusion to the King, who is *Pater patriæ*, is a Cursing our great Parent; and what can prove better a Design to murder his Parent, than the malicious Hatred that

prevails over a Son to curse him? What restrains vicious Men from murdering those, by whose Death they may expect licentious Liberty, and an opulent Succession, save the Fear of the Laws of the Land, or at least an innate Awe of the Law of Nature? But here you see in the *Treason*, a Contempt of the Laws of the Land, and in the *Cursing*, an Abhorrence of the Laws of Nature.

There is no Reason to suspect our Zeal in this Case from any State Design; for we took Pains to shun a Probation of the *Treason*. It was forced upon us, and not fought by us; so violent were, and are we in the Search of the Murder, that even *Treason* was not able to divert us: Nor press I it at this Time, but to let you see there is nothing so wicked or dangerous, which this Pannal durst not attempt. He not only wishes the King's Confusion, but drinks it openly; and not only drinks the King's Confusion himself, but he forces others to do so; nor needed he to be drunk, to be guilty, for this was the first Step of his drinking; and to convince you that he knew it was a Crime, it is proved that he took his Complices sworn never to detect it; the fatal Encouragement which always tempts him to commit his Villainies. The *Cursing* his Father is not from meer Humour or Dissoluteness, but it becomes yet probable by a previous Design to have his Estate, and from the Restraint he found from him, of being debarred from the ravishing Hopes of a boundless Liberty. The Expressions are various and execrable, such as, *Devil take him, drown him, rive him, let him never come back, let him never eat more*, &c. and these Expressions, which should never have been once spoke, were frequently repeated, and are proved, not by suspected Persons, or Strangers, but by his Father's, and his own Servants, and such of them too as were *Philip's* own Favourits, and who think themselves very unhappy in being obliged to depone against him.

You are then, Gentlemen, in the third Place to judge, how far this Murder and Parricide are prov'd; in which you need to be the less scrupulous, that the Son, who is accused of it, is to die however; for either of the two former Crimes are so far prov'd beyond all Doubt, that though he should escape this, he cannot these. And as to the Probation of this Crime, I must first represent to you, that in occult or atrocious Crimes, the Law has relaxed, and remitted much of its Scrupulousness in Probation, because in these the ordinary Probation cannot be had; and to admit none but such, were to reject all: And therefore in Hamesucken, which is the beating a Man in his own Houfe, but much more the murdering a Man by way of Hamesucken in his own Houfe, wherein all Means are used to cover, and few can be got for discovering, you must not expect two Witnesses who saw the Murder committed, but only such Probation as can before God convince you, that this Murder was committed by that Man. No Inquest ever failed to find the Murder of Children to be clearly prov'd, though there were no Witnesses that saw it committed; and the murdering Parents is a more atrocious Crime, because we owe more Duty to our Parents, than any Parent does to a Child, and never Son ow'd more than this did, nor can be more believ'd to have killed a Parent. For clearing whereof you are to consider

first, that he did not drown himself, as was pretended, but was murdered by some Persons; and, as the Law violently presumes, that no Man would murder himself, so, without the Help of this Presumption, it is prov'd most convincingly, by ocular Inspection, that he was strangled; the Marks of Strangling, *viz.* the congealed Blood, the Dislocation of one of the Vertebrae in his Neck, &c. being visible Signs prov'd in the ordinary Way, and we have added to this the Opinion both of the Chirurgeons and Physicians, who at once declared, that he was not drowned, and that he was strangled; the outward Marks likewise of his not being drowned appearing as visibly as that he was strangled: So you must conclude, that he was strangled, except you can think, that after he had strangled himself, and broke his own Neck, he drowned himself.

In the next Place, who could have murdered this innocent and obliging Gentleman, except some Person who had Access to his House, wherein he was murdered, and had Malice against himself? And these two can meet in no Person, but this unnatural barbarous Son; for one of the things that heightens his Guilt is, that he should abhor a Father, who engaged meer Strangers to love him as a Friend! And we have prov'd that he not only hated his Father, and that he had done so for many Years, but that he vowed he would take away his Life before *Christmas* next; and that in many various, but clear Expressions, and at many several Times; for sometimes he swore, if he made a Disposition to his second Son, he should take his Life; sometimes, that he should be Master of all before *Christmas*, and he should use the Servants as they used him: That though his Mother was like to die, that his Father should die before her: And he scarce ever spoke of his Father, without swearing he would strike a Sword to his Heart: Nor would his Passion so much as suffer him to dissemble this, even to his Mother; and he who durst own it to her, durst certainly do it whenever he had Occasion.

I proceed now to clear to you, that I have proved, that he not only design'd and vow'd in Passion, that he would murder his Father, but that he actually attempted to murder him; and for this I have led these Witnesses, who prove, that when his Father came from the Leaden Mines, he fled into *Culter*, as a trembling Partridge pursued by a Hawk, telling some Gentlemen, that he had been pursued seven Miles by his unnatural Son, who accordingly came to the House, and shot several Pistols in at the Windows; whereupon the Gentlemen who now depone, were forc'd to watch with his Father all the Night, and were forc'd to convoy him the next Day near to *Edinburgh*. We have also produced other Gentlemen, to whom his Father declared, that he attempted against his Life; and who will not believe the best of Fathers deponing against the worst of Sons? Nor could anything have drawn this from the Father, save the terrifying Danger to which he was hourly exposed. All the Supreme Courts of *Europe* have found the Attempt to kill sufficient to infer Parricide: This is a higher Degree of Guilt than Cursing, and yet that infers Death; and to attempt to kill a Father is more villainous than to kill a Stranger. What shall be said then of frequent and delibe-

rate Attempts? And thus you have this Son again prov'd guilty of Death, and even Parricide. That which hastened the perpetrating this Crime, was, that his Father, wearied out with his Villainies, was at last forc'd to dispoise his Estate to his second Son; and though there be nothing more ridiculous than to ask, what Reason the Son had to kill his Father, as he now does; for there can be no Reason for so barbarous an Action; yet this was a Motive to him, and may be a Proof to you; for so kind a Father, who had tryed all Means and Methods to reclaim his licentious Son, had never proceeded to this, unless he had been driven to it by those frequent Attempts made by his Son upon his Life, in hopes to enjoy his Estate by the Death that he was to give. To disappoint which Hopes, his Father designed to settle his Estate on the second Brother; after which Settlement, he could gain nothing but the Gallows, by killing his Father: Whereupon he, to prevent the Delivery of the Disposition, did associat to himself *Thomson*, whom himself used to call the Devil's Taylor, *Thomson's* Wife, and *Janet Johnson*, who was his own Concubine, and his Father's known Enemy, whom he could never have frequented, except upon so barbarous a Design. *Thomson* denied that he was in the House for eight Days before, and yet it is proved he was in *Sir James's* House the Night the Murder was committed. *Johnson* denied also before the Council, that she was out of her House after Nine o' Clock that Night, and yet it is prov'd, that she stayed Abroad till after Twelve, so that her Husband was forced to send for a Stranger to give Suck to her Infant. Why did they both deny, or the abandon her Child, at so suspect a Time? And it is ridiculous to pretend, as they do, that they forgot so extraordinary a Circumstance, in so extraordinary a Night, especially being examined upon it within two or three Days thereafter. By their Assistance the Murder was designed to be upon *Saturday*, the Day of *January*; but God, to discover, and revenge a Murder (which he thought fit to suffer to be committed for the Punishment of so many preceding horrid Crimes) inspired *Sir James* to bring with him that Night, a devout Minister, for preparing the Father, and proving against the Son; and this pious and grave Man, whose Merit may be laid in Ballance with many Witnesses, depones, that he heard that Night the Noise of many People within the House, which was inconsistent with *Sir James's* drowning himself without it: And depones, That his Attention followed this Noise until it died out towards the River, into which he was thrown by them; and the Brink is prov'd to have been broken, and beat by many Feet, which fortifies much this Deposition. It is also proved, that he refused that Night to come to publick Prayer with his Father, swearing, that he could not look upon him, and that the next Morning, when all went to find out his Father, he confessed he had first found him; but that he came away without discovering that he had found him, nor did he shew the least Grief when he was found by others; whereas, if Nature had not been quite devoured by Vice and Guilt, he had certainly thrown himself upon his dead Father, and had lamented that fatal Death, which no Man, except he, saw with dry Eyes;

but

but whilst others were mourning for his Father, this Miscreant would not suffer him to be carried in to his own House, saying, that he died like a Dog. O criminal Moderation! that never appeared in this passionate Creature, save upon the Death of his Father. O cursed Justice! never shown, or pretended to, save in asserting, that his Father deserved no Respect, because he drowned himself. Upon this villainous Pretext, he caused throw him into a remot House, where none were allowed to see the Body, save his own Accomplices, to prevent all Discovery by Inspection of it; and for the same Reason caused bury him very suddenly, in spite of a Countermand from his Friends at *Edinburgh*. But they, fully perswaded that Sir *James* was murdered by his own Son, sent out some Chirurgeons and Friends, who having raised the Body, did see it bleed miraculously upon his touching it. In which God Almighty himself was pleased to bear a Share in the Testimonies which we produce; that divine Power, which makes the Blood circulate during Life, has oft-times, in all Nations, opened a Passage to it after Death, upon such Occasions, but most in this Case; for after all the Wounds had been sewed up, and the Body designedly shaken up and down, and which is most wonderful, after the Body had been buried for several Days, which naturally occasions the Blood to congeal; upon *Philip's* touching it, the Blood darted and sprung out, to the great Astonishment of the Chirurgeons themselves, who were desired to watch this Event; whereupon *Philip*, astonished more than they, threw down the Body, crying, *O God! O God!* and cleansing his Hand, grew so faint, that they were forced to give him a Cordial. But least any Shadow of Difficulty might remain with you, his divine Providence, which oft-times reveals it self by the Mouths of Babes and Sucklings, has brought us two little Witnesse, whom, as no body could be so unworthy as to corrupt, so none can be such Infidels as not to believe, especially since they depone against their own Parents, and have owned firmly in their Presence, what they now depone in yours. From them ye have an Account, how *Philip* that Night came into the House of their Parents, and there swore, *'He would be rid of his Father that very Night:* How they went out at Midnight, and after their Return made their Reflections, how easily Sir *James* had died, and how briskly *Philip* had behaved, by guarding the Door with a Pistol in his one Hand, and a Sword in the other; how they had hung a Stone about his Neck, but had thereafter taken it away, and how the Mother durst not stay in her own House, while Sir *James's* Coat was there; and if you had seen this little Boy upon his Knees, begging his Father to confess, with so much Affection, so much Judgment, so much Piety, you had needed no other Probation but himself. The Father himself, before his Death, was convinced, and frequently foretold, that his Son would kill him; and the Mother, how soon she heard of her Husband's Death, and some of the Circumstances now insisted upon, and remembered what she had heard her Son say to her self, and what he had said at *Nunland*, concluded he was the Murderer, in spite even of that criminal Kindness which she had for him; almost the whole Nation was convinced of this before any Probation was led: And the Lords of the Privy Council, among whom many of our

Judges sit, did declare, that they thought that half of the Probation which was led before them, sufficient to convince an Inquest. How then should the least Scruple remain with you, before whom so full, so clear, and so legal a Probation has been led, that like a Bend, every Part of it supports another, and like a Chain, every Link draws on another?

I need not fortifie so pregnant a Probation, by laying out before you how often he and his Complices have contradicted one another, and even how often he has contradicted himself in the most obvious and material Points, and how he denies every thing with Oaths, and with equal Confidence, though never so clearly prov'd: Albeit such as these are the chief things that make up the Probation in other Cases; nor how he suffered the greatest Indignities imaginable from his Complices in Presence of the Privy Council; though this convinced many of their Lordships, that he was at the Mercy of those Complices, who were too far upon his Secrets, not to be slavishlie submitted to. But I cannot omit, how that since he came into Prison, he has lived so impiouffie, and atheisticalle, as shewes, that he had no Awe upon his Spirit, to refrain him from committing any Crime from a Love to God, or a Fear to Hell; and that he constantly filled and kept himself drunk from Morning till Night, thereby to drown the Voice of his Conscience, and to make himself insensible of the Terrors of the Almighty.

The Judges have declared what was necessary to be prov'd, and you are only to judge, if we have prov'd what they thought necessary; and therefore there is no Place to doubt, if a Man's Life may be taken upon meer Presumptions; for the Judges have eased you of that Scruple, by finding the Grounds in this qualified Libel relevant; and his own Advocates have acknowledged this Probation to be so strong and unanswerable, that before the Half of it was led, they went away and deserted a Client, whom they found they could not defend; nor should any Man doubt of a Probation, which one's own Advocats think invincible. If then such amongt you as are Fathers, would not wish to be murdered by your own Children; or such of you as are Sons, would not wish the World to believe that you are weary of your Fathers, you will all concur, to find this Miscreant guilty of a Crime that God has taken so much Pains to detect, and all Mankind had such Reason to wish to be punished. May then the Almighty God, who form'd your Hearts, convince them; and may this poor Nation cite you, as the remarkable Curbers of Vice, to all succeeding Ages.

Thereafter his Majesty's Advocat protested for an Assise of Error against the Inquest, in case they should assoilzie the Pannal.

The Persons who pass upon the Assise of *Philip Standsfield*, return'd their Verdict in Presence of the saids Lords; whereupon the Tenor follows.

The whole Assise called upon the Jury of *Philip Standsfield*, upon the three Points following, particularly lybel'd against him; to wit, the Crime of Treason, the Cursing of his Father, and Accession to his Father's Murder; they unanimously, in one Voice, by the Mouth of *William Baillie* of *Lamington*, their Chancelor, finds the Pannal guilty of the forsaide Crimes.

Sic subscribitur,

WILLIAM BAILLIE,
of *Lamington*, Chancelor.

THE Lords Justice General, and Commissioners of Justiciary, having considered the Verdict of the Assize returned against *Philip Standsfield*, they, by the Mouth of *John Leslie*, Demptster of Court, decerned and adjudged the said *Philip Standsfield* to be taken upon *Wednesday* next, being the 15th of *February* instant, to the Mercat-Cross of *Edinburgh*, and there, betwixt two and four a Clock in the Afternoon, to be hanged on a Gibbet till he be dead, and his Tongue to be cut out, and burnt upon a Scaffold, and his right Hand to be cut off, and affixt on the East-Port of *Haddington*, and his Body to be carried to the *Gallowie* betwixt *Leith* and *Edinburgh*, and there to be hanged up in Chains; and ordains his Name, Fame, Memory, and Honours to be extinct, his Arms to be riven forth, and delet out of the Books of Arms, swa that his Posterity may never have Place, nor be able hereafter to bruik or joyse any Honours, Offices, Titles, or Dignities within this

Realm in time coming, and to have forfeaulted, amitted and tint all and sundry his Lands, Heretages, Titles, Offices, Tacks, Stedings, Rooms, Possessions, Goods and Gear whatsoever pertaining to him, to our Sovereign Lord, to remain perpetuallie with his Highness in Property; which was pronounced for Doom: Whereupon his Majesties Advocat asked, and took Instrumtus.

Sic subscribitur, }
 JO. LOCKHART,
 DAVID BALFOUR,
 ROGER HOGE,
 P. LYON.

Extracted forth of the Books of Adjournal, by me Mr. *Thomas Gordon*, Clerk to the Justice-Court.
Sic subscribitur, THO. GORDON.

Which Doom and Sentence, above-written, was accordingly put to due Execution upon the Person of the said *Philip Standsfield*, in Manner above prescribed.



CXLII. *The Trial of the most Reverend Father in God, Dr. William Sancroft, Lord Archbishop of Canterbury, and of the Right Reverend Fathers in God, Dr. William Lloyd, Lord Bishop of St. Asaph, Dr. Francis Turner, Lord Bishop of Ely, Dr. John Lake, Lord Bishop of Chichester, Dr. Thomas Kenn, Lord Bishop of Bath and Wells, Dr. Thomas White, Lord Bishop of Peterborough, and Sir Jonathan Trelawny, Lord Bishop of Bristol*, at the King's-Bench, for Publishing a Libel, June 29, 1688. Trin. 4 Jac. II.*

FRIDAY June 15, 1688.

Sir *Robert Wright*, Lord Chief Justice, }
 Mr. Justice *Holloway*, }
 Mr. Justice *Powell*, } Judges.
 Mr. Justice *Allybone*, }

HIS being the first Day of the Term, his Majesty's Attorney-General (as soon as the Court of King's-Bench was sat) moved on the Behalf of the King for a *Habeas Corpus*, returnable immediate, directed to the Lieutenant of the Tower, to bring up his Grace the Lord Archbishop of *Canterbury*, and the Bishops of *St. Asaph*, *Ely*, *Chichester*, *Bath and Wells*, *Peterborough*, and *Bristol*; which was granted.

And with great Dispatch, about eleven o'Clock the same Day, the Lieutenant returned his Writ, and brought the said Lord Archbishop and Bishops into Court, where being set down in Chairs, set for that Purpose, Mr. Attorney-General moved the Court, viz.

Sir *Tho. Powis*. Mr. Att. Gen. My Lord, I pray that the Writ and Return may be

read, by which my Lords the Bishops are brought hither.

L. C. J. Read the Return.

Clerk reads the Return, which in English is as follows:

I Sir *Edward Hales*, Baronet, Lieutenant of the Tower of London, named in the Writ to this Schedule annext, To our Most Serene Lord the King, do most humbly certify, That before the coming of the said Writ, to wit, the eighth Day of June, in the fourth Year of the Reign of our Lord James the Second, King of England, &c. William Lord Archbishop of *Canterbury*, William Lord Bishop of *St. Asaph*, Francis Lord Bishop of *Ely*, John Lord Bishop of *Chichester*, Thomas Lord Bishop of *Bath and Wells*, Thomas Lord Bishop of *Peterborough*, and Jonathan Lord Bishop of *Bristol*, mentioned in the aforesaid Writ, were committed and delivered to, and are retained in my Custody, by Virtue of a certain Warrant under the Hands and Seals of *George Lord Jefferies*, Baron of *Wem*, Lord High Chancellor of England, *Robert Earl of Sunderland*, Lord President of the Privy-Council of our Lord the King, *Henry Lord Arundel* of *Warder*, Keeper of

the Privy-Seal of our said Lord the King, William Marquess of Powis, John Earl of Mulgrave, Lord Great-Chamberlain of England, Theophilus Earl of Huntingdon, Henry Earl of Peterborough, William Earl of Craven, Alexander Earl of Murray, Charles Earl of Middleton, John Earl of Melfort, Roger Earl of Caithmain, Richard Viscount Preston, George Lord Dartmouth, Sidney Lord Godolphin, Henry Lord Dover, Sir John Ernle, Knight, Chancellor of the Exchequer of our said Lord the King, Sir Edward Herbert, Knight, Chief Justice of the Common-Bench of our Lord the King, and Sir Nicholas Butler, Knight, Lords of his Majesty's most honourable Privy-Council, to me directed: The Tenor of which Warrant follows in these Words, viz.

“ THESE are, in his Majesty's Name, and by his Command, to require you to take into your Custody the Persons of William Lord Archbishop of Canterbury, William Lord Bishop of St. Asaph, Francis Lord Bishop of Ely, John Lord Bishop of Chichester, Thomas Lord Bishop of Bath and Wells, Thomas Lord Bishop of Peterborough, and Jonathan Lord Bishop of Bristol, For Contriving, Making and Publishing a Seditious Libel in Writing, against his Majesty and his Government, and them safely to keep in your Custody until they shall be delivered by due Course of Law; for which this shall be your sufficient Warrant. At the Council-Chamber in Whitehall, this eighth Day of June, 1688. And this is the Cause of the taking and detaining, &c.

L. C. J. Well, what do you desire, Mr. Attorney?

Mr. Att. Gen. We pray for the King, that the Return may be filed.

L. C. J. Let it be filed.

Mr. Att. Gen. By this Return your Lordship observes what it is my Lords the Bishops were committed to the Tower for; it is by Warrant from the Council-Board, where, when their Lordships appeared, they were not pleased to give their Recognizances to appear here, as they were required by the King to do; and thereupon they were committed to the Tower, and now come before the Court upon this Return of the King's Writ of Habeas Corpus; and by the Return it does appear, it was for Contriving, Writing, Framing, and Publishing a Seditious Libel against his Majesty and the Government. My Lord, it is our Duty, who are the King's Council, pursuant to our Orders, to prosecute such Kind of Offences; and when the proper Time shall come for us to open the Nature of the Offence, your Lordships will then judge what Reason there is for this Prosecution; but in the mean Time, what we are now to offer to your Lordship is, The Officer of this Court has an Information against his Grace the Archbishop of Canterbury, and the rest of my Lords the Bishops, which we desire may be read to them, and pray that they may plead to it, according to the Course of the Court.

Sir Rob. Sawyer. If it please your Lordship to spare us a Word for my Lords the Bishops.

Mr. Att. Gen. My Lord, we pray for the King the Information may be read,

Sir Rob. Sawyer. We desire to be heard a Word first.

Mr. Soll. Gen. We oppose your speaking any thing, till the Information hath been read.

Sir Rob. Sawyer. But what we have to offer is proper before it be read.

Mr. Att. Gen. Your Time is not yet come, Sir Robert.

Sir Rob. Sawyer. Yes, this is our proper Time for what we have to say, and therefore we move it now, before there be any other Proceedings in this Matter.

Mr. Soll. Gen. It is irregular to move any thing yet: Pray let the Information be read first.

Mr. S. Pemberton. If your Lordship please to spare us, we will offer nothing but what is fit for us to do.

Sir Rob. Sawyer. And now is our proper Time for it.

Mr Soll. Gen. Gentlemen, You do know the Way of Proceeding in such Cases better than so: I am sure, as for you, Sir Robert Sawyer, you have often oppos'd any such Motion as irregular; and I hope the Case is not alter'd, however you may be, the Course of the Court is the same.

Sir Rob. Sawyer. With Submission, if your Lordship please to spare me a Word, that which I would move, is, to discharge my Lords the Bishops upon this Return, and from their Commitment upon this Warrant.

Mr. Att. Gen. Surely these Gentlemen think to have a Liberty above all other People: Here is an Information, which we pray my Lords the Bishops may hear read, and plead to.

Mr. Soll. Gen. Certainly, Sir Robert Sawyer, you would not have done thus half a Year ago.

Sir Rob. Sawyer. What would not I have done? I move regularly (with Submission) to discharge my Lords the Bishops from their Commitment; if they are not here legally imprisoned, now they are before your Lordships upon this Writ, then you will give us leave to move for their Discharge, before any thing else be said to them; and that is it we have to say, to demand the Judgment of the Court upon this Return, whether we are legally imprisoned?

Mr. Att. Gen. Under Favour, my Lord, neither the Court, nor they, are ripe for any Motion of this Nature yet.

Mr. S. Pemberton. If we do not move it now, it will afterwards (I fear) be too late.

Mr. Soll. Gen. These Gentlemen are very forward, but certainly they mistake their Time; this is a Habeas Corpus that's brought by the King, and not by the Prisoners; and therefore they are too soon, till they see what the King has to say to them.

Mr. Att. Gen. Your Lordship cannot as yet be moved for your Judgment about the Legality of this Commitment, because this Writ was granted upon our Motion, who are of Council for the King, and upon this Writ they are brought here: And what is it we desire for the King? Certainly nothing but what is regular. We have here an Information for the King against my Lords, and we desire they may plead to it.

Mr. S. Pemberton. Good my Lord, will you please to hear us a little to this Matter.

L. C. J. Brother Pemberton, we will not refuse to hear you by no means, when you speak in your proper Time, but it is not so now; for the King is pleased, by his Attorney and Solicitor, to charge these noble Persons, my Lords the Bishops, with an Information; and the King's Council call to have that Information read, but you will not permit it to be read.

Mr.

Mr. S. Pemberton. Pray, my Lord, spare us a Word: If we are not here as Prisoners regularly before your Lordship, and are not brought in by the due Process of the Court, then certainly the King's Council, or the Court, have no Power to charge us with an Information; therefore we beg that you will hear us to that, in the first Place, whether we are legally here before you?

Mr. Soll. Gen. These Gentlemen will have their proper Time for such a Motion hereafter.

Mr. Pollexfen. No, Mr. Solicitor, this is, without all Question, our only Time for it; we shall have no Time afterwards.

Mr. Att. Gen. Yes, you will, for what do we, who are of Council for the King, now ask of the Court, but that this Information may be read? When that is done, if we move to have my Lords the Bishops plead, then they may move what they will; but before we make that Motion, they cannot break in upon us with their Motion; and, with Submission to your Lordship, whether my Lords the Bishops were duly committed, is not yet a Question.

Mr. Finch. But it is, and this is the fittest Time for it.

Mr. Soll. Gen. Pray will you hear us quietly what we have to say, and then answer us with Reason, if you can: I think we are in a proper Way, but they are not, my Lord; for (as I said) my Lords the Bishops are brought by the King's Writ upon our Motion for the King, not upon theirs; and now we have them here before the Court, We for the King will charge them with an Information; which Information, that they and the Court may know what it is they are charged with, we pray it may be read to them by the Clerk; and when it is read, let these Gentlemen say what they will for them, they shall have their Time to speak; but certainly they ought not to obstruct the King's Proceedings, nor oppose the Reading of the Information to these noble Lords, who are brought here in Custody into Court, to this very Purpose, that they may be charged with this Information.

Mr. S. Pemberton. But we have somewhat to say before you can come to that, Mr. Solicitor.

Mr. Soll. Gen. You ought not to be heard as yet.

Mr. S. Pemberton. Under Favour we ought to be heard.

Sir Robert Sawyer. My Lord, Mr. Solicitor has opposed our being heard, but we now desire he would hear our Answer to it, and that which we have to say, is this, That my Lords the Bishops are not here regularly in the Court to be charged with an Information; and if the Law be not with us in this Point, as we doubt not to make appear it is, no question but when your Lordship has heard what we have to say, you will give a right Rule in it. My Lord, we say, that by the Rules of Law, no Man ought to be charged with an Information or Indictment, by the express Statute of *Edward* the Third, unless he come into the Court by legal Process: That is a standing Rule, and the Practice of this and all other Courts is pursuant to it. Now in this Court you have several Processes that go out of this Court, and he that comes as taken by Virtue of a *Capias*, or an Attachment after a Summons, or by *Venire* in the Nature of a *Subpoena*: I say, he that comes in upon these Processes, may be charged with an Information; but where a Person is in Prison, committed by another Jurisdiction, and another Au-

thority, than that of this Court; when the Prisoner is brought here by *Habeas Corpus*, the first Thing the Court has to do, is to enquire whether he be legally committed; to that End the Return is filed, and the Party has leave to make his Exceptions to it, as we do in this Case. My Lords are brought here upon a *Habeas Corpus*, the Return of which has been read, and now the Return is filed, we are proper to move, that my Lords may be discharged; for you now see what they are committed for; it is for a Misdemeanor in making and publishing a Libel, that's the Matter for which they are committed; and it appears by the Return likewise, that they who are thus committed are Peers of the Realm; for so my Lords the Bishops all are, and for a Misdemeanor they ought not by Law to have been committed.

L. C. J. You go too far now, Sir *Robert Sawyer*; I would willingly hear you whatsoever you have to say; but then it must be in its due Time.

Mr. Att. Gen. This very Discourse (indeed I have heard) has pass'd up and down the Town for Law; we see now whence they had it.

Mr. Soll. Gen. I know it has heretofore been urged by me, but denied by them who now urges it, and I am glad that they now learn of me to tuck about.

L. C. J. Look you, Gentlemen, do not fall upon one another, but keep to the Matter before you.

Mr. S. Pemberton. So we would, my Lord, if the King's Council would let us. First, we say, we being brought here upon a Return of a *Habeas Corpus*, there was neither at the Time of the Commitment Cause to imprison us, nor was there by the Warrant any Cause to detain us in Prison; and for that, besides what has been hinted at, we say further, that here it is returned, that we were committed by such and such Persons, Lords of the Privy-Council; but the Return doth not say, that it was done by them, as Lords of the Privy-Council, which must be in Council; for if it be not in Council, they have not Power to make such a Warrant for the Commitment of any Person, and that we stand upon. Here is a Return that is not a good Return of a legal Commitment, and therefore we pray my Lords may be discharged.

Mr. Pollexfen. Pray, my Lord, spare me a Word; that is the Thing we humbly offer to your Lordship's Consideration; and, under Favour, I think we are proper both as to the Matter, and as to the Time: The Return is now filed before you; if by this Return there appears to have been such a Cause to commit these Lords to Prison, as is legal, then we acknowledge they may in a legal Course be brought to answer for their Offence; but, with Submission, it appears not by any thing that is in this Return, that my Lords the Bishops were committed by the Order of the Privy-Council. All that is said, is, That they were committed by my Lord Chancellor, and those other Persons, named Lords of the Privy-Council; which we conceive is not a good Return; for they can do nothing as Lords of the Privy-Council, except only as they are in Council, and by Order made in Council; except that do appear, they have no Power to commit: Then take the Case to be so; here is a Man committed by one that has no Authority to commit him, and he is brought by *Habeas Corpus* into this Court, what shall the Court do with him? Shall they charge him with an Information? No, it does appear that he was in Custody, but under

under a Commitment, by those who had no legal Power to commit him; and therefore he must be discharged; and that we pray for my Lords the Bishops. What the King's Council may have to say to them afterwards, by Way of Information or otherwise, they must take the regular Methods of the Law, to bring my Lords the Bishops to answer; but as the Case stands here before you, upon this Return, it does appear, they had no Authority to commit them, by whose Warrant they were committed; and therefore this Court has nothing to do but to discharge them.

Mr. Finch. I beg your Lordships leave to say one Word farther on the same Side: I think, with humble Submission, this is the most proper Time for us to make this Motion; for here is a *Habeas Corpus* returned; this Return is filed, and then the King's Council move to charge my Lords the Bishops with an Information. That Motion of theirs (we say) is too soon, unless my Lords are here in Court, I mean legally in Court; for no Man is in Court so as to be liable to be charged with an Indictment, or Information, that is not brought into Court by legal Process, or as a Prisoner upon a legal Commitment: Then, my Lord, with humble Submission, we say, that it doth appear by this Return, that my Lords the Bishops are not here legally in Court, because this Commitment of theirs was not a legal Commitment; and two Objections we have to it, the one is, that the Persons committing had no Authority to commit; for the Return says, that it was by Virtue of a Warrant under the Hands of such and such, being Lords of the Council, and they (we say) have no Authority to do this. The other Objection is, that the Fact for which they were committed, they ought not to have been imprisoned for: The Fact charged upon them is in the Nature of a bare Misdemeanor, and for such a Fact it is the Right of my Lords the Bishops (as Peers of the Realm) that they ought to be served with the usual Process of *Subpœna*, and not to be committed to Prison. These are the two Objections that we have to this Return, and this is, under Favour, the proper Time for us to make this Objection, before the King's Council can charge my Lords the Bishops with an Information.

L. C. J. What say you to it, Mr. Attorney?

Mr. Att. Gen. With Submission, my Lord, these Gentlemen have out of course, and preposterously, let themselves into this Discourse; and, when all is done, we must recur to that which we moved to your Lordship before, to desire that your Lordship would order the Information to be read; and when we call my Lords to plead to the Information, then will be their proper Time to make this Objection; for 'tis a strange Thing, certainly, for Men to make Objections before they know what it is they are charged with! They say, the Ground of their Motion is, because my Lords the Bishops are here in Court upon the Return of an *Habeas Corpus*; and therefore they come in upon a Commitment (as they say) for that which they ought not to be committed for at all, and we cannot charge them, unless they be properly in Court. Now for that, it is true, if that Commitment of theirs were the only Thing that was here before the Court, then the Court would, if that Commitment were illegal, discharge them of that; but when a Man is present here in Court, brought into Court, let him

come how he will, he is not to have any longer Time than that Instant to appear to, and be charged with the Information. 'Tis true, upon a *Subpœna*, which is in the Nature of a Summons, there a Man hath, as it were, an *Essoyn*, and may make his Excuse, and he shall have Time; but when he is present in Court, either as a Person privileged, as an Officer, or as a Prisoner, he shall be charged presently; and these Gentlemen are not to let themselves into Invectives against the Commitment, thereby to keep off their being charged with the Information. Besides that, it is strange these Gentlemen should know the Privilege of my Lords the Bishops as Peers, better than all the Lords of the Council, who are most of them themselves Peers; and they that make the Objection should have considered, whether these Lords that made the Commitment, did not think themselves concerned in all the Privileges of Peerage, as well as these seven Noble Lords!

Sir. Rob. Sawyer. Is this an Answer to our Objection, Mr. Attorney?

Mr. Att. Gen. I say, it is a strange Objection, and I answer, 'tis out of due time; for this we say, that my Lords the Bishops being now here in Court as Prisoners upon a Commitment, and we desiring to charge them with an Information, you are not to examine the Matter of their Commitment, and therefore I do insist upon it, that the Information should be read, and then you will consider, whether they are not bound to plead to it.

Mr. Finch. My Lord, I hope Mr. Attorney General will not think legal Objections to be Invectives.

Mr. Att. Gen. Truly I know not what you call legal Objections; I do not think yours are so, nor do I think legal Objections are Invectives; but I used that Expression, as very proper for what you urged against the Commitment.

L. C. J. Nay, Gentlemen, don't quarrel about Words.

Mr. Finch. My Lord, we would not willingly have Words given us to quarrel at.

Mr. Sol. Gen. My Lord, the Question is, whether we are in the right Method of Practice, as to the Course of the Court, or they? It may be these Gentlemen think to make us angry, and take Advantage of our being in a Passion.

Mr. Finch. Mr. Solicitor, we desire to have our Objections answered.

Mr. Sol. Gen. Nay, if you begin to be angry, Gentlemen, we can be angry too.

L. C. J. I would have neither of you be angry.

Mr. Sol. Gen. It seems they would have an Answer to their Objections, but will not suffer us to give it; they would first examine whether my Lords the Bishops have been duly committed; that, we say, is not to be done by the Court as yet: Your Lordship sees they are actually in Custody, by a Commitment of the Lords of the Council, that appears by the Return before your Lordship, and for what they were committed. What do we now pray for the King? First, we move for a *Habeas Corpus*, then that this Information may be read, and all is in order to bring this Fact, for which they were committed, to a Trial. 'Tis said upon the Return, they were sent to the Tower, for Contriving, Writing, and Publishing a Seditious Libel against the King's Person and Government, which, I think, is Crime enough for a Man to deserve to be committed for: They would have

you

you to discharge these Lords from this Commitment (the Return as they say, being not legal) before the Information be read: But we think their Motion is irregular; for here is a Crime charged in the Commitment, and upon that Commitment they are here now as Criminals before your Lordship; and Mr. Attorney has exhibited an Information for the King, which is in the Nature of a Declaration at the King's Suit; and that in this Court, which is the Supreme Court now in being for the Trial of Matters of this Nature. We will come to that Question, whether they were legally committed, when there is a proper Time for it? But now we find my Lords the Bishops in Court, upon a Commitment for a great Crime: I repeat it again; it is for Contriving, Writing, and Publishing a Seditious Libel against the King's Person, and against the King's Government; and whether the King's Council shall not have Leave to make out this Charge by an Information, sure can be no Question at all in this Court. I hear them mention the Statute of *Edward the Third*; but that is not at all to the Purpose; that is but what was offered in another Case that may be remembered, and offered by Way of Plea, and pressed with a great deal of Earnestness, but rejected by the Court; and now what could not be received then by Way of Plea, these Gentlemen would, by their Importunity, have you receive by Way of Parole at the Bar. I suppose the Design is to entertain this great Auditory with an Harangue, and to persuade the weak Men of the World (for the Wise are not to be imposed upon) that they are in the Right, and we in the Wrong. Under Favour, my Lord, we are in the Right for the King; we desire this Information may be read, and let them plead what by Law they can to it, according to the Course of the Court: But that which they now urge, is untimely, and out of Course.

Sir Rob. Sawyer. My Lord, we offer this to your Lordship —

Mr. Att. Gen. Why, Gentlemen, you have been heard before your Time already.

Mr. S. Pemberton. Pray, my Lord, give us leave to answer what the King's Council have objected.

L. C. J. The King's Council have answered your Objections, and we must not permit Vying and Re-vying upon one another: If you have no more to say, but only as to the Matters that have been urged, you have been heard to it on both Sides already.

Mr. S. Pemberton. I would, if you please, answer what has been objected by the King's Council, and state the Case aright.

Mr. Just. Allyn. Brother Pemberton, I do not apprehend that the Objection you make against this Commitment has any Weight in it. The Objection (as I take it) is this, that these Lords were not legally committed, because they were committed (says the Return) by such and such Lords of the Council particularly named; and it does not specify them to be united in the Privy-Council: Now truly, with me, that seems to have no Weight at all; and I will tell you why. If my Lord Chief Justice do commit any Person and set his Name to the Warrant, he does not use to add to his Name, Lord Chief Justice, but he is known to be so, without that Addition. And would you have a different Return from the Lieutenant

of the Tower to a *Habeas Corpus*, than the Warrant it self will justify? the Lords do not use to write themselves Privy Counsellors; they are known to be so, as well as a Judge, who only writes his Name, and does not use to make the Addition of his Office.

Sir Rob. Sawyer. Pray, my Lord, give me leave to be heard to this; I think truly it is a weighty Objection; for, under Favour, we say, it must upon the Return here appear, that they were legally committed, before you can charge them with an Information. I do not take Exceptions to the Warrant, because it is subscribed by such Lords, and they do not write themselves Lords of the Council; they need not do that: And the Return has averred that they are so; but the Return ought to have been, that it was by the Order of the Privy Council, and so it must be, if they would shew my Lords to be legally committed, that they were committed by Order of the Privy Council, and not by such and such particular Persons, Lords of the Privy Council; so in the Case put by Mr. Justice *Allyn*, of a Commitment by your Lordship, or any of the Judges, it must be returned to be by such a Warrant, by such a one Chief Justice, for that shews the Authority of the Person committing, and then your Lordship's Name to it, indeed, is enough, without the Addition: But if it does not appear by the Return, that there was sufficient Authority in the Person to commit, your Lordship cannot take it to be a legal Commitment. But now in this Case they could have no Authority to commit but in Council; and this Return seems to make it done by them as particular Persons, and that's not a good Return, with your Lordship's Favour, upon which these Reverend and Noble Lords can be detained in Prison. But what do they on the other Side say to this? Why, we shall be heard to it anon: But, my Lord, they very well know, it would be too late for that Effect which we desire of our Motion, and therefore we lay the Objections before you now in its proper Time (say we) you ought not to read any Information against us, because we are not legally here before the Court; and sure, that which was said by the King's Council, that your Lordship may charge any one that you find here in Court, which way soever he comes in, cannot be legal.

Mr. Att. Gen. Who ever said so?

Sir Rob. Sawyer. I apprehend you said so, Mr. Attorney, or else you said nothing.

Mr. Att. Gen. *Sir Robert Sawyer*, You of that Side have a Way of letting your selves in to say the same things over again, and of making us to say what you please.

Sir Rob. Sawyer. Truly I did apprehend you laid down that for Doctrine, which I thought a very strange one; for we say, with your Lordship's Favour, he that is in Court without a legal Process, is not in Court so as to be charged with an Information.

Mr. S. Pemberton. My Lord, It is not the Body being found here that intitles the Court to proceed upon it, but the Person accused is to be brought in by legal Process: Then if we be not here by legal Process, the Information cannot be charged upon us; and if we suffer it to be read, it will be too late for us to make this Objection.

L. C. J. That you have all said over and over, and they have given it an Answer.

Mr. Att. Gen. Pray, Mr. Serjeant, will you make an End: You have repeated your Objection over and over, I know not how often, and will never be contented with our Answer.

Mr. J. Allynbone. Sir Robert Sawyer, that which you said in Answer to the Case I put, methinks does not answer it: For if the Return be as good, that it was by a Warrant from such an one, Lord Chief Justice, as if my Lord Chief Justice had added the Title of his Office to his own Name, when he subscribed the Warrant; then this Return, That this was done by such and such Lords of the Council, must be as good as if they had added that to their own Names.

Sir Rob. Sawyer. That is not our Objection.

Mr. Att. Gen. Your Objection has been heard, and answered; we pray the Information may be read.

Mr. S. Pemberton. No, we are not come to that yet.

Mr. Just. Allynbone. Pray, would you have an Averment by the Lieutenant of the Tower, in his Return to an *Habeas Corpus*, that it was done by them in the Council-Chamber?

Mr. Finch. My Lord, the Difference is this, with Submission; a Commitment by Sir Robert Wright, Chief Justice, is a good Commitment, and a Return of that Nature were a good Return, because he is Chief Justice all over *England*, and hath Authority to commit wherever he is; but a Commitment by such an one, or such and such Lords of the Privy-Council, cannot be a good Return of a Commitment; because, though they be Lords of the Council, yet neither single, or apart, nor all together, have Authority to do such an Act, unless they be assembled in the Privy-Council: There their Authority is circumscribed; so that that must needs be a great Difference between a Commitment made by a Judge, who is always so, and a Commitment by a Lord, or so many Lords, by the Name of Lords of the Privy-Council, who carry not their Authority about with them, but are limited to their Assembly in Council.

Mr. Just. Allynbone. Mr. Finch, Indeed your Objection is worth something, if my Lord Chief Justice could not act but as under the Character of Chief Justice; for you are now arguing, that these Lords could not do this Act, but as Lords of the Council in Council: The same (say I) may be said of a Commitment by the Lord Chief Justice; he cannot do it but under the Formality of his Authority, as he is Chief Justice, unless you will make it impossible for him to do any thing but as Chief Justice, or unless you make it impossible to separate his Person from his Authority.

Mr. Finch. Sir, the Difference lies here; the Authority of the one is general and universal, and goeth with him wherever he goes; the others Authority is limited to a particular Sphere.

Mr. Just. Allynbone. Why, would you have it averred, that they did it, being assembled in Council?

Mr. Finch. Under Favour, they cannot justify any thing that was done by them as Lords of the Council, but in the Privy-Council.

Mr. Just. Powell. Truly, my Lord, for my Part, I think there is no such great Necessity of Haste in this Matter: Here are Exceptions taken to this Return; and the Matter transacted now before us, appears to me to be of very great Weight;

peradventure a greater or a weightier has not been agitated in this Place in any Age: It concerns these Noble and Reverend Lords in Point of Liberty: It comes suddenly upon us, and therefore, my Lord, I think it very fit we should consider a little of this Matter, and consult the Precedents of Returns, how they are; for there are Multitudes of Returns of Writs of *Habeas Corpus* in this Court; therefore it were requisite, that we did consult the Forms of other Returns, and how the Precedents, as to this Matter, have always been: If they are according as this is, then all is well, but if they be otherwise, it is fit we should keep to the usual Forms.

L. C. J. What's your Opinion of it, Brother Allynbone?

Mr. Just. Allynbone. I am still of the same Mind I was, my Lord, That he could make no Return but this Return he has made; and if his Warrant was insufficient upon this Account, that these particular Persons, Lords of the Privy-Council, did this Act without saying, that they did it in Privy-Council; then 'tis not his Return that could mend it; and truly I do not know that there does need any Precedent for this; for every one knows where the Lords of the Council are; and 'tis a sufficient Averment, this that is in the Return.

Mr. Pollexfen. They are Lords of the Council every where, but they do not act as Lords of the Council any where but in Council.

Mr. Just. Allynbone. So my Lord Chief Justice is Chief Justice every where.

Mr. Finch. And he can do judicial Acts, as such, every where; but the Lords of the Council cannot act but in the Council.

Mr. Just. Allynbone. Nor is it to be presumed that they did do it.

Mr. Finch. It is not a Presumption that is to make any thing in this Case, but the Question is, whether here be a legal Return of a legal Commitment?

Mr. Just. Allynbone. Such publick Persons, in such publick Acts, can never be presumed to act in their separate private Capacities.

Mr. Finch. But, with Submission, your Lordships can judge only what is before you in this Return, whether it be a good Return, and whether here be a good Authority asserted in the Persons that did commit my Lords the Bishops.

L. C. J. Truly, as to this Objection and Exception that has been made by them, I have considered of it, and what has been said on all Sides, and I think 'tis the usual Way of Commitment; I never saw any other; all the Warrants that ever I saw, are of this Form; if there were any Precedents, they should be shewn of that Side.

Sir Robert Sawyer. There are Multitudes of Precedents otherwise, and none of this Form.

L. C. J. I confess, 'tis a Case of great Weight, and the Persons concerned are of great Honour and Value; and I would be as willing as any Body to testify my Respects and Regards to my Lords the Bishops, if I could see any thing in it worth considering of.

Mr. Soll. Gen. There's no Colour for it, if they do but look upon the Statute of the 16th and 17th of the late King, which arraigns the Proceedings of his Privy-Council: That tells you what Things belong to the Cognizance of the Privy-Council, and what not; and there you have all the Distinctions about Commitments by the King

and Council, and by the Lords of the Council: And that Act will shew, that this is a Commitment according to the usual Form. They know very well what the common Stile of the Orders and Commitments of Council is, as in other Places, and other Commitments. By such an one, Chief Justice, that is the Stile that is very well known for such Warrants: So a Commitment by such and such, naming them particularly, *Lords of the Council*, that's an Order made by the *Lords in Council*; and that Statute distinguishes between Commitments of one Sort and the other; and it does it, because sometimes Warrants run in one Form, and sometimes in another; but they all come within the Direction of that Statute. My Lord, we are in a plain Case, my Lords the Bishops come regularly before you, upon a Commitment by the Council; and therefore we pray they may be charged with this Information.

Sir Robert Sawyer. Pray, will your Lordship give us leave to have that Statute look'd into, which Mr. Solicitor speaks of; and then we shall see whether it be to his Purpose.

L. C. J. Let the Statute be read.

Mr. Soll. Gen. If it be *Keeble's Book*, it is the 16th of *Charles* the First; if it be the old Book, it is the 16th and 17th of *Car.* towards the End.

Clerk reads. Provided always, and be it enacted, that this Act, and the several Clauses therein contained, shall be taken and expounded to extend only to the Court of Star-Chamber; and to the said Court holden before the President and Council in the Marches of Wales, and before the President and Council in the Northern Parts.

Mr. Soll. Gen. It is the Paragraph before that.

Clerk reads. And be it also provided and enacted, That if any Person shall hereafter be committed, restrained of his Liberty, or suffer Imprisonment, by the Order and Decree of any such Court of Star-Chamber, or other Court aforesaid, now, or at any time hereafter, having, or pretending to have the same, or like Jurisdiction, Power, or Authority to commit, or imprison, as aforesaid; or by the Command or Warrant of the King's Majesty, his Heirs or Successors, in their own Persons; or by the Command or Warrant of the Council-Board, or of any of the Lords, or others of his Majesty's Privy-Council, that in every such Case, every Person so committed, restrained of his Liberty, or suffering Imprisonment, upon demand—

Mr. Soll. Gen. That is all: Your Lordship sees these several Distinctions of the Stile of Commitment.

Mr. Att. Gen. Now, pray favour us a little. My Lord, I think these Gentlemen will not deny, but that the Lords of the Council can commit. I must confess, they ask that which was pretty reasonable, if the Case was as they would make it. They would have my Lords the Bishops discharged, because there is not a Return of a good Commitment, and that stands upon this Presumption, that what is here said to be done by all these Lords, at the End of whose Names this is added, *Lords of the Privy-Council*, was done by them out of Council, which, I suppose, your Lordship

will not presume, but will take it, that they did this as Lords of the Council in Council; and no Man can say, but the Lords in Council can commit.

Mr. Soll. Gen. You may as well presume upon a Warrant made by my Lord Chief Justice, because it is not said where he did it, and therefore he did it in *Scotland*.

Mr. Att. Gen. I say again, unless your Lordship will presume that which is not to be presumed, this must needs be a very good Return.

Mr. Jus. Allyn. Truly (as Mr. Solicitor says) you may as well desire us to presume, that my Lord Chief Justice would commit a Man in *Ireland* or *Scotland*; I can see no imaginable Difference.

Mr. Finch. My Lord, that which we pray, is, not that your Lordship would presume, but that you would not presume, but take the Return as 'tis before you; and then see whether it can be thought to be a Commitment by the Lords in Council?

Mr. S. Pemberton. Pray, my Lord, spare us a little in this Matter: Here has been the Clause of a Statute read to you, from whence Mr. Solicitor would conclude, that all Commitments by several Sorts of Persons there named, are legal; or else the Enumeration of the several Sorts of Commitments, signifies nothing to this Purpose. But I pray your Lordship would consider this, that the very Scope and End of that Act of Parliament is, to relieve against illegal Commitments and Oppressions; then the several Commitments therein named, can never all be called legal; so that this signifies nothing to our Purpose. My Lord, they tell us we stand upon Presumption: No, we do not so; we say your Lordship ought not to presume the one or the other, but to judge upon what is before you: But here is nothing before you but this Return of a Commitment of these noble Persons, my Lord the Archbishop of *Canterbury*, and the rest of the Bishops, which is said to be by these particular Lords. Now if your Lordship will please to give us Time to look into it (for this is an Exception we take at the Bar upon hearing the Return read) we would shew the constant Way has been quite otherwise than this Return makes it; therefore we desire Leave to satisfy your Lordship concerning the usual Form of Precedents, and thereby it will appear, that it ought to have been, that they were committed by Order of the Privy-Council, and then he should have set forth the Warrant itself, which would have shewn the Names of the Privy-Councillors, and he needed not to have put their Names in the Return, as the particular Persons that committed them: But now, my Lord, this does not appear to be an Order made in Council, as it ought to be, and the Return is that which is before you, and you are to judge only upon what is before you.

L. C. J. So we do.

Mr. Jus. Allyn. Pray, Sir *Robert Sawyer*, would the Saying of a Governor of the *Tower*, in his Return to a Writ of *Habeas Corpus*, alter the Nature of the Commitment?

Mr. Att. Gen. My Lord, we are in your Lordship's Judgment.

Mr. Jus. Allyn. I say, Brother *Pemberton*, would any collateral Saying of the Licutenant of the *Tower* alter the Nature of the Thing, his Return in this Case is only an Inducement to the

Warrant of Commitment, and his saying one way or t'other would neither vitiate nor mend the Commitment.

Mr. Soll. Gen. Your Lordship cannot take Notice of the Commitment but from the Warrant.

Mr. Pollexfen. The Return is the Fact upon which you are to judge.

Mr. Just. Powell. Certainly we must judge of the Record, and nothing else, and the Return is the Record now, being filed.

L. C. J. The Return is as certain, I think, as can be.

Mr. Soll. Gen. By the Return it appears, the Bishops were committed by the Warrant of such and such Lords of the Council, and that which is before you now is, whether you will not intend it to be done by them in Council.

Mr. Just. Powell. We can intend nothing, but must take the Return as 'tis.

L. C. J. The Warrant is good enough, I think truly, and so is the Return.

Mr. Pollexfen. I think in all the *Habeas Corpus's* that have been since the King's Return, of Persons committed by the Council, the Returns have been quite otherwise than this Return is. We do all pretty well agree (for ought I can perceive) in these two Things. We do not deny but the Council-Board has Power to commit; they on the other Side do not affirm, that the Lords of the Council can commit out of Council.

Mr. Att. Gen. Yes, they may, as Justices of the Peace.

Mr. Pollexfen. This is not pretended to be so here.

L. C. J. No, no, that is not the Case.

Mr. Pollexfen. Then, my Lord, with Submission, I will compare it to any thing else of this Nature. I deny not but that the Council may commit, but the Question is, whether this Return of their Commitment be right. Suppose there should be a Return to a *Habeas Corpus*, that such a one was committed by Sir *Robert Wright*, and three others by Name, Justices of this Court, for a Contempt, without saying, that it was done in Court, this would be an ill Return: Although they had Power in Court to commit for a Contempt, yet it must appear, that it was done in Court, or it cannot be a good Return. If I had thought, or foreseen, that such a Return would have been made, I could easily have made out our Objection; but we could not foretel what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates that have been heretofore in the great Case of the *Habeas Corpus* concerning my Lord *Hollis*, and those other Gentlemen who were in Prison upon Commitments by the Privy-Council, the Returns are, that they were committed by Order of the Privy-Council, as near as I can remember. I will not take it upon me to be positive in it, but I believe, if your Lordship thought fit to give us a short Time to look into it, we should be plainly able to shew you, that all the Returns of Commitments of this Nature, are said to be by Order of the Council-Board, and never any of them naming the Lords; for that may be true, and yet not a legal Commitment.

L. C. J. I have seen several Precedents of Commitments in this Form, and if you make no Exception to the Warrant, you can make no Exception to the Return, because that only sets forth the Warrant.

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Mr. Pollexfen. The Commitment you are to judge of, is upon the Return, with Submission, and supposing the Warrant to be right and good, yet the Return is not legal.

Mr. Att. Gen. We say, in common Understanding, it cannot be but a Commitment in Council.

Mr. S. Pemberton. But common Understanding and legal Understanding are two Things, and we pray the Judgment of the Court.

Mr. Soll. Gen. And so do we, my Lord, and pray your Rule in it.

Mr. Just. Allybone. You may by the same Reason say, That upon all Commitments by Warrant from Justices of the Peace, that the Commitment was out of the County, if the Party does not allege in the Warrant, or Return, that the Commitment was in the County. 'Tis an Objection that would put us upon presuming what we have no Reason to presume.

L. C. J. If you would have our Opinions, let my Brothers declare theirs, I will soon tell you my Mind.

Mr. Just. Holloway. Pray let the Return be read again [*which was done*].

Mr. Att. Gen. So that the Return says, they were committed by Virtue of a Warrant of such and such by Name, Lords of the Council, and whether this be a Warrant of the Council is the Question, and we think it is plain enough, that 'tis a good Return.

Mr. Just. Powell. I have given you my Thoughts already: I think we ought to consult Precedents in a Case of this Weight and Nature; and truly I will not take upon me to say, whether it be a good Return or not a good Return, without looking into Precedents.

Mr. Just. Allybone. For my own Part, it does not stick at all with me, for the Reasons I gave before. When any Man that has an Authority to commit, does commit a Person to an inferior Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his Warrant, by which the Party was committed, and whatsoever he says by the Bye, cannot have any Influence, one way or other, to alter the Nature of the Thing. Now unless you would make every Man that is a Justice of the Peace write his Name, and stile himself Justice of the Peace, this must be a good Commitment. Every Commitment shall be presumed to be pursuant to the Power of the Person committing; and I am sure, take these Lords separately, and they had no Power to commit, and consequently such a Warrant would be no Authority to the Lieutenant of the *Tower* to receive them: But when they send such a Warrant as this, we shall presume it to be according to the Power they have, and not according to the Power they have not. This Warrant is returned by the Officer, and I cannot but presume that it is all very well.

Mr. Just. Holloway. My Lords, I am very desirous and willing your Lordships should have all the Right and Justice done you that can be, and by the Grace of God, I will endeavour it all I can. I see in this Case it is agreed on both Sides, that the Council have a Power to commit, and the Commitment is here certified in the Words of the Warrant, and the Lieutenant has made his Return, that they were committed by Virtue of this Warrant. If the Lieutenant of the *Tower* had returned any other Commitment, you would

have blamed him for a false Return; but now you find Fault with his Return, because he does not say, the Warrant was made by the Lords of the Council, and in Council: That is a thing so notoriously known to all the Kingdom, that my Lords were sent to the Tower by the Council, that no body doubts it; and being thus sent by this Warrant, I do not see but that this is a very good Return, and my Judgment is, that the Information ought to be read.

L. C. J. I told you in the Beginning, after you had made your Objections, that I thought it was as all other Returns are; and I am of the same Opinion still, I find no Fault with the Warrant, nor with the Return.

Mr. S. Pemberton. There is no Objection to the Warrant at present upon this Question.

L. C. J. Neither do I take upon me to say any thing, nor is there any thing now to be spoken of touching the Fact for which these Noble Lords were committed.

Mr. Att. Gen. We pray, my Lord, the Information may be read.

Mr. Jusf. Holloway. There is no Question about the Fact; but whether this be a good Return which is here made, that they were committed by such and such Lords of the Council.

L. C. J. I would do as much to give my Lords the Bishops Ease, and set them at Liberty, as I could possibly by Law; but we must not break the Rules of Law for any one.

Mr. Soll. Gen. Pray read the Information.

Mr. Finch. No, my Lord, we oppose the reading of it.

Mr. Soll. Gen. Why! Will not you be satisfied with the Opinion of the Court?

Mr. Finch. We have another Thing to offer, which we must have the Opinion of the Court in, before this Information can be read.

Mr. Att. Gen. Pray let us hear what it is?

Mr. Finch. My Lord, we did humbly offer one Objection more to your Lordship against the reading of the Information: The former Objection was concerning the Persons committing, in that it does not sufficiently appear upon the Return, that they were committed by the Lords in Council; the Court have given their Opinion in that: But the other Objection still remains, whether they ought to have been committed at all; and therefore when they now appear upon this *Habeas Corpus*, we say they were not legally committed to Prison, because a Peer ought not to be committed to Prison in the first Instance for Misdemeanor.

Mr. Soll. Gen. If you please you may speak to that by and by; but that is not proper now for you to offer, or for the Court to determine, whether a Peer may be committed upon an Accusation for a Misdemeanor.

Mr. Finch. With Submission, that is such a Difficulty that lies in the way against the reading of the Information, that you must get over it, before you can come at the reading of it.

Mr. Att. Gen. You will have your Time for all this Matter by and by; but certainly you cannot be admitted to it yet.

L. C. J. Truly I think you are too early with that Exception.

Mr. Finch. With Submission, we think this is the proper Time, and I will tell your Lordship the Reason why.

L. C. J. *Mr. Finch,* certainly every thing in the

World that can be said, you will say for your Client, and you shall be heard; for we are very willing to deliver these noble Lords, if we can by Law, and if the Exceptions you make be legal.

Mr. Finch. My Lord, we do not doubt your Justice; and therefore we desire to offer what we have to say in this Point: The only Question (now it seems) is about our Time of making our Exception. Mr. Attorney (we apprehend) did say one thing which was certainly a little too large; that however any Man comes into Court, if the Court find him here, they may charge him with an Information.

Mr. Att. Gen. Who says so? I said no such thing.

Mr. Finch. Then I acquit Mr. Attorney of it, he did not say so: Then both he and I agree the Law to be, That a Man that does come into Court, if he does not come in by legal Process, he is not to be charg'd with an Information: Then since we do agree in that Proposition, certainly we must be heard to this Point, whether we are here upon legal Process, before you can charge us with this Information?

Mr. Att. Gen. You think you have said a fine thing now, and take upon you an Authority to make me agree to what you please.

Mr. Finch. Certainly the Consequence is plain upon your own Premises.

Mr. Att. Gen. Do you undertake to speak for me?

Mr. Finch. I am in the Judgment of the Court, and to them I leave it.

Mr. Att. Gen. I know you thought you had got an extraordinary Advantage, by making me say what you please; but there has been very little said, but what has been grounded upon Mistakes all along. This is that I do say, If a Man comes in voluntarily upon any Recognizance, though he be not in Custody; or if he comes in upon any Process, if the Court find him here, though that Process be not for the thing charged in the Information, yet the Court is so much in Possession of the Person, that he shall plead to any Information; and that I do say, and will stand by.

Mr. Soll. Gen. My Lord, we are here in a very great Auditory, and this Court is always a very great Court, (but here is a greater and nobler Assembly than usually we have here) and these Gentlemen, to shew their Eloquence and Oratory, would, by converting Propositions otherwise than they are delivered, put another Meaning upon them, and so draw strange Inferences from them. But these Arts, we are sure, will not prevail here; we say plainly, and we are sure the Law is so (let them apprehend what they will) that your Lordship cannot exhibit an Information to any Man that you find accidentally here in Court. Then, says *Mr. Finch*, we are agreed: But withal (say I) take my other Proposition; If a Person be brought into Court by legal Process, or upon any Contempt whatsoever, by an Attachment or Warrant, or upon a *Habeas Corpus* after a Commitment, being thus found in Court, your Lordship may certainly charge him with an Information. When these Gentlemen, who are so eager on the other side, did preside here, and stood in the Places where Mr. Attorney and I now are; I can name them abundance of Cases of the like nature with this, when Men have been compelled to appear to Informations, and plead presently: They are the Persons

Persons that made the Precedents; they made the Law for ought I know: I am sure I find the Court in Possession of this as Law, and we pray the usual Course may be followed.

Mr. Finch. Pray, my Lord, spare us a Word in this Matter: I do agree with Mr. Attorney in this Matter, but I do not agree with Mr. Solicitor.

Mr. Soll. Gen. You do not agree with your self.

Mr. Finch. I hope I do, and always shall agree with my self; but I do not agree with you, Mr. Solicitor.

Mr. Soll. Gen. You do not in 1688, agree with what you were in 1680.

Mr. Finch. Says Mr. Attorney, a Man that comes voluntarily in, cannot be charged with an Information; with him I agree. Says Mr. Solicitor, a Man that comes in, and is found in Court by any Process, may be charg'd with an Information: I say no, if the Process be wholly illegal; for he cannot be said to be legally in Court. Suppose a Peer of the Realm be taken upon a *Capias*, and is committed to the *Marshalsea*, and is brought up upon a *Habeas Corpus*, I would fain know, whether you could declare against him.

Mr. Att. Gen. No, we cannot.

Mr. Finch. And why is that, but because the Process is illegal, and he is not truly in Court: Then is it a proper Time now to make this a Question, Whether my Lords here were legally committed, before you can lay any Thing to their Charge by way of Information? For if the Commitment be illegal, it is a void Commitment; and if the Commitment be void, the Process is void, and then my Lords are not legally in Court.

L. C. J. That sure is but returning again to the same Question that has been determined already.

Mr. Soll. Gen. If your Lordship will permit them to go over and over the same things, we shall never have an End.

Mr. Finch. My Lord, we pray these Gentlemen of the King's Council my be a little cool with us, and then they will find, we do no talk the same things over and over again, nor meddle with that which the Court have given their Judgment in.

L. C. J. Well, go on, Sir.

M. Finch. My Lord, we say it is the Privilege of the Peers of *England*, that none of them shall be committed to Prison for a Misdemeanor, especially in the first Instance, and before Judgment. This (we say) is the Right of my Lords the Bishops, and that which they claim as Lords of Parliament. Now it appears upon this Return and the Warrant, that the Council-Table hath committed them (for your Lordship and the Court hath rul'd it, that this Commitment must be taken to be by Order of the Privy-Council, and we meddle not with that further) but we say that the Council-Table may commit a Man unjustly, that is certain. There has been Relief often given in this Court against Commitments by the Council-Table: And that they were unjustly committed, depends upon that Point of their Privilege as Peers.

Mr. S. Pemberton. My Lord, we say, that the Lords of the Council have illegally committed these Noble Persons, who are Peers of the Realm, and ought to have the Privilege of their Peerage, which is not to be committed for a Misdemeanor;

that the Council ought not to have done: For the Peers of *England* ought no more to be committed for a Misdemeanor, and to be imprisoned, especially upon the first Process, than they may be in a Case of Debt. It is true, in the Case of Treason, Felony, or the Breach of the Peace, the Peers have not such a Privilege; they may be committed: But for a Misdemeanor (as this does appear to be in the Warrant of Commitment) they ought not to be committed: But they were committed by the Lords of the Council; and we now complain of this to your Lordship as illegal, and therefore pray my Lords may be discharged.

Sir Rob. Sawyer. Will your Lordship be pleased to favour me a Word on the same side, for my Lords the Bishops. It must be agreed to me, that if a Peer be brought into Court, as taken by a *Capias*, he cannot be charged with a Declaration; and the Reason is, because the Process is illegal: Then, my Lord, with Submission, when a Peer comes upon a Foreign Commitment, and is brought in Custody upon a *Habeas Corpus*, this is either in the Nature of a Process, or a final Commitment, as a Judgment; they will not say, that this is a good Commitment, so as to amount to a Judgment; for the Council-Board could not give a Judgment in the Case; besides, the Commitment is illegal, because it is not a Commitment till they find Security to answer an Information here, but 'tis a Warrant to keep them for a Misdemeanor: Besides, there is another thing we have to say to this Warrant (for I am making Objections against the Validity of this Commitment) it does not appear that there was any Oath made, and therefore the Court must adjudge that there was no Oath made, and then no Man ought without Oath to be committed, much less a Peer. But that which we chiefly rely upon is, That my Lords ought not to have been committed for this, which is but a Misdemeanor at most: And if they use it, as Process, to bring my Lords the Bishops to answer an Information, we say, by Law no such Process can be taken out against the Persons of Peers for bare Misdemeanors. I do agree, that for Felony, Treason, or Surety of the Peace, the Persons of Peers may be committed; and that which is called Surety of the Peace in our Books, Mr. Solicitor knows very well, in some of the Rolls of Parliament, is called Breach of the Peace, but it is all one; and the Meaning, in short, is, that it is such a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties for the Peace. If it should mean a Breach of the Peace by Implication, as all Trespasses and Misdemeanors are said to be *contra Pacem* in the Indictment, or Information, than it were a simple thing to enumerate the Cases wherein Privileges did not lie; for there could be no Information whatsoever, but must be *contra Pacem*, and so there could be no such thing as Privilege at all. And besides, we say, the very Course of this Court is contrary to what they would have; for in the Case of a Peer, for a Misdemeanor, you go first by Summons, and then you do not take out a *Capias* as against a common Person, but the next Process is a *Distingas*, and so *ad infinitum*. And I do appeal to them on the other side, and challenge them to shew any one Precedent, when a Peer was brought thus into Court, to be charged with an Information, without it were in the Case of an apparent Breach of

the Peace; for he must be charged in Custody, and there must be a *Committitur* to the Marshal, to entitle the Court to proceed. Your Lordship will find but very few Precedents of Cafes of this Nature about common Persons; for till within these fourteen or fifteen Years there was no such thing ever done against a common Person: But this was the Rule: First there went out a *Subpœna*, and then an Attachment, and when the Party was taken upon the Attachment, he is taken to come in upon Process, and then the Court would charge him presently; but if he did appear upon the Summons, they would not charge him, but he had Time to take a Copy of the Information, and an Imparance of course, till the next Term, before he could be compelled to plead. But in the Cafe of a Peer, there never was any such Precedent as the Attaching his Person, but only a Summons and Distress: And I would be glad the King's Council would shew, that ever there was any such Process taken out against the Person of a Peer, for a meer Misdemeanor. My Lord, 'tis plain, what Breach of the Peace means in every Information; and I only speak this to acquaint the Court how the constant Proceedings in all these Cafes have been. These Informations were antiently more frequent in the *Star-Chamber*; and what was the Process there? Not the common Process of a *Subpœna*, that was not the Course there; but the Process was a Letter from the Chancellor, that if the Party upon that Letter did not appear, in a common Cafe, there went out an Attachment; but in a Peer's Cafe never: And so it appears by *Crompton's Jurisdiction of Courts, Tit. Star-Chamber 33*. This appears likewise by the Proceedings in Chancery against the Peers, till the Queen's Time. They did not so much mistake out an Attachment after Default upon a *Subpœna*, but they would then, in the Queen's Time, be so bold as to take out an Attachment against a Lord for not appearing; but that Course was condemned as illegal; so we find in my Lord *Dyer*.

Mr. Att. Gen. That was at a common Person's Suit.

Sir Robert Sawyer. But the Proceedings in the *Star-Chamber* were at the King's Suit, and I am sure Mr. Solicitor knows that the Peers Privileges reach to Informations; but, as I was saying, it was so adjudged as to the Chancery in my Lord *Cromwell's* Cafe, 14 *Eliz. Dyer*, 315.

L. C. J. You take a great Compass, *Sir Robert Sawyer*; but pray remember what you laid down at first, for the Ground of your Discourse, That there was never any Commitment of a Peer for a bare Misdemeanor: You must keep to that; that is the Point you are to look after.

Sir Robert Sawyer. My Lord, I will so; I do not cite these Cafes but for this Purpose, to shew, that in all Courts the Peers have particular Privileges; and I am sure they can produce you no Precedents for any such Proceedings against a Peer. In my Experience of these Matters, I never knew any such; nay, I knew it always to be otherwise, that in Informations for Misdemeanors, there did never issue out a *Capias* against a Peer: And Mr. Attorney knows very well, it was so in the late Cafe of my Lord *Lovelace*; for that Cafe of my Lord *Devonshire*, that it was an express Breach of the Peace, though it was debated and disputed then; so that I take it, these Noble Lords cannot be charged with this Information, because

they do not come in by legal Process; and unless they can shew me any Cafes, where a Peer did ever come in upon such a Commitment, and answered to an Information upon that Commitment, it must certainly be allowed not to be the legal Course; though if such a Precedent could be shewn, that pass'd *sub Silentio*, without Debate or solemn Determination, that would not do, nor could bind the rest of the Peers. If one Man would lose a particular Benefit he has, all the whole Body must not lose it; and the Benefit is not small, of Time to make his Defence; of Imparling, of taking a Copy of the Indictment, and preparing himself to plead as his Cafe will bear; and indeed a common Person has used to have these Privileges, though in some Cafes of late, they have taken the other Course; and if a *Capias* went out (which we say cannot go against a Lord) and the Party were brought in, he was to answer immediately. Now, my Lord, I take it, that the Privileges of Peers is in all Times the same with the Parliamentary Privilege in Parliament Time, which reacheth to Informations, as well as other Actions. My Lord *Coke* is express in this Point, in the 4 *Instit.* 25. If that Objection should hold good, that every Information being *contra Pacem*, that should be a Breach of the Peace, then (as I said before) Privilege will hold in no Information, which is contrary to that and all our other Books: 'Tis only such a Breach of the Peace, as for which Security of the Peace may be required. But further, that this is a Privilege enjoyed by the Peers, Spiritual as well as Temporal, I suppose will not be denied; for I think they will not question, but that the Bishops and Abbots that were Lords of Parliament were Peers; and we find in our Books, when the Court has been moved for a *Capias* against an Abbot, if he were a Mitred Abbot, and sat in the Lords House, it was always said, that no such Process ought to go; and so it is in the Cafe of Bishops: But indeed for other Noblemen, the Difference is this: Where it does not appear upon Record, that they are Lords in Parliament, there the Courts have put them to bring their Writs of Privilege; but where it does appear upon Record, that they are Peers, the Court is to allow and take Notice of their Privilege; and there needs no such Writ. Now that the Parliamentary Privilege, and the Privilege of Peers (as to their Persons) is the same, appears by the Form of the Writ in the *Register, Fol. 287. Fitz. Herb. Nat. Brev. 247*. The Words of the Writ are these, That if such a one be sued at the Suit of another, the Writ commands, that a Peer out of Parliament-Time should have the same Privilege with those summoned by the King to the Parliament; and I know not any Difference that can be put between them; and it cannot be denied, that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controll of the Parliamentary Privilege: So that upon these Grounds, I do press that my Lords the Bishops may be discharged. If there be any Information against us, we are ready to enter our Appearance, to answer it according to the Course of the Court: But if the Information be for no other thing than what is contained in the Warrant of Commitment, then their Persons ought to be privileged from Commitment.

Mr. Pollexfen. If your Lordship please to take it altogether, you will find it a Case very well worth your Consideration, it being the Case of all the Peers of England.

Mr. Att. Gen. My Lord, these Gentlemen have taken a great deal of Liberty, and spent much of your Time in making long Arguments, and after all, truly, I do not know where to have them, nor can understand what they would be at. It seems they agree, that for Treason, Felony, and Breach of the Peace, a Peer may be committed.

L. C. J. That is, say they, such a Breach of the Peace, as for which Surety of the Peace may be required.

Mr. Att. Gen. Then all the Learning they have been pleased to favour us with, is at an End; for if here be any thing charged upon the Bishops, for which Sureties of the Peace may be required, then this is a good Commitment.

L. C. J. That they must agree upon their own Arguments.

Mr. Att. Gen. Can then any Man in the World say, that a Libel does not require Sureties of the Peace? For we must now take it as it is here upon this Return. How my Lords the Bishops will clear themselves of it, is a Question for another Time; but the Warrant says, they were committed for Contriving, Framing, and Publishing a Seditious Libel against his Majesty, and his Government: Is there a greater Misdemeanor? Or is there any thing on this Side a capital Crime that is a greater Offence? Is there any thing that does so tread upon the Heels of a capital Offence, and comes so near the greatest of Crimes that can be committed against the Government? Not to enlarge at this Time upon what the Consequences of such Things may be; is there a greater Breach of the Peace than such Seditious Practices? No doubt, any Man may be committed for it, and may be bound to find Sureties for his good Behaviour.

Sir Rob. Sawyer. I say Sureties of the Peace, not of the good Behaviour.

Mr. Soll. Gen. Pray my Lord, would you consider where we are; we are going towards France, I think, or some farther Country: They have set us out to Sea, and I do not see after this rate, when we shall come to Land. Certainly, these Gentlemen are mightily out of the Way, and would fain have us so too! We are here upon a single Question, as this Case stands before your Lordship, upon the Return. Here is a Libel, a Seditious Libel, said to be contrived, made and published against the King and his Government, by these Noble Lords the Prisoners. This is the Accusation; suppose this be true, that is to be proved hereafter; I hope they are innocent, and will prove themselves so: But suppose it to be true, that they have made a Seditious Libel against the King and his Government, will any Man say, that this is not done *Vi Et Armis*? This is a Libel with a Witness; nay, two or three Degrees more will carry it to High Treason, and all the Informations that were exhibited by Sir Robert Sawyer, when he was Attorney General (and he exhibited a great many for Libels) constantly these Words were in, *Vi Et Armis Et contra Pacem*.

Bishop of Peterborough. Was it so in your own Case, Mr. Solicitor?

Mr. Soll. Gen. Yes, it was so in my Case, and you were one of them that prosecuted me, for ought I know; or if you did not prosecute me, you preached against me; or if you did not, some

of your Tribe did: But so, my Lord, it was in many other Cases, within Time of Memory. Sir Robert Sawyer has paid a Complement upon me, of my great Skill in Parliament Matters; but truly there needs no great Skill in Matters where the Law is so plain. A Peer they agree may be in Prison for Treason, Felony, or Breach of the Peace; but that Breach of the Peace, say they, is where the Law requires Sureties of the Peace: But is there any Certainty where Sureties of the Peace shall be required, and where not? Then I would put this Case; These Lords have contrived and published a Seditious Libel against the King and His Government; and whether this be not such a Breach of the Peace, as will require Sureties of the Peace, is the Question before you: And it plainly appears to be so, in Sir Baptist Hicks's Case, in *Hobart*. If a Man write a private Letter provoking another to fight, although there be no Fighting, this is a Breach of the Peace. Now a Letter can do no Wrong in that kind, but as it incites and stirs up to Fighting, which may occasion Blood-shed; and I think there cannot be a greater Breach of the Peace, than for a Man to come to the King's Face, and publish a Libel against him, and yet, according to their Doctrine, this Man shall go away, and you shall not take him up, but take a *Subpoena* against him, and wait for the Delay of all the ordinary Process; and they tell you another Thing, that a *Capias* does not lie upon an Information against the Person of a Peer, and that there is no Precedent of any such Thing; but I would pray them to remember the Case of my Lord Lovelace, about some three Years ago, for breaking a Foot-man's Head. It seems, if a Man libels the King in his own Presence, that is not so great a Matter as a little Correction to an insolent Foot-man; but there he was bound in a Recognizance to appear there in this Court, and accordingly he did appear, and was charged with an Information; and as to that Precedent, I do believe Sir Robert Sawyer and Mr. Finch won't contradict me. This was in the first Year of this King. There was likewise my Lord of Pembroke's Case, who went to a disorderly House, and there frightened some People: We moved the Court, and had an Attachment against him for a Misdemeanor, and he was glad to compound the Thing, or it had not ended so soon as it did; and yet if a Lord comes to the King's Person, and affronts Him to his very Face, will not an Attachment lie against him for it? Certainly it will. My Lord, we have gone out of the Way too much already, and these Gentlemen will lead us farther; but we hope your Lordships will reduce us to the Methods of the Law. Here is an Information which we desire may be read; if they have any thing to plead to it, their Time for that will come after it is read: If they think they have been illegally imprisoned, it appears plainly upon this Return, who they were that did commit them. Here are a great many Noble Lords to answer an Action of false Imprisonment, if these Lords think fit, and may have these learned Gentlemen, that are very well able to advise them what they should do in it.

Sir Rob. Sawyer. We pray your Lordship's Judgment, whether the Cases put by Mr. Solicitor are like our Case?

Mr. Soll. Gen. They are as like, as Sir Robert Sawyer is to Mr. Attorney that was.

Sir Rob. Sawyer. Those Cases are of apparent Breaches of the Peace; so likewise was my Lord of *Devonshire's* Case; but certainly that was not at all like this.

Mr. Finch. With your Lordship's Favour, I would add but one Word, and I would repeat nothing of what has been said: All that I shall say is this; There is a great deal of Difference between an actual Breach of the Peace, and that which in the bare Form of an Information is a Breach of the Peace, by Construction of Law, it being *contra Pacem*. Suppose it be laid that a Man did *Vi & Armis* speak Words, will that make the Words a Breach of the Peace?

Mr. Soll. Gen. It must be *Vi & Armis*, and certainly is a Breach of the Peace.

Mr. Finch. If a Man write a Petition, are the Pen and Ink that he uses the Arms?

Mr. Soll. Gen. My Lord, I hope, *Mr. Finch* remembers what I heard him say in *Algernon Sidney's* Case, *scribere est agere*.

Mr. Finch. I think it is so, *Mr. Solicitor*, but every Action is not a Breach of the Peace.

L. C. J. Well, let my Brothers deliver their Opinions, I will give you mine.

Mr. Just. Alibone. The single Question now is, Whether or no that which *Mr. Solicitor* was pleased to name as the Crime, and lay it to the Charge of my Lords the Bishops, that is a Seditious Libel, by a Breach of the Peace. I do confess that there is little of Argument to be drawn from Forms of Indictments; and I shall put no great Strefs upon the Words, *Vi & Armis*, where the Fact will not come near it; but if a Commitment may ensue (as they seem to agree) wherever Surety of the Peace may be required, nothing seems more important to me, than that Surety of the Peace should be required, where there is any thing of Sedition in the Case; and wherever there is a Seditious Act, I cannot tell how to make any other Construction of it, but that it is an actual Breach of the Peace; that is my Opinion.

Mr. Just. Powell. I am of the same Opinion in this Point too, as I was in the other Point before: It was a Matter of great Consequence, I thought, upon the former Point, but now it appears to me, to be of far greater Consequence than it did at first; for here, all the Great, High, and Noble Peers of *England* are concerned in it, as to their Privilege. Our Predecessors in this Court heretofore would not determine the Privileges of the Peers, but left them to themselves to make what Judgment they pleased of them. I think truly 'tis a Thing of that Weight, that it may be very fit for the Court to take Time to consider of it, and I declare for my own Part, I will not take upon me to deliver any Opinion in a Matter of this Consequence, before I have consulted all the Books that can give me any Light in the Case.

Mr. Just. Alibone. Brother *Powell*, I am not determining, limiting, or cramping the Privilege of Peers, but I am only considering whether or no a Seditious Libel be a Breach of the Peace. 'Tis agreed to be on all Hands a Breach of the Peace. Is there any thing that will require Sureties of the Peace to be given upon the doing of it? For there *Sir Robert Sawyer* has laid the Foundation of his Distinction, and if that shall draw any Person under a Commitment, then, say I, in my Judgment, wherever there is a Seditious Libel,

there is that which is an actual Breach of the Peace; for I am sure there is that which is sufficient to require Sureties of the Peace. I controvert not the Right of the Peers one Way or other, but only declare my Opinion, That this is a Fact that comes within the Rule laid down by them, that what will require Sureties of the Peace, is a Breach of the Peace.

Mr. Just. Holloway. God forbid that in a Case of this Nature, any one should take upon him here to say, that every Misdemeanor were a Breach of the Peace, I say not so; but certainly there are some such Misdemeanors as are Breaches of the Peace; and if here be such a Misdemeanor before us, then it is acknowledged, that even in Parliament-time, a privileged Person might be committed for it: For in Treason, Felony, and Breach of the Peace, Privilege does not hold. I will not take upon me, as my Brother said, to determine concerning the Privilege of the Peers, it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine Privilege, nor do we determine whether this be such a Libel as is charged in the Information, that will come in Question another Time; but certainly as this Case is, the Information ought to be read, and my Lords ought to appear and plead to it.

L. C. J. Certainly we are all of us here as tender of the Privileges of the Peers as any in the World can be, and as tender as we would be, and ought to be in trying any Man's Right: It becomes us to do it with great Respect and Regard to my Lords the Bishops; and therefore I would be as careful (if that were the Question before me) to consider very well before I give my Opinion, as ever I was in my Life. But when I see there can come no Mischief at all to the Privileges of the Peers, by what is agreed on all Hands, I think I may very justly give my Opinion: For here is the Question, Whether the Fact charged in the Warrant be such a Misdemeanor as is a Breach of the Peace? and the Words of the Warrant (which is now upon the Record) being such as have been recited, I cannot but think it is such a Misdemeanor as would have required Sureties of the Peace; and if Sureties were not given, a Commitment might follow; and therefore I think the Information must be read.

Mr. Att. Gen. We pray the Clerk may read it. Clerk reads. *Middlesex, ss. Memorandum.* That *Sir Thomas Powis*, Knight, Attorney General of our Lord the King, who for our said Lord the King in this Behalf Sues, comes in his own Person here into the Court of our said Lord the King, before the King himself at *Westminster*, on Friday next, after the Morrow of the *Holy Trinity* in this Term, and for our said Lord the King, gives the Court here to understand, and be informed, that our said Sovereign Lord the King, out of his signal Clemency —

Mr. Soll. Gen. Read it as it is in *Latin*.

Bishop of Peterborough. My Lord, we desire it may be read in *English*, for we don't understand *Law-Latin*.

Mr. Soll. Gen. No, my Lords the Bishops are very learned Men, we all know; pray read it in *Latin*.

Clerk reads. *Memorandum, Quod Thomas Powis, Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte sequitur, in propria Persona sua venit hic in Curia dicit Domini Regis coram ipso Rege apud Westmonasterium,*

rium, *Die Veneris proxime post crastinum Sanctæ Trinitatis, isto eodem Termino, & pro eodem Domino Rege, Dat Curia hic intelligi & informari, quod dictus Dominus Rex, nunc ex insigni Clementia & benigna Intentione suis erga Subditos suos Regni sui Angliæ per Regiam suam Prerogativam, quarto die Aprilis, Anno Regni Diæ Domini Regis nunc Tertio, apud Westmonasterium in Comitatu Middlesexiæ, Declarationem suam Intitulatam, His Majesty's Gracious Declaration to all his Loving Subjects for Liberty of Conscience, egerentem Datum eisdem Die & Anno, Magno Sigillo suo Angliæ Sigillatam publicavit; in qua quidem Declaratione continetur.*

JAMES REX,

IT having pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest Difficulties, but to preserve Us by a more than ordinary Providence, upon the Throne of Our Royal Ancestors, there is nothing now that We so earnestly desire, as to establish Our Government on such a Foundation as may make Our Subjects happy, and unite them to Us, by Inclination as well as Duty, which We think can be done by no Means so effectually, as by granting to them the free Exercise of their Religion for the Time to come, and add that to the perfect Enjoyment of their Property, which has never been in any Case invaded by Us since Our coming to the Crown; which being the two Things Men value most, shall ever be preserved in these Kingdoms during Our Reign over them, as the truest Methods of Our Peace, and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the *Catholic* Church, yet We humbly thank Almighty God, it is, and hath long Time been Our constant Sense and Opinion (which upon divers Occasions We have declared) that Conscience ought not to be constrained, nor People forced in Matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government, which it destroys, by spoiling Trade, depopulating Countries, and discouraging Strangers; and finally, that it never obtained the End for which it was employed. And in this we are the more confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing Endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible, the Success has not answered the Design; and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all our loving Subjects, that they may live at Ease and Quiet, and for the Increase of Trade, and Encouragement to Strangers, have thought fit, by Virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no Doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first Place We do declare, that We will protect and maintain Our Archbishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exercise of their Religion, as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Distur-

bance whatsoever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of *Penal Laws* in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediatly suspended, and the further Execution of the said *Penal Laws*, and every of them, is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government, in the Practice thereof, may not be endangered, We have thought fit, and do hereby streightly charge and command all Our loving Subjects, that We do freely give them Leave to meet and serve God after their own Way and Manner, be it in private Houses, or Places purposely hired or built for that Use, so that they take special Care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be peaceably, openly and publicly held, and all Persons freely admitted to them; and that they do signify and make known to some one or more of the next Justices of the Peace, what Place or Places they set apart for those Uses. And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby command, that no Disturbance of any kind be made or given unto them, under Pain of Our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the Benefit of the Service of all Our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administered on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the twenty-fifth and thirtieth Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any Time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is, or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention, from Time to Time hereafter, to grant Our Royal Dispensations, under Our Great Seal, to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above-mentioned Acts, and every of them. And to the end that all Our loving Subjects may receive and enjoy the full Benefit and Advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures and Disabilities by them, or any of them incurred or forfeited, or which they shall or may at any Time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion, and from all Suits, Trou-

bles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Recufants, and other Our loving Subjects, for all Crimes and Things by them committed, or done contrary to the *Penal Laws* formerly made relating to Religion, and the Profession or Exercise thereof; hereby declaring that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from Time to Time be granted unto any Person or Persons desiring the same, willing and requiring Our Judges, Justices, and other Officers, to take Notice of and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given, in relation to Religion and Property, might be sufficient to remove from the Minds of Our loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to declare, That we will maintain them in all their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Properties whatsoever.

Et idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege ulterius dat Curie hic intelligi & informari, quod postea scilicet vicesimo septimo die Aprilis Anno Regni dicti Domini Regis nunc, &c. quarto, apud Westmonasterium predictum in Comitatu Middlesexie predicto, idem Dominus Rex nunc ex eadem Clementia & benigna intentione suis erga subditos suos Regni sui Anglie, per Regiam suam Prærogativam, aliam Regalem suam Declarationem Intitulatam, His Majesty's gracious Declaration, gerentem datum eisdem die & anno ultimo mentionatis, magno sigillo suo Anglie similiter sigillatam, publicavit; in qua quidem Declaratione continetur.

JAMES REX.

OUR Conduct has been such in all Times, as ought to have persuaded the World, that We are firm and constant to Our Resolutions; yet, that easy People may not be abused by the Malice of crafty wicked Men, We think fit to declare, That Our Intentions are not changed since the 4th of *April*, 1687, when We issued out Our Declaration for Liberty of Conscience in the following Terms. —

His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience.

JAMES REX.

IT having pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest Difficulties, but to preserve Us by a more than ordinary Providence upon the Throne of Our Royal Ancestors, there is nothing now that We so earnestly desire as to establish Our Government on such a Foundation as may make Our Subjects happy, and unite them to Us by Inclination as well as Duty; which We think can be done by no Means so effectually, as by granting to them the free Exercise of their Religion for the Time to come, and add that to the perfect Enjoyment of their Property, which has never been in any Case invaded by Us since Our coming to the Crown; which being the two Things Men value most, shall ever be preserved in

these Kingdoms during Our Reign over them, as the truest Methods of their Peace and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the Catholick Church; yet We humbly thank Almighty God, it is, and hath long time been Our constant Sense and Opinion (which upon divers Occasions We have declared) that Conscience ought not to be constrained, nor People forced in Matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government, which it destroys by spoiling Trade, depopulating Countries, and discouraging Strangers; and finally, that it never obtained the End for which it was employed. And in this We are the more confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing Endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible, the Success has not answered the Design; and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all Our loving Subjects, that they may live at Ease and Quiet, and for the Increase of Trade, and Encouragement to Strangers, have thought fit, by virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no Doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first Place We do declare, that We will protect and maintain Our Archbishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exercise of their Religion, as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Disturbance whatsoever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of *Penal Laws* in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediatly suspended, and the further Execution of the said *Penal Laws*, and every of them, is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government, in the Practice thereof, may not be endangered, We have thought fit, and do hereby freightly charge and command all Our loving Subjects, that as We do freely give them Leave to meet and serve God after their own Way and Manner, be it in private Houses, or Places purposely hired or built for that Use, so that they take special Care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be peaceably, openly and publickly held, and all Persons freely admitted to them; and that they do signify and make known to some one or more of the next Justices of the Peace, what Place or Places they set apart for those Uses. And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby command, that no Disturbance of any kind be made or given to them, under Pain of Our Displeasure, and to be further proceeded against with

with the uttermost Severity. And forasmuch as We are desirous to have the Benefit of the Service of all our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administered on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the twenty-fifth and thirtieth Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any Time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention, from Time to Time hereafter, to grant Our Royal Dispensations under Our Great Seal, to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above-mentioned Acts, and every of them. And to the end that all our loving Subjects may receive and enjoy the full Benefit and Advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures, and Disabilities by them or any of them incurred or forfeited, or which they shall or may at any Time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion; and from all Suits, Troubles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Reculants, and other Our loving Subjects for all Crimes and Things by them committed or done, contrary to the *Penal Laws* formerly made relating to Religion, and the Profession or Exercise thereof; hereby declaring, that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from Time to Time be granted unto any Person or Persons desiring the same; willing and requiring Our Judges, Justices, and other Officers, to take Notice of, and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given in relation to Religion and Property, might be sufficient to remove from the Minds of Our loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to declare, That We will maintain them in all their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Properties whatsoever.

Given at Our Court at Whitehall the fourth Day of April, 1687, in the Third Year of Our Reign.

Ever since We granted this Indulgence, We have made it Our principal Care to see it preserved without Distinction, as We are encouraged to do daily by Multitudes of Addressees, and many other Assurances We received from Our Subjects of all Perswasions, as Testimonies of their Satisfaction

and Duty, the Effects of which We doubt not but the next Parliament will plainly shew; and that it will not be in vain that We have resolved to use our uttermost Endeavours to establish Liberty of Conscience on such just and equal Foundations as will render it unalterable, and secure to all People the free Exercise of their Religion for ever; by which future Ages may reap the Benefit of what is so undoubtedly for the general Good of the whole Kingdom. It is such a Security We desire, without the Burden and Constraint of Oaths and Tests, which have been unhappily made by some Governments, but could never support any. Nor should Men be advanced by such Means to Offices and Employments, which ought to be the Reward of Services, Fidelity and Merit. We must conclude, that not only good Christians will join in this, but whoever is concerned for the Encrease of the Wealth and Power of the Nation. It would perhaps prejudice some of our Neighbours, who might lose Part of those vast Advantages they now enjoy, if Liberty of Conscience were settled in these Kingdoms, which are above all others most capable of Improvements, and of commanding the Trade of the World. In pursuance of this great Work, We have been forced to make many Changes both of Civil and Military Offices throughout Our Dominions, not thinking any ought to be employed in Our Service, who will not contribute towards the establishing the Peace and Greatness of their Country, which We most earnestly desire, as unbiassed Men may see by the whole Conduct of Our Government, and by the Condition of our Fleet, and of Our Armies, which, with good Management, shall be constantly the same, and greater, if the Safety or Honour of the Nation require it. We recommend these Considerations to all Our Subjects, and that they will reflect on their present Ease and Happiness, how for above three Years, that it hath pleased God to permit Us to reign over these Kingdoms, We have not appeared to be that Prince Our Enemies would have made the World afraid of, Our chief Aim having been not to be the Oppressor, but the Father of Our People, of which We can give no better Evidence than by conjuring them to lay aside all private Animosities, as well as groundless Jealousies, and to choose such Members of Parliament as may do their Part to finish what We have begun for the Advantage of the Monarchy over which Almighty God hath placed Us, being resolved to call a Parliament, that shall meet in *November* next at farthest.

Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc postea scilicet tricesimo die Aprilis Anno Regni sui quarto supra dicto, apud Westmonasterium predictum in Comitatu Middlesexie predicto, imprimi & per totam Angliam publicari causavit, & pro magis solemnitate demonstratione, notificatione, & manifestatione gratie sue Regie benignitatis & benevolentie sue ad omnes ligeos suos in eadem Declaratione ultimo mentionata specificatos, postea scilicet quarto die Maii Anno Regni sui quarto, apud Westmonasterium predictum in Comitatu Middlesexie predicto idem Dominus Rex debito modo ordinavit prout sequitur.

At the Court at *Whitehall*, the 4th of *May*, 1688. It is this Day ordered by his Majesty in Council, That his Majesty's late Gracious Declaration, bearing Date the 27th of *April* last, be read at the usual Time of Divine Service, upon

the 20th and 27th of this Month, in all Churches and Chapels within the Cities of *London* and *Westminster*, and ten Miles thereabout; and upon the 3d and 10th of *June* next, in all other Churches and Chapels throughout this Kingdom. And it is hereby further ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their several and respective Diocesses, to be read accordingly.

Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curie hic intelligi & informari, quod post Confectionem prædicti ordinis scilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto supradicto, apud Westmonasterium prædictum in Comitatu Middlesexie prædicto Willielmus Archiepiscopus Cantuariensis de Lambeth in Comitatu Surriae, Willielmus Episcopus Asaphensis de St. Asaph in Comitatu Flintiae, Franciscus Episcopus Eliensis de Parochia Sancti Andreae Holborn in Comitatu Middlesexie, Johannes Episcopus Cicestrensis de Cicestria in Comitatu Suffexie, Thomas Episcopus Bathonensis & Wellensis de Civitate Wells in Comitatu Somersetae, Thomas Episcopus Petriburgensis de Parochia sancti Andreae Holborn in Comitatu Middlesexie, & Jonathan Episcopus Bristolensis de Civitate Bristol, inter se consulerunt & conspiraverunt ad diminuendam Regiam Authoritatem, Regalem Prærogativam & Potestatem, & Regimen ejusdem Domini Regis nunc in præmissis, ac ad eundem Ordinem infringendum & eludendum; ac in prosecutione & executione conspirationis prædictæ, ipsi idem Willielmus Archiepiscopus Cantuariensis, Willielmus Episcopus Asaphensis, Franciscus Episcopus Eliensis, Johannes Episcopus Cicestrensis, Thomas Episcopus Bathonensis & Wellensis, Thomas Episcopus Petriburgensis, & Jonathan Episcopus Bristolensis dicto decimo octavo die Maii Anno regni dicti Domini Regis nunc quarto supradicto, Vi & Armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexie prædicto, illicitè, malitiosè, seditiosè, & scandalosè, quoddam falsum, fictum, pernitiosum, & seditiosum libellum in scriptis, de eodem Domino Rege & Regali Declaratione & Ordine prædictis (prætextu Petitionis) fabricaverunt, composuerunt & scripserunt, & fabricari componi & scribi causaverunt, & eundem falsum, fictum, malitiosum, pernitiosum, & seditiosum libellum per ipsos prædictum Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicestrensem, Thomam Episcopum Bathonensem & Wellensem, Thomam Episcopum Petriburgensem, & Jonathanum Episcopum Bristolensem manibus suis propriis respectivè subscriptum die, & anno, & loco ultimo mencionatis in præsentia dicti Domini Regis nunc Vi & Armis, &c. publicaverunt, & publicari causaverunt; in quo quidem falso, ficto, malitioso, pernitioso & seditioso libello continetur—

The humble Petition of William Archbishop of Canterbury, and of divers of the Suffragan Bishops of that Province (now present with him) in Behalf of themselves and others of their absent Brethren, and of the Clergy of their respective Dioceses,

Humbly sheweth,

THAT the great Averfeness they find in themselves to the distributing and publishing in all their Churches, your Majesty's late Declaration

for Liberty of Conscience, proceedeth neither from any want of Duty and Obedience to your Majesty; our holy Mother the Church of *England* being both in her Principles, and in her constant Practicè unquestionably Loyal, and having, to her great Honour, been more than once publickly acknowledged to be so by your Gracious Majesty; nor yet from any Want of due Tenderness to Dissenters, in relation to whom they are willing to come to such a Temper as shall be thought fit when that Matter shall be considered and settled in Parliament and Convocation. But among many other Considerations, from this especially, because that Declaration is founded upon such a dispensing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and the Beginning of your Majesty's Reign; and is a Matter of so great Moment and Consequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour or Conscience, so far make themselves Parties to it, as the Distribution of it all over the Nation, and the solemn Publication of it once and again, even in God's Houfe, and in the Time of his Divine Service, must amount to, in common and reasonable Construction.

— In contemptum dicti Domini Regis nunc, & Legum hujus regni Angliæ, manifestum, in malum exemplum omnium aliorum in tali casu delinquentium, ac contra Pacem dicti Domini Regis nunc Coronam & Dignitatem suas, &c. Unde idem Attornatus dicti Domini Regis nunc generalis pro eodem Domino Rege petit advisamentum Curie hic in præmissis, & debitum legis processum versus præfatos Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicestrensem, Thomam Episcopum Bathonensem & Wellensem, Thomam Episcopum Petriburgensem, & Jonathanum Episcopum Bristolensem fieri; ad respondendum dicto Domino Rege de & in præmissis, &c.

T. POWYS.

W. WILLIAMS.

Mr. Att. Gen. My Lord, we humbly pray, that according to the Rules of the Court in such Cases, my Lord Archbishop of *Canterbury*, and my Lords the Bishops, may plead to the Information.

Mr. Soll. Gen. My Lords the Bishops are here in Custody in the Court, upon the highest Commitment that can be in this Kingdom, to wit, that of the King in Council; and we pray, that according to the Course of the Court, they may plead to the Information presently.

L. C. J. What does his Grace and my Lords the Bishops say to it?

Mr. S. Pemberton. Will your Lordship give us leave, who are of Council for his Grace my Lord of *Canterbury*, and the rest of my Lords the Bishops, to speak a Word in this Matter?

L. C. J. Ay, Brother, go on.

Mr. S. Pemberton. That which we have to desire of your Lordship, and the Court, is this; We have now heard this Information read, and 'tis plain we could know nothing of this before, the Warrant of Commitment being only in general for a Libel; and this being a Case of the greatest Consequence, peradventure, that ever was in *Westminster-Hall* (that I think I may boldly say,

it is a Case of the greatest Consequence that ever was in this Court) and it being a Matter of this Nature, that these great and noble Persons, my Lords the Bishops, are here taxed with; that is, for making a seditious Libel, contained in such a Petition (as though it was a Libel to petition the King) we do beg this of your Lordship, that (it being of this great Importance) to the End we may come prepared to say what we have against it, we may have an Impanance till the next Term.

Mr. Finch. Pray, my Lord, favour me with a Word on the same Side, for my Lords the Bishops. Your Lordship sees now how necessary the Trouble we gave you before, in making our Objections against the reading of the Information was, and what the Drift and Aim of the King's Council was, in the desiring the Information to be read first; for now it is read, What is it that they desire of your Lordships? They desire that my Lord Archbishop, and my Lords the Bishops, being in Custody, and brought here in Custody, they may be now so charged with this Information, as to plead presently. This, my Lord, we oppose, and with humble Submission we ought to have Time to imparle, and a Copy of the Information, that we may consider what we have to plead to it; for however we come here into Court, whether legally or not legally, yet ought we in the one and in the other Case, to have Time to consider of our Defence. And, my Lord, till of latter Time this Practice which the King's Council now calls the Course of the Court, was never used, nor was any Man required to plead immediately; and, my Lord, if the Practice of the Court has not been antiently so (as I do believe they will scarce shew it to be antienter than a few Years last past) then with humble Submission, though the Course of the Court have been so for some little Time past, yet it is not in the Power of the Court (as we humbly conceive) to make a Course in Prejudice of all the Privileges that the King's Subjects are by the antient Rules of Law entitled to; they cannot make a new Law in prejudice of any Right or Privilege which the Subject hath, and call it the Course of the Court. Now that this which we desire for my Lords the Bishops, is the Right and Privilege of the Subject, is most manifest; for there might be many Defences that a Man may have to make to an Accusation of this Nature, which it is impossible for him to know at the first hearing of an Information read, and yet which would be necessary for him to make use of, or at least it would be impossible for him to make use of in such a Manner as the Law doth allow of and require. It may be the Pleas which he has to plead may be such as that he has not Time to put into Form; there may be Matters upon the hearing the Information read, that it would be necessary for him to give Answer to, which he knew not of before, and therefore may neither have Materials ready, nor be capable of putting them (if he had them ready) into such Form as the Law requires. They tell you on the other Side, that if a Man be brought into Court by legal Process, he may be charged with any Information whatsoever; that they are not tied to the Fact alledged in the Commitment, but finding the Party under a legal Imprisonment, they can exhibit an Information against him for any other Offence. Then, my Lord, would I fain know, which way any Man alive can be prepared to make his just and legal Defence, for he knows

not his Accusation; for though he think it may be for that for which he was committed, yet it may prove otherwise, and then he can be no way provided with Materials for his Defence, but he must lose all Advantages which the Law gives him for his Defence. My Lord, if this be the Course of latter Times, yet you will not take that to be such a Law as is binding to all future Times; and we are sure the King's Council cannot shew that this was the antient Practice, for that was quite otherwise.

L. C. J. *Mr. Finch,* you were not here, I suppose, when this Question came in Debate in this Court lately, in the Case of a very great Person: 'Twas urged very earnestly and very learnedly by one that stands by you. We upon that Debate asked Sir *Samuel Astry*, what the Course of the Court was? and he told us, that the Course of the Court (of his own Knowledge for all the Time that he had sat as Clerk of the Crown in this Court) was, that when any one was brought in Custody, or upon a Recognizance, they were to plead presently.

Mr. Finch. Sir *Samuel Astry* has not been here so very long, as to make the Practice of his Time the Course of the Court.

L. C. J. But I will tell you what he said further, if you will hear me: He said, he had enquired of Mr. *Waterhouse*, whom we all know to have been an old Clerk in the Crown-Office, and he told him, that that had been the Practice all his Time.

Mr. S. Pemberton. My Lord, I hope the Course of the Courts of *Westminster-hall* shall not depend upon the Certificate of such a one as Mr. *Waterhouse*, who is a Man, we all know, superannuated, and very defective in his Memory.

Mr. Just. Powel. Certainly what they desire for the Defendant is very reasonable, for I take the Point to be only this; whether a Man may be compelled, being in Custody, to plead to an Information presently.

Mr. Just. Allynbone. Pray, Brother *Powel*, spare me a Word in this Matter. *Mr. Finch*, I suppose you labour for what the Court will not deny you, that you may have Time to plead according to the Course of the Court. We are not making Courses for particular Facts, that by my Consent we will never do; but if you say such a Thing is not the Course of the Court, and the King's Council affirm it is, how shall this be determined? And from whom can we take our Information to determine what is the Course? I am sure there is none of us that are here now, can pretend to tell what the antient Course was; for my Part, I declare it, I cannot; and I know no Reason there should be any Novelty introduced into the Court upon any Ground or Reason whatsoever, nor will I consent to any while I sit here: Therefore I desire to know what is the antient Course, and how we shall come to the Knowledge of that Course, if not by the Certificate of those who have been antient Officers of the Court?

L. C. J. Nay, that is certain, the Court will bring in nothing new in any such Case as this.

Mr. Just. Allynbone. If that hath not been the antient Course without Exception, I am against it; I know no Reason my Lords the Bishops should have any thing new put upon them: On the other Side, they must not expect to have the antient Course of the Court declined in their Case.

Mr. Pollexfen. Pray, my Lord, hear me a little in this Matter: 'Tis not my Desire that any Law should be alter'd for any particular Case, and the Course of the Court I know is the Law of the Court; but I humbly crave leave to say, That I take the antient Course of the Court to be quite otherwise than what the King's Council would have it. There may be particular Things done now and then, perhaps in particular Cases, and upon particular Occasions, which will not make what is so done to be the Course of the Court, nor be a binding Rule to you. Now, as to this Matter of Time or no Time, to plead to an Information, I remember the Time very well, when I and some others that stood at the Bar, and wondred when we saw this Practice coming in, and thought it a very hard and mischievous Thing; for, in Truth, the several Plots that have been, and the Heats of Men about those Things, have brought in this Course: For certain I am, and I dare affirm, there never was any such Course here before, neither upon Warrant from the Chief Justice, nor upon Recognizance, or any other Process, was a Man compelled to plead instantly, without having a *Capias* in the regular Form, after a Contempt for not appearing upon Summons. Truly, my Lord, we had no Interest in the Matter one way or other, to make us scruple it any otherwise than as we were concerned that the Law and Justice of the Nation should have its true and antient Current. And this I can assure your Lordships, that here was both my Lord Chief Justice *Saunders*, and Mr. Serjeant *Holt*, and myself, who taking Notice when this was first offered at, to make a Man plead immediately, without giving him Time to consider what he should plead, could not but say among ourselves, that it was an unreasonable Thing; and we were inclined to speak to the Court to inform them of the Consequence of it, which needs must be very mischievous. Sir *Samuel Astry*, we know, came to be Clerk of the Crown in my Lord *Scrogg's* Time. We know 'tis usual and customary for the Court to ask what is the Course of the Court in doubtful Cases, and to receive the Information from the Officers of the Court on both Sides. If it be on the Plea-side, from Mr. *Aston*; if on the Crown-side, from Sir *Samuel Astry*, concerning Things of Practice; but I did never think that what they reported was final and conclusive to the Court: But to make this Matter clear, I humbly pray, that you would please to give Order for the Search of old Precedents, how the old Practice really hath been: Every thing that has been done in hot Times, is not to be made a standing Rule. If there do any such thing appear to have been done and practised antiently, truly, my Lord, I will submit, and say I am under a mighty Mistake; but if this which is now urged for the Course of the Court, is nothing but what the Zeal of the Times, and Heat of Persecutions hath introduced, surely that is not fit to be a constant Rule for the Court to go by; for every one knows, that the Zeal of one Time may bring in that by Surprize upon one Man, which when things are cool, at another time will appear to be plain Injustice. We have indeed seen strange Things of this kind done before, but I hope to God they are now at an End, and we shall never see any such thing done hereafter; and as for this particular Point, I think it is a wonderful Thing in the Consequence of it, if the Law should be as they would have it. Here is a long In-

formation just read over to a Man (but whether long or short, as to the main Point, 'tis the same) and you say the Course of the Court is, he must plead to it immediately. Surely Matters of Crime that require Punishment to be inflicted on Men, are of as much Consequence and Concern, as any Civil Matter whatsoever; and Men are to have their Rights in those Matters preferred, as well as in other Matters, which is all I press: For suppose a Man has a special Matter to plead, as particularly suppose it be the King's Pardon, I cannot give this in Evidence upon a Trial after not guilty pleaded, then I ought to plead it; but what if I have it not ready? 'Tis not telling the Court of it, without shewing of it, that will do; and it may be a Man that is taken up, and brought hither in Custody, cannot have it ready to shew; but yet then by this Rule a Man shall lose the Benefit of his Plea, by being compelled to answer immediately: But they say, the Court will do right, I suppose they will; and my Lords the Bishops in this Case I believe do not distrust but that the Court will do right; but I never thought the Law was brought to that Pass, that such Things as these were left wholly in the Discretion of the Court. Certainly Imparlanes, Time to plead, and just Preparations for a Man's Defence are Things that the Law has settled, and not left in the Discretion of the Court; and truly to me it seems all one utterly to take away a Man's Defence, as to hinder him of the Means to prepare for it. My Lord, here is an Information before you against these noble Lords, it is a Matter of great Moment, and though I hope in God there is no great Cause for it, yet however, since such Persons are concerned, and 'tis a Matter of such great Weight, I hope you will give us such an Imparlance, as if we had this Day appeared upon the ordinary Process, which is an Imparlance until the next Term.

L. C. J. There is a Difference between this and that other Case: If my Lords the Bishops had appeared upon the Summons, they would have had an Imparlance of Course; but when they are brought up hither in Custody, that mightily alters the Case. But that we may not be too hasty in a Thing of this Nature, let the Clerk of the Court be consulted with, that we may know what the true Course is.

Mr. Att. Gen. My Lord, we pray Sir *Samuel Astry* may be examined a little about it.

Mr. Just. Allybone. Mr. *Pollexfen*, I believe the Court is unanimous in their Resolutions of making nothing new in this Case; but pray give me leave to tell you, this is not the first Time that this Question has come to be agitated in this Court since I came hither. Now from whence can the Court take their Measures to be rightly informed what the Practice of the Court is, but from the Information of the Officers of the Court? who by their constant Employment, are most capable of knowing what the Course is. Now if you come to offer any thing that may be Matter of Doubt to the Court, concerning the Practice of the Court, you having known that this thing was controverted before (for so it has been) should have provided yourself with something that must be a reasonable Motive for us to doubt; for this has not been only once, but often moved, and our Officers have been consulted with concerning this Question, which took its Rise from such Objections as you have made now. Now for you to tell us, That you desire that we would look into Precedents,

dents, is, methinks, pretty odd. If you had brought us any Precedents, it had been something: And withal I must tell you, that you must not reckon the Favour of the Court, in any particular Case, to be the standing Rules for the Practice and Course of the Court; but instead of bringing Precedents, you only offer your own Thoughts, and those would create no Doubt in us but what has been before satisfied upon Examination of the Officers of the Court.

Mr. Pollexfen. Pray Sir, will you give me leave to answer one Word.

Mr. Just. Powell. Truly I have not observed that ever this Point was started so as to beget a Question since I came hither, but only in the Cases of the *Quo Warranto's*; and truly in that Case I thought it hard they should be denied Time to plead, especially the Consequence being so fatal.

L. C. J. Yes, yes, Brother, it has been several Times.

Mr. Just. Powell. Truly, my Lord, I have not observed it, nor do I remember it.

Sir Rob. Sawyer. My Lord, I have always taken the Distinction, as to these Matters, to be this ———

Mr. Just. Powell. But, my Lord, if the ancient Course of the Court hath been to grant an Impar lance, and a Copy of the Information before they plead, I see no Reason why my Lords the Bishops should not have the Benefit of that ancient Course: For if a Man that is sued at Law for a two-penny Trespass, shall have that Advantage as to receive a Declaration, and have Time to plead what he can to it, why should not my Lords the Bishops, in a Matter of the great Weight, have the same Advantage too? But indeed, if the Course of the Court had been anciently otherwise, I can say nothing to it; for the Course of the Court is certainly the Law of the Court.

Mr. Just. Albybone. Brother Powell, you say well, if they did produce any one Precedent to give us Occasion to doubt in the Matter.

Sir Rob. Sawyer. Pray, good my Lord, will you give me leave ———

Mr. Att. Gen. Why, Sir Robert Sawyer, will you never have done?

Mr. Sol. Gen. No, they are so zealous and eager in this Case, that they wont permit either the Court, or any body else to speak a Word but themselves.

Mr. S. Pemberton. Good Mr. Solicitor, give us leave to answer the Objection that the Court hath made to us; we would satisfy your Lordship where the Distinction really lieth, where there has been an Opportunity for the Party to come in, as by Summons or *Subpœna*, or the like, and he has slipped that Opportunity, and so the King is delayed. In that Case they always used to put the Party upon Pleading presently, when he was taken up upon a *Capias*, and brought in Custody; but when there was never any *Subpœna* taken out (as the Case is here) so that the Party never had an Opportunity to come in and render himself, and appear to answer it according to the due Course of Law, an Impar lance was never yet denied, nor Time to plead; and that is the Case here.

Sir Rob. Sawyer. My Lord, Mr. Serjeant has given you the true Distinction, where Process has gone out to summon any one to appear to an Information, and he hath failed to appear according to the Summons, and the Prosecutor for the King

takes out a *Capias*; if he be brought in upon that *Capias*, the ancient Course has been so as they say: But for that other Matter, where a Man comes in upon a Commitment at the first Instance, and an Information is put in just as this is, the same Morning, and not before; if they can shew any one Precedent of this Kind fifteen Years ago, I would be contented to yield that they are in the right; but I am sure they are not able to do it. In Sir Matthew Hales's Time when this was moved, it was refused; and he was clear of another Opinion.

Mr. Att. Gen. I hope now, my Lord, we shall be heard a little for the King; and I cannot forbear observing in the first Place, somewhat that these Gentlemen have offered at, who are now inveighing against the Heat of the Times, when a great Part of that Heat we know who were the Inflamers of; but what is all this to the Purpose? The Question is barely this, Whether when a Man is brought into Custody into this Court, and charged with an Information, he shall not by the Course of the Court be compelled to plead presently?

Sir Rob. Sawyer. To Indictments for Treason and Felony he shall be compelled to plead presently, but not to an Information for Misdemeanors.

Mr. Just. Powell. It seems to me very hard he should.

Mr. Att. Gen. Sir, there are many Things that seem hard in Law, but yet when all is done, the Judges cannot alter the Law. 'Tis a hard Case that a Man that is tried for his Life for Treason or Felony, cannot have a Copy of his Indictment, cannot have Council, cannot have his Witnesses sworn; but this has been long practised, and the Usage is grown to a Law, and from Time to Time it hath been so taken for Law; it cannot be altered without a new Law made; as it hath been heretofore, so it must be now, till a greater Authority alter it; and so, as to the Case here at present, if it were a new Case, and it was the first Instance, I must confess, I think I should not press it; but if this be the constant Practice of the Court, and if these Gentlemen that now oppose it, some of them ministerially, some of them judicially, have themselves established this Practice, they have no Reason to wonder that we follow them in it. We do not blame them for what they do now; for Men when they are of Council may be permitted to argue for their Client contrary to their former Opinions; but if these Things, by their Procurement, have been done thus before, surely without Offence we may pray the like may be done now. 'Tis our Duty, on Behalf of the King, to desire that he may have Right done him, as well as they on Behalf of my Lords the Bishops; and for the Usage, to cite Precedents were endless, especially of late Times, and these Gentlemen know them all very well, for they were some of them Parties to them themselves, and we can do no more, nor need, than to put them in mind of their own Doings; whether it was so before their Time or not, it concerns them to make out and retract their own Errors; but in our Observation, if ever this was pressed, or insisted upon on the King's Behalf, this Course has always been pursued.

Sir Rob. Sawyer. For a Precedent, my Lord, there is the Case of my Lord Hollis, where there was given Time after Time.

Mr. Soll. Gen. That was only Time to argue the Plea to the Jurisdiction of the Court.

Mr. Just. Powell. Mr. Solicitor, have you ever known it contested, and upon Debate fo ruled, in an Information for a Misdemeanor, as this Case is?

Mr. Soll. Gen. If you please to ask Sir *Samuel Astry*, he will inform you how the Course has been.

L. C. J. What say you, Sir *Samuel Astry*?

Sir Samuel Astry. My Lord, when I came into this Place, there was an ancient Gentleman that had been long a Clerk in the Office.

L. C. J. How many Years is it since you came into this Office?

Sir Samuel Astry. About a Dozen Years, I think, my Lord; and he sat in this Place where Mr. *Harcourt* does now. He was always accounted a loyal, honest, and intelligent Man, that is Mr. *Waterhouse*, who is now alive; and when I came into my Office, I took my Instructions in a great Measure from him, and asked him what the Course of the Court was, in such Cases which I myself did not understand; for though I had been an Attorney twenty Years, yet it was on the other Side, the Civil Side; and though I knew some Things of my own Knowledge, yet I did not so well know the whole Practice of the Court; and particularly I asked him, what was the Course of the Court in this Case that is now in Question, and he told me, that in all his Time and Experience, if a Man appears upon a Recognizance, or was a Person in Custody, or appeared in *propria persona*, as a Person privileged, he ought to plead at the first Instance; and according to that Practice, when Sir *Robert Sawyer* was Attorney General, it was the constant Practice, and I am sure he knows it is no new Thing.

Sir Rob. Sawyer. But upon what Information, Sir *Samuel Astry*, were they Informations upon Misdemeanors?

Sir Samuel Astry. Yes, several.

Sir Robert Sawyer. But was there no Process taken out first to call the Party in?

Sir Samuel Astry. Yes, where Process was never taken out.

Mr. Att. Gen. For how long Time is that you speak of your own Knowledge, Sir *Samuel*?

Sir Sam. Astry. About a Dozen Years.

Mr. S. Pemberton. It was never done till very lately, but after the Party was in Contempt for not appearing.

Mr. Soll. Gen. I would ask you, Sir *Samuel Astry*, one Question: Was the usual Process of *Subpoena* first taken out? For Mr. Serjeant *Pemberton* says it was; do you find any Warrant for such a Difference as that?

Mr. S. Pemberton. Do you find any such Case as this is?

Mr. Soll. Gen. Nay, pray Mr. Serjeant, give us your Favour, and let us ask our Questions according to your own Doctrine. How do you find the Practice to have been as to that Distinction they have made?

Sir Sam. Astry. Sir, I would be very loath to enlarge the Precedents of the Crown-Office further than the Truth is; I tell you whence I took my Instructions, from Mr. *Waterhouse*, who was an ancient Clerk in the Office; he has been in that Office sixty Years, and the Instructions I took from him, were, that this was the Practice all his Time, and it has been asserted all my Time. It

has been often contested, I confess, and Mr. *Pollexfen* has always opposed it, and moved against it, but it has been always ruled against him: I know it was against his Judgment, but the Court always over-ruled it.

Sir Rob. Sawyer. Sir *Samuel Astry*, can you give any one Precedent before you came into this Office?

Sir Sam. Astry. Sir, I can go no farther than this that I have told you, what Information I received from him.

Sir Rob. Sawyer. What is all this but a Certificate from Mr. *Waterhouse*?

L. C. J. We can be informed no otherways than by Certificate from the old Clerks of the Office.

Mr. S. Pemberton. Alas, he is a Child, and not fit to do any thing.

Mr. Pollexfen. We all know Mr. *Waterhouse* very well, he is a very weak Man, and always was so, and there is no depending upon any thing that he says.

Mr. Soll. Gen. Pray, my Lord, will you hear us a little for the King.

The Bishop of Peterborough whispering with Sir Robert Sawyer, Mr. Solicitor said to him, My Lord, you had better look another way, and look towards the Court, for there your Business lies.

L. C. J. Well, Mr. Solicitor, what say you?

Mr. Soll. Gen. My Lord, it appears plainly, that the King is in Possession of this Privilege, and has been so for these Dozen Years; for so long the Justice of the Kingdom towards all the Subjects, hath run in all the Instances of it in this Channel; and though it hath been contested as often as Mr. *Pollexfen* has been of Council for the Defendant, in such Cases it has always been ruled against him. He indeed has made his continual Claims (Sir *Samuel Astry* says) he has raised the Dust, and made a Hue and Cry, but it has always gone against him: And I would ask the rest of you Gentlemen that are of Council for my Lords the Bishops (for some, or one of you, I am sure, has been concerned in every Information that has been exhibited in this Court for these nine or ten Years last past, I would ask you) whether in any Information that you have been concerned in, if the Party being brought in by Process, insisted to have Time and an Imparlance, it was ever granted him? I know you will not say it ever was; why then should there be more done in this Case, than has been done in all other Cases these ten Years? 'Tis not sufficient to make Declarations against the Unreasonableness of the Practice, for it is but what you have done yourselves, and insisted upon for Law; and all those Men that upon Informations have been compelled to plead, have had Injury done them; or else these Lords will have no Injury by the Court's taking the same Course. It is true, my Lords the Bishops are Peers, and here are seven of them, and seven Lords go a great Way; they make a Committee, I think, in the House of Peers, and a mighty Matter is made of it, that this is the Case of so many Lords! But will you alter the Course of the Court, because seven of my Lords the Bishops are concerned in it, and they make a mighty Stir about the Reasonableness of the Thing? How can it be believed that the Law will not give a Man Time to make his Defence? They agree themselves, that if it were in the Case of Life and Death, they must plead presently; and

and doth not the same Reason hold? And may not an Argument be drawn à fortiori, in the Case of a Misdemeanor? If I am not to have Time when I plead for my Life, there is less Reason I should have Time to answer a Trespafs: But, my Lord, 'tis not Reason that weighs in the Case, 'tis the Course of the Court, which is the Law of the Court that we are contending for: And what is there in the Case that should require so much Time for my Lords the Bishops to plead to it? It is charged in the Information, that these noble Prelates did make a Libel which was produced by them, and published in the King's Presence; they can easily tell whether they have done this, or not done it. What can they plead but the general Issue? They talk of special Matter to be pleaded, but can they shew any more that they can say, than what any poor ordinary Countryman, if he were here to plead to an Information, could say? That is, whether he was guilty or not guilty. These Lords can tell whether it be true, that they did publish the Paper laid in the Information, and then your Lordship will tell them what will be the Consequences of that Publication in Point of Law. We say all this was done at *Westminster*; there the Scene is laid, and it is not an Information for an old stale Thing done a great while ago, but a Thing that was done Yesterday, and a Thing notorious enough, their contesting with the King about his Declaration of Indulgence. And as to what Mr. Finch has said, that this is a Novel Invention, and a Trick to rob a Man of his just Defence; sure he forgets who it is that taught us the Trick. If it be a Trick, we have learnt it from those that trick'd before us; and what is it that these Lords do desire? They would have an Impar lance till *Michaelmas* Term: Does, or can your Lordship think they ask that which is reasonable? To have six Months Time to plead not guilty to an Information for a Libel, and when so many Men have been denied it formerly upon the Instigation of those very Gentlemen that now press so very hard to have it granted, sure they must expect to be denied it too; and all this while these Lords lie under this Accusation, which is not so trivial a Matter as some would make it. I believe my Lords the Bishops have a Desire to be cleared, I suppose it is only their Council that desire to delay it, upon what Ground I know not; I believe they themselves would be glad to remove the Imputation, which would be best done by a Trial, and the sooner the better: If they have a Mind to justify themselves, that is the readiest Course for it, and they may do it presently, by pleading Not Guilty. My Lord, I know I am in a great Auditory, and Abundance of your Lordship's Time has been taken up already; I press it therefore for the Sake of the King, and for the Sake of my Lords the Bishops, we shall else have all hang in suspense, and hang in the Air for six Months longer; therefore let the Matter be put upon a fair Issue, so as it may come to a speedy Determination. I am sure if these Lords be innocent to Day, they will be innocent to Morrow, and if it were my own Case, I would desire to have it tried as speedily as I could, and therefore I pray they may plead immediately.

Mr. Jus. Powell. Mr. Solicitor, what do you say to the Difference that was taken between a Person that was brought in Custody at the first Instance, where there is no Contempt to the Process

of the Court, and one that comes here by *Capias*, upon Default of appearing at the Summons?

Mr. Finch. My Lord, if I apprehend them aright, they give us more than we did ask, for Mr. Solicitor has laid it down as a Rule, that if a Man is taken upon a *Capias* in a mean Process, he shall have no Impar lance.

Mr. Soll. Gen. No, you are greatly mistaken, Sir, and I pray don't lay down Rules for me.

Mr. Finch. If I am Sir, I beg your Pardon, but this I am sure of, if a *Venire Fac* goes out, which is in the Nature of a *Subpœna*, and the Party appear to it, that being the first Time he could come into Court, you cannot force him to plead to an Information, but he has an Impar lance of Course.

Mr. Jus. Powell. Methinks it seems very reasonable, that this forcing a Man to plead presently should be only a Punishment for a Contempt of the Court, and pray, were my Lords the Bishops in Contempt to the Court when they came here to Day? Certainly they were not, for no Man is in Contempt, but he that being served with Process, disobey that Process; and if my Lords the Bishops had been served with a *Subpœna* and had not appeared, then there would have gone out a *Capias* to bring them in, and then they would have come in upon a Contempt, and then they would have come within the Rule.

Mr. Soll. Gen. If you have a Mind to it, you may ask Sir *Samuel Astry* again.

Mr. Att. Gen. If they come in upon Bail, they ought to plead presently.

Mr. Jus. Albybone. Mr. Finch, I'll tell you what sticks with me, truly you could not but be aware that this would be required of you; for this very thing was in Debate last Term, and you know what Rules the Officer said was the Course of the Court, why did you not therefore come prepared with some Precedents, to shew us what the Course of the Court is?

Mr. Att. Gen. Truly, my Lord, at this rate, we shall keep your Lordship here all this Afternoon, if these Gentlemen will not be satisfied with the Rule of the Court; and for an Answer to what Mr. Justice Powell says, if any Riot be committed in the Country, and the Parties are bound by Recognizance to appear here, that is no Process of this Court, and so consequently there can be no Contempt, and yet they must plead presently.

Mr. Jus. Powell. There is a particular Reason for that, because they are bound by Recognizance, Sir *Samuel Astry* and others say, that if they come in by Recognizance they must plead presently.

Mr. Soll. Gen. But for the Thing itself (that the People that hear us may not imagine that this Court puts a Hardship upon my Lords the Bishops, more than is done in other Cases) it is best to keep the same Rule as in all other Cases; for when all is done, when Justice goes with an equal Current, without any regard to one Person or other, then every body is safe, and all Persons concerned do their Duty: So in this Case, here be no Precedents produced wherein it has been otherwise; then can no Person complain but that Things go in this Case as they do in all other Cases; perhaps such a Case (as to the Fact of it) never happened before; but for the Law of it, that is plain, and the same is in all other Cases; for that there may be an Information against my Lords the Bishops, as well as other People, if they

make Libels, sure it is no doubt at all; and if an Information lies against them for it, they are under the same Rules as others are: But these Gentlemen talk of being surprized, and that this is the first Time they have heard of this Information, but have we told any News in this Information? Was not all that is contained in it, notoriously enough known before? Was not the King's first Declaration very well known? Was not his second Declaration very well known? Was not his Order of Council for reading of the Declaration very well known? Is not your own Petition a Thing very well known to yourselves and all the World? Then these being the particular Facts of which this Information is made up, and we only say you did this Fact, and we ask you, did you do it, or did you not? Can there be any great Surprise in this? My Lord, I cannot see any thing that alters this from the common Case, but only their being Peers; and since this Question has been heretofore under Contest, these Gentlemen have had Time enough to have prepared Precedents, to differ this from the common Rule, if they could; but since they cannot, we desire they may have the same Rule that is in all other Cases, and then to be sure all will go right.

L. C. J. Sir Samuel Astry, pray will you tell us, whether ever the Court used to grant an Imparance where a Person comes in in Custody? Or did you ever know, when a Person comes in upon a Commitment, Time was given him to plead?

Mr. S. Pemberton. Have you ever known it disputed and denied?

Sir Sam. Astry. My Lord, I have known that 'tis in the Discretion of the Court to grant what Time they please.

L. C. J. Is it the Course of the Court to give an Imparance?

Sir Sam. Astry. No, 'tis the Favour of the Court, and if the Defendants have at any Time shewed a reasonable Cause, that they have a special Matter to plead, or any other Cause allowed by the Court, the Court has sometimes indulged them so far as to give them Time.

L. C. J. But how is the ordinary Course, Sir *Samuel Astry*?

Mr. Juß. Allybone. Ay, for as I said before, Things done in particular Cases in Favour are not Precedents.

Sir Sam. Astry. I have told your Lordship the Course is this, that any Person that appears upon a Recognizance, or is taken up by your Lordship's Warrant, or by a Warrant from a Justice of Peace, or any other way in Custody, or any Officer of the Court that is a privileged Person, and that must appear *propria persona*, must plead presently, if the Court upon particular Reasons do not give him Time; and this I received Information of, as the Practice of the Court, from *Mr. Waterhouse*, who had been a Clerk in the Office sixty Years.

Mr. Soll. Gen. He said so before, but these Gentlemen will never be contented, unless they have a new Law made for them.

Mr. Pollexfen. My Lord, I would not unnecessarily trouble your Lordship; but truly this is a Case of great Concern. And first of all, I think we shall all agree, that what has been used for ten or twelve Years past will not make the Course of the Court, and next I perceive they do not bring any one Instance for any Proceeding of this Sort

above ten or twelve Years old. But then say they on the other Side, Why do not you bring Precedents that it has gone otherwise heretofore? My Lord, that cannot be done, for it is a Negative on our Side, that this which they desire is not the Course of the Court: But then, as it is impossible to prove a Negative, so the Proofs should come on the other Side, that this has been done: They ought to shew it, if there has been any such thing as a standing Rule, or else it shall be presumed an Innovation, as being contrary to all Reason. But, my Lord, because they put it upon us, there is this Proof on our Side, as much as a Negative can afford. In those Proceedings that were in the great Case of the *Habeas Corpus*, there was an Information against *Elliot* and others; they had Time given them to plead over and over, so that there is one Precedent: And as many of these Cases in former Times as can be found, will shew that this was always the Course. But pray, say they, produce us one Instance, that ever there was a Man that came in upon a Recognizance, that had Time to plead. Truly, my Lord, I cannot just now tell whether any such Instance can be produced, but I verily believe there may be a great many; but I turn it upon them, and that with great Reason. With Submission to your Lordship, shew me any Man, if you can, above a Dozen Years ago, that had not Time allowed him to plead. Ay but, say they, *Mr. Waterhouse*, an ancient Clerk of the Crown-Office, that has been there these sixty Years, hath certified that this hath been the Practice of all his Time. My Lord, we that have been conversant in the Business of this Court, did all very well know *Mr. Waterhouse* when he was here, and sat in Court in the Place of *Sir Samuel Astry*.

Sir Sam. Astry. No, Sir, it was in *Mr. Harcourt's* Place.

Mr. Pollexfen. Well, he executed a Place here, and 'tis no Matter whether he were Master of the Office or no; but I think we all knew him very well, he was a Man as lame in his Business as could be; for there are some Men that will never do Business well, let them be never so long at it; and he was as weak in the Practice of the Court, and every thing else, as 'tis possible for one that has been bred in an Office can be; and at this Time he is grown so decrepit and superannuated, that you may as well depend upon the Certificate of an old Woman, as any thing that he shall say in such a Matter as this: He is now almost fourscore Years of Age, and has lost that little Memory and Understanding he had; but if his Certificate must be depended upon, because of his standing in the Office, pray, my Lord, let him come hither, and do you ask him what he has to say in this Matter.

Mr. Soll. Gen. Ay, that is very well indeed.

Mr. Pollexfen. Good Mr. Solicitor spare us, certainly there needs not such great Haste in this Matter, we are upon a Business of very great Weight and Concernment; for you are now making a Law for the whole Kingdom, in Point of Practice, in Cases of this Nature. We do say indeed, that by the Reason of the Heat and Zeal of these last ten Years, such a Usage has been introduced, but *Sir Samuel Astry* tells you, it was opposed, and I hope that neither I, nor the Thing will be the worse thought of, because I opposed what I thought an unreasonable and new Invention. My Lord, I know in the Case of the City of *London*,

we had Time to plead a whole Vacation after an Imparlance, and were not at all hurried on, as the King's Council would do in this Cafe. My Lord, if they can produce any antient Precedent for it, I will say no more; but there is no Cafe in Print in any of our Books that ever I read, or can remember, that countenances such an Opinion. A Man by this Means may lose his just Defence, and he has no Remedy, nor will it ever be in his Power to retrieve it, for he may be brought on a sudden into Court upon a Warrant, and when he is here, he shall be charged with an Information, and presently he must plead not guilty, because he has not Time to prepare a Plea of any other Nature, let him have never so much other special Matter or Occasion for it. If you please to let this Matter be examined what the Precedents are, and of what Age those Precedents are, then perhaps your Lordship will get some Satisfaction; but otherwise, if the bare Certificate of the Matter of the Office is to be a Guide to the Court what is Law, and what is not, we shall be in a very uncertain Condition, especially when the Matter carries in the very Face of it, a great deal of Unreasonableness and Injustice. They on the other Side will argue, that is not more unreasonable than the Practice in the Cafe of Treason and Felony, where Persons are compelled to plead instantly. But under Favour, my Lord, there is no Comparison between this Cafe and that, though I know it was always thought a Hardship and Defect in our Law, that a Person should be denied Time to plead in Cafe of Life and Death, except he can shew some special Matter of Law that he has to plead, and then he has always Time allowed him to put it into Form; and I could never think there was any Reason to be given for it, but because the common Defences of Felons would be little Shifts and Arts, which would destroy Proceedings, and make them tedious, and that would be an Encouragement to People to commit Felony; and beside there is a Trust which the Law reposes in the Court in capital Cafes, to take Care that these Men should not suffer upon any little Tricks in Law; but if you come below Treason and Felony, the Law puts no such Hardship upon the Defendant, nor reposes such a special Trust in the Court; but a Man may plead any thing he has to plead; and can any Man plead before he sees what he is to plead to? And shall the Law allow him Council to prepare his Plea, and not allow him Time to consult with that Council about it? These are Things, my Lord, that truly to me seem unreasonable: But as to the Practice and Course of the Court, I pray your Lordship to give Order, that the Precedents may be searched, that you may know what the antient Practice was.

Mr. Finch. Whether you will grant an Imparlance now or no, yet I hope, however, you will think fit to give my Lords the Bishops Time to plead.

L. C. J. But *Mr. Finch*, we have had a Certificate from *Sir Samuel Astry*, which truly weighs a great deal with me; he tells you the Practice has been so ever since he came here, and that *Mr. Waterhouse* told him, that it had been so all his Time, which is sixty Years.

Mr. Pollexfen. My Lord, there are Persons here that will upon their Oaths declare, That *Mr. Waterhouse* has often told them the Practice was otherwise, even in his Time, and afterwards

a long Time before this new Way of Proceeding came in.

Mr. Ince. My Lord, if I might have Liberty to speak, I can say *Mr. Waterhouse* has told me.

L. C. J. Pray be quiet *Mr. Ince*.

Mr. Just. Allybone. But pray *Mr. Pollexfen* give me leave to mind you how the Evidence stands against you; the Objections are, that this has been a Practice but for twelve Years last past; If that be true, I think it goes a great Way, for the Practice of twelve Years is Precedent enough, *Prima Facie*, that such is the Practice; for how shall we come to the Knowledge of the Practice, but from our Officer *Sir Samuel Astry*, who has been here examined? And he tells you, that upon his coming into the Office, when it could not be so doubtful as now, it seems, it is, he took Instructions from *Mr. Waterhouse*: I allow you 'tis but his Certificate, but that must go a great Way with the Court.

Sir Rob. Sawyer. Such a Practice as this has been always very rare in Informations for Misdemeanors; and they bring you nothing of any Precedent older than *Sir Samuel Astry's* Time.

Mr. Finch. Pray, my Lord, give me leave to vary the Question; I do not now make it a Question, whether your Lordships should grant my Lords the Bishops an Imparlance, but whether you would think fit to look into the Course of the Court before that Time that *Sir Samuel Astry* speaks of, and take Time to consider and search into Precedents.

Mr. Just. Allybone. Do you, *Mr. Finch*, give us any one Reason or Precedent that may make us doubt, whether this be the Course of the Court or no? And you could not but be aware of this before, and therefore should have come prepared to make out your Objection.

Mr. Finch. *Mr. Pollexfen* and the rest of the Practisers in my Lord *Hales's* Time will tell you, that the Course was otherwise in his Time. *Sir Samuel Astry* indeed tells you, it has been so since his Time; but this was one of the Points, it seems, that he was ignorant of, which made him enquire of *Mr. Waterhouse*, so doubtful was this Practice.

Sir Samuel Astry. I was an Attender upon this Court before I came into this Office, but it was in another Place, on the other Side of the Court; and therefore was not concerned so much to know what was the Course on this Side, till I came into this Office.

Mr. Soll. Gen. These Gentlemen differ among themselves, one would have an Imparlance, the other only Time to plead; I believe truly they cannot tell what they would have, I pray the Rules of the Court may be kept to.

Sir Samuel Astry. Here are two Clerks that sit by me, that have been a long Time in the Office, *Mr. Harcourt*, my Secondary, and the Clerk of the Rules; I pray they may be asked their Knowledge of this Matter.

Mr. Att. Gen. Certainly these Gentlemen think they have a Privilege above all other People, that they must not be subject to the same Rules as others are! We on our Parts have taken all the Methods that we could to make this Matter manifest, and what is it that these Gentlemen now propose? They pray you to take Time to consider, but have they used the right Means of creating a Jealousy or Suspicion in the Court, that the Course is otherwise? They can give no Instance of it, and all they say is, 'tis a Negative, that this is not the Course of the Court, but the

Imparance that they beg is in the Affirmative, surely that they can find Proof of, if it be so. As for my Lord *Hollis's* Case, that is with us, and not against us; let Mr. *Pollexfen* shew that ever any one of the Men that were brought into Court in Custody, either had Time to plead, or an Imparance.

L. C. J. Sir *Samuel Astry* says he has given you his Opinion, and here are two other Clerks of the Office that he refers himself to, are you willing that they should be asked?

Mr. S. Pemberton. Yes, my Lord, with all our Hearts.

L. C. J. Mr. *Harcourt*, how long have you been a Clerk in the Crown-Office?

Mr. Harcourt. About seventeen or eighteen Years, my Lord.

L. C. J. How long have you known the Practice of the Court in this Matter, and what is it?

Mr. Harcourt. I cannot charge myself with Particulars from the Time of my coming into the Office, but for these ten or twelve Years past (I remember) it has been as the King's Council prescribed, and as Sir *Samuel Astry* has declared.

L. C. J. What say you, Mr. *Sillyard*, how long have you known the Crown-Office?

Mr. Sillyard. I have been a Clerk here about thirty Years.

L. C. J. Well, and how has the Practice been all your Time?

Mr. Sillyard. I have not sat here as Clerk of the Rules but a little while, but since I have sat here, I have always observed it to be the Practice, that one that comes in Custody should plead immediately; it was a Thing heretofore that did not so often happen as it hath done here of late, therefore I cannot so well speak to it; but it hath fallen out frequently within some Years last past, and that hath been the constant Course.

Sir Samuel Astry. When you first came to be Attorney-General, Sir *Robert Sawyer*, I am sure it was so.

Mr. Att. Gen. Pray let me ask you, Mr. *Sillyard*, you say you have known the Office thirty Years; when you first came to the Office, were Informations as frequent as they are now, and have been of late?

Mr. Soll. Gen. It was so in the Case of Mr. *Hampden*, when you were Attorney-General, Sir *Robert Sawyer*, he was forced to plead immediately to an Indictment, for a Crime that perhaps you will say was near upon Treason.

Sir Rob. Sawyer. Yes, truly, it wanted but one Witness, that was all.

Mr. Soll. Gen. But yet the Indictment was only for a Misdemeanor, and there we struggled and debated the Matter, but were forced to give it over, because the Course of the Court was against us, so it has been by the unquestionable Testimony of Sir *Samuel Astry* for these twelve Years last past; and in those twelve Years we have had many Changes, perhaps there may have been twelve Chief Judges, and they have all affirmed it, and if I then make it out, that in all these Judges Times that are within our Remembrance, it has gone thus, then there are enough Precedents in the Matter.

Sir Rob. Sawyer. But, my Lord, I desire to know, whether that were the antient Course, Mr. Solicitor?

Mr. Soll. Gen. They that make the Objection ought to prove it; but I will name Sir *Robert Saw-*

yer another Case, and that is the Case of Sir *Samuel Barnardiston*, which was the Case of a Libel too, he was forced to plead immediately, and it cost him 10,000*l.* Fine.

L. C. J. Well, Gentlemen, have you done on either Side?

Mr. S. Pemberton. If your Lordship will please to give us Time till to Morrow Morning, we will come hither by Rule of Court, and bring you some Certificates and Affidavits, or else some Precedents that we hope will satisfy your Lordship in this Matter.

L. C. J. No, Brother, we cannot do that; the Question is what the Course of the Court is, we have an Account of that from Sir *Samuel Astry*, for twelve Years of his own Knowledge, and from Mr. *Waterhouse* by him for sixty Years; but for Mr. *Waterhouse* they except against him, and say he was a Person that was always lazy and did not so well understand his Business, and now is superannuated, that is said, but is but *gratis dictum*, perhaps it may be so, perhaps not; and they have offered to examine Mr. *Ince* about some Opinion that he has had from this Mr. *Waterhouse*; it may be he may have asked him some Question that may lead to it, and he may have given him some slight Answer, but then here are these two Persons, Mr. *Harcourt*, and Mr. *Sillyard*, and the one has been a Clerk these sixteen or seventeen Years, and the other has known the Office thirty Years; though there were not heretofore so many Informations of this Nature and Kind as now of late, but still they say, that a Person that comes in upon a Commitment, or a Recognizance, shall never have any Imparance.

Mr. Soll. Gen. Can they give any one Instance that has any the least Shadow to the contrary?

Mr. Pollexfen. My Lord, if we had Time, we hope we should be able to satisfy you in this Matter.

Mr. Soll. Gen. You have had Time enough to prepare yourselves for this Question, if you had thought you could do any good in it.

L. C. J. Would the Course of the Court be otherwise to Morrow than it is to Day, we have taken all the Care we can to be satisfied in this Matter, and we will take Care that the Lords the Bishops shall have all Justice done them, nay, they shall have all the Favour by my Consent that can be shewn them, without doing wrong to my Master the King; but truly I cannot depart from the Course of the Court in this Matter, if the King's Council press it.

Mr. Att. Gen. My Lord, we must pray your Judgment in it, and your Direction, that they may plead.

L. C. J. Truly I think they must plead to the Information.

Mr. Att. Gen. Sir *Samuel Astry*, pray ask my Lords whether they be Guilty or Not Guilty.

Then his Grace the Lord Archbishop of Canterbury stood up, and offered a Paper to the Court.

L. Archbishop of Cant. My Lord, I tender here a short Plea (a very short one) on Behalf of myself and my Brethren the other Defendants; and I humbly desire the Court will admit of this Plea.

L. C. J. If it please your Grace, it should have been in Parchment.

Mr. Soll. Gen. What is that my Lord offers to the Court?

L. C. J. We will see what it is presently, Mr. Solicitor.

Bish. of Peterb. I pray, my Lord, that the Plea may be read.

Mr. Soll. Gen. But not received.

Mr. Att. Gen. No, we desire to know what it is first.

Sir Rob. Sawyer. Mr. Attorney, if they will plead, the Court sure is obliged to receive it.

L.C. J. If it is a Plea, your Grace will stand by it.

L. Archbish. of Cant. We will all stand by it, my Lord; it is subscribed by our Council, and we pray it may be admitted by the Court.

Mr. S. Pemberton. I hope the Court will not deny to receive a special Plea, if we offer one.

L.C. J. Brother, let us hear what it is.

Mr. Soll. Gen. Read it if you please, but not receive it.

Clerk reads the Plea; which in English is thus:

THE BISHOP'S PLEA.

AND the aforesaid William Archbishop of Canterbury, William Bishop of St. Asaph, Francis Bishop of Ely, John Bishop of Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop of Peterborough, and Jonathan Bishop of Bristol, being present here in Court in their own Persons, pray Oyer of the Information aforesaid; and it is read to them, which being read and heard by them the said Archbishop and Bishops, the said Archbishop and Bishops say, that they are Peers of this Kingdom of England, and Lords of Parliament, and each of them is one of the Peers of this Kingdom of England, and a Lord of the Parliament, and that they being (as before is manifest) Peers of this Kingdom of England, and Lords of Parliament, ought not to be compelled to answer instantly for the Misdemeanor aforesaid, mentioned in the said Information exhibited here against them in this Court; but they ought to be required to appear by due Process in Law issuing out of this Court here upon the Information aforesaid, and upon their Appearance to have a Copy of the said Information exhibited against them, and reasonable Time to imparle thereupon, and to advise with Council learned in the Law, concerning their Defence in that Behalf, before they be compelled to answer the said Information: Whereupon, for that the said Archbishop and Bishops were imprisoned, and by Writ of our Lord the King, of Habeas Corpus, directed to the Lieutenant of the Tower of London, are now brought here in Custody, without any Process upon the Information aforesaid issued against them, and without having any Copy of the said Information, or any Time given them to imparle, or be advised, they pray Judgment, and the Privilege of Peers of this Kingdom, in this Case to be allowed them; and that they the said Archbishop, and Bishops, may not be compelled instantly to answer the Information aforesaid, &c.

ROBERT SAWYER.
HEN. FINCH.
HEN. POLLEXFEN.

Mr. Att. Gen. My Lord, with your Lordship's Favour, this, in an ordinary Person's Case, would perhaps be thought not fair Dealing, or that which (it being in the Case of these Reverend Prelates) I shall not now name; to make all this Debate and Stir in a Point of this Nature; to take the Judgment of the Court after three or four Hours arguing, and when the Opinion of the Court has been delivered, then to put in a Plea to the Jurisdiction of the Court—

Sir Rob. Sawyer. It is no such Plea.

Mr. Att. Gen. It is so in Effect; but certainly it is such an Irregularity, and such an unfair way of proceeding as would not be endured in an ordinary Case; and I hope you will give so little Countenance to it, as to reject it, and make them plead according to the usual Course and Way of Proceedings. Certainly a Plea of this Nature, after so long an Argument, would be reckoned nothing but a Trick.

Mr. S. Pemberton. We hope the Court and you are not of one Mind, Mr. Attorney, in this Matter; we desire the Court to receive the Plea.

Mr. Att. Gen. With Submission, the Court is not bound to receive Pleas that are put in purely for Delay, as this is; for the Judgment of the Court has been already given in the very Matter of this Plea; and for rejecting a Plea, it is done every Day; if a Man puts in a meer trifling dilatory Plea, the Court may reject it. Does this Plea contain any thing in it, but what has been argued and debated *pro & con*, and settled by the Court already? If they will put in any Plea in Chief they may, but such a Plea as this, I hope shall not have so much Countenance as to be received by the Court.

Mr. Pollexfen. Do you demur to it? if you please, Mr. Attorney, we will join in Demurrer with you.

Mr. Att. Gen. No, there will be no need of that.

Mr. Soll. Gen. Surely the Court will never give so much Countenance to it, as to receive it.

Mr. Finch. If you will, please either to reply or demur, Mr. Solicitor, we are here to maintain the Plea.

Mr. Soll. Gen. If you were here, you would say the same thing that we do. My Lord, this Plea is, That my Lords the Bishops are not bound to plead instantly; so that 'tis not a Question, Whether they ought to answer, or not to answer, but whether they ought to answer immediately, and what do they say more? They would have an Imparance, and Time to consult with their Council what they shall plead, which is all but one and the same thing; and what is the reason they give for this? They induce it thus, These Noble Persons are Peers of the Realm, and so ought not to be compelled to plead immediately: This, if I mistake not, is the Sum of their Plea. Now, pray my Lord, what sort of Plea is this? It is not a Plea to the Jurisdiction of the Court, though it do in a sort decline the Justice of the Court? Is it a Plea in Abatement? No, it is not; for it is only to gain Time: And do they now offer any thing more for themselves, than what was said by their Council before? only, that we are Peers of the Realm, and that such is the Privilege of Peers, that they ought to have an Imparance, and Time to plead, and that they ought not to answer presently. My Lord, this Matter hath been long agitated in the Court already; your Lordship, and the Court, have given your Judgments, and we know your Lordship, and the Court, will not admit of Tricks to delay the King's Causes. We all know the Term is a short Term; and what I said in the Beginning upon this Matter, I say again, it is the Interest, and for the Honour of my Lords the Bishops (if they understand their own Interest, and value their Honour) to have this Cause tried as soon as may be; but this Trifling and Tricking

is only for Delay: For what Issue can be taken upon this Plea? Certainly none. And if we should demur, what will be the End of that, but only to get Time to slip over the Term? If there were any thing worth the considering in this Plea, and that had not been already debated and settled, then it might concern us to give some Answer to it; but we have spent three Hours, by my Watch, in the Dispute, and the Matter having been over-ruled already, it is Time to have an End of it. Sure the Court will never be so treated by these Persons that are of Council for my Lords the Bishops, for it cannot be thought that my Lords the Bishops do it of themselves; and whether the Court will be so served, we submit to your Lordship. Certainly you will not receive such a Plea as this, especially it being in Paper, you will never countenance such a Practice so far as to give these Lords Time to trifle with the Court. If any such thing as a Plea be tender'd to the Court, it ought to be in Parchment; and if they would have an Imparance, there ought to have been an Entry of a *Petit Licentiam interloquendi* upon the Roll, but not such a Plea as this; for this in effect is no more than desiring an Imparance, which if it be granted of course, upon such a Prayer entered upon the Roll, you take it of course; but if it be not of course, you cannot come in by way of Plea, it must be by Suggestion upon the Roll, and a *Conceditur* entered. If this be admitted as a Precedent, every Man hereafter that comes in upon any Information, will take Advantage of it, and plead such a Plea as this; and if you grant an Imparance in this Case upon this Plea, you must grant an Imparance in every Case. Certainly the Law is not to be altered, the Methods of Proceedings ought to be the same in every Case. And I hope you will not make a particular Rule in the Case of my Lords the Bishops, without a special Reason for it.

Mr. S. Pemberton. We put in this Plea, my Lord, and are ready to abide by it; and we say, that according to the Course of the Court, it ought to be received.

Mr. Att. Gen. No, but good Mr. Serjeant, 'tis in the Discretion of the Court whether they will receive it or not; for the Matter has been in Debate already, and has received a Determination; the Court has over-ruled them in this very Point already, and there is no more in this Plea than was in the Argument before, and therefore it ought to be rejected as a frivolous Plea.

Mr. Soll. Gen. Here is a Plea offered in Writing, and in Paper; the Court sees what it is, and I hope you will give no Countenance to it.

Mr. Pollexfen. I do hope, my Lord, you will not judge this as a frivolous Plea; I think our Case is such, that you will not do that; if you think fit you may over-rule it, but I hope you will not refuse it.

Mr. Soll. Gen. The Court will certainly reject a frivolous Plea, and they may do it.

Mr. Pollexfen. But Mr. Solicitor, I hope the Court will consider of it, whether it be a frivolous Plea or not. It is true, there has been a Debate about the Course of the Court, and there has been an Examination of the Clerk of the Office, and the Court has gone upon his Certificate; but yet still perhaps it may remain in Doubt, and it being a Question of such a Consequence as this, it may very well deserve the Court's Consideration. There never was a judicial Settlement of it that I know

of yet; nor do I know any way of having it satisfactorily settled, but by the Judgment of the Court entered upon Record. Here we offer a Plea that contains the Matter in Debate, and this Plea will appear upon Record; and if upon Consideration of the Plea your Lordship shall think fit to over-rule it, and be of Opinion against the Plea, then will you, by your Resolution, in a judicial way, settle the Question that has hitherto been in Controversy.

L. C. J. Mr. Pollexfen, I would ask you whether the Council have dealt ingenuously with the Court or no in this Matter, after four Hours Debate, and the Opinion of the Court delivered, to come and sum up all the Arguments in such a Plea as this, and so put us upon debating it over again?

Mr. Pollexfen. My Lord, certainly this has been done before, without Offence. After we had moved for a Thing which was denied upon Motion, it is no such great Disrespect to the Court, with Submission, to put the same Matter into a Plea, for the judicial Opinion of the Court.

Sir Rob. Sawyer. That, without all Question, has been done a great many times.

Mr. Soll. Gen. How many times have you been accused of playing Tricks, Sir Robert Sawyer?

Sir Robert Sawyer. Not so many as you, Mr. Solicitor.

Mr. Soll. Gen. I don't ask it as if I questioned it; for I assure you, I don't doubt it of your Part at all.

L. C. J. Pray Gentlemen don't fall out with one another at the Bar; we have had Time enough spent already.

Mr. Pollexfen. Truly, my Lord, I would not trick with the Court in any Case, nor on the other side would I be wanting to advise, and do for my Client what I am able, and lawfully may. We have laboured all we could to get Time for my Lords the Bishops to imparle to this Information; and we have been the more earnest in it, because it concerns us, who attend this Bar, to take what Care we can that the Course of the Court may be observed; but as for this Matter, we suppose this Practice of the Court is not in Law a good Practice. Now what Way in the World has any Man to bring this so in question, as to have a judicial Resolution of the Court about it, but by such a Plea? We take it, that it is usual and legal for us to have an Imparance, and a Man would imparle, but the Court upon Motion refused to give him an Imparance. Is it not, think you, very fit for the Party to have this judicially entered upon Record? where all this Matter will appear, and the Party may be relieved by Writ of Error, if the Judgment of the Court should be wrong; but truly I cannot see how the Court can refuse the Plea; for if so be a Plea be pleaded, they have their Liberty to answer it on the other side by a Replication, or else to demur, and the Judgment of the Court may be had upon it one Way or other; but the Court will never go about to hinder any Man from pleading where here he may plead by Law. Here is a Plea put in, and the Court sure will take no Notice what is the Matter of the Plea, till the other Party have either replied or demurred. The same thing may happen in any other Plea that is pleaded, and the Party will be without Remedy upon a Writ of Error, because the Plea being rejected, there does nothing appear upon Record.

Truly

Truly for the Court to reject and refuse the Plea, would be as hard as the refusing of the Imparance, and we know no Way we have to help our selves.

Mr. Soll. Gen. You might have entered your Suggestion for an Imparance upon the Roll, and then it would have appeared upon Record, and if the Court had unjustly denied it you, you would have had the Benefit of that Suggestion elsewhere. Truly, my Lord, I think if any thing be tricking this is, for it is plainly ill pleading.

Mr. Finch. Then pray demur to it.

Mr. Soll. Gen. No, Sir, 'tis fencing with the Court, and that the Court won't suffer. It is only to delay; and if we should demur, then there must be Time for arguing; and what is the Question after all, but whether you would be of the same Opinion to Morrow, that you are to Day?

Sir Rob. Sawyer. I would put Mr. Solicitor in Mind of *Fitz-Harris's* Case, which he knows very well: He put in a Plea, and we for the King desired it might not be received; but the Court gave him Time to put it into Form, and I was fain to join in Demurrer presently, and so may these Gentlemen do if they please.

Mr. Soll. Gen. Yes, *Sir Robert Sawyer*, I do know the Case of *Fitz-Harris* very well; I was assigned of Council by the Court for him; we were four of us, and there was a Plea put in, but no such Plea as this. There was an Indictment of High-Treason against him, in which Case it is agreed on all Hands, that the Party must answer presently; but because he suggested here at the Bar, says he, I have Matter to plead to the Jurisdiction of the Court, and shewed what it was. I was impeached before the Lords in Parliament for Treason, for the same Matter of which I am here accused. The Court did give him Time to put this into Form, and we were assigned his Council to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here indicted for one and the same Treason for which we were impeached in Parliament, and that that Impeachment was still depending, and so we rested in the Judgment of the Court, whether we should be put to answer it here. This was a Plea that carried something of Weight in it, and not such a trifling one as this. It is true, *Sir Robert Sawyer*, who was then Attorney General, did press the Court to over-rule it immediately; but it being a Matter of some Importance, the Court would not do that, but had it argued solemnly by Council on both Sides, and at last there was the Opinion of three Judges against one, that the Plea was no good Plea. But what is that to such a trifling Plea as this?

Mr. Att. Gen. Pray, my Lord, favour me a few Words about that Case of *Mr. Fitz-Harris*. It is true, there was a Plea put in, and it is true also, that that which brought that Plea to be argued, was the Demurrer that was put in by *Sir Robert Sawyer*, who was so zealous and hasty in the Matter, that because the Court did not presently over-rule the Plea, as he desired, he immediately demurred, before the rest of the King's Council could offer at any thing about it; and thereupon it was put to the Judgment of the Court, and no doubt must be argued, and spoke to on both Sides; but where Pleas are really in Abuse of the Court,

the Court never gives any Countenance to them: Nay, truly I have known another Course taken; I am unwilling to mention a Case that happened much about that Time too in this Court, because of that Regard I have to my Lords the Bishops, but *Sir Robert Sawyer* remembers it very well, I am sure: It was the Case of one *Whitaker*, who for a Thing like this, putting in a trifling Plea, not only had his Plea rejected, but something else was ordered. I could shew the Precedent, but that I am more tender than to press it in this Case, because there the Court order'd an Attachment to go against him; but I will put these Gentlemen in Mind of another Case, and that is the Case of a Peer too: It is the Case of my Lord *Delamere*, which they cannot but remember, it being in the highest Case, a Case of Treason. When my Lord *Delamere* was arraigned, and to be tried for High Treason, he put in a Plea before my Lord Chancellor, who was then High Steward, and *Sir Robert Sawyer*, who was then Attorney General, prayed the Lord Steward, and the Peers, to reject it, and the Court did reject it (as we hope the Court will do this) and would never so far delay Justice as to admit of a Plea that carried no Colour in it, and there was no Demurrer put into the Plea, but it was absolutely refused. My Lord, in this Case we have had the Judgment of the Court already, and therefore we must now desire that this Plea may be rejected.

Mr. Soll. Gen. My Lord, we have now gone out of the Way far enough already; it is Time for us to return, and bring the Case into its due Methods. We pray your Lordship to reject this Plea.

Sir Robert Sawyer. My Lord, we are in your Judgment, whether you will receive this Plea or not.

L. C. J. You shall have my Judgment presently; but my Brothers are to speak first.

Mr. Just. Alibone. *Mr. Pollexfen* makes it a Question, whether this Plea may be rejected or not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. Just. Powell. Truly I do not know whether the Court can reject this as a frivolous Plea.

L. C. J. Surely we may, and frequently do.

Mr. Att. Gen. You do it every Day; 'tis a frequent Motion: If a frivolous Plea be put in, before it be entered upon Record as a Plea, the Court may refuse it, if they see Cause.

Mr. Just. Alibone. Truly if it may be, this appears to me a frivolous Plea.

Mr. Just. Powell. I do not know how the Court can reject any Plea that the Party will put in, if he will stand by it, as they say they will here; and I cannot think this a frivolous Plea, it concerning the Privilege of Peers and Lords of Parliament.

Mr. Just. Alibone. Brother *Powell*, I would be as tender of the Privileges of Parliament, and speak with as much Respect of the Privileges of the Peerage, as any body else; but for the Matter of the Plea, truly it appears to me, that the Peers are named in it only for Fashion sake, and it is frivolous.

Mr. Justice Powell. The Matter of the Plea, except only their being said to be Peers and Lords of Parliament, was spoke to before, but it was only *obiter*, and by way of Motion; but now it may come before us for our Judicial Determination.

Mr. Just. Allynbone. Pray let the Plea be read again. [*Which was done.*]

Mr. Just. Allynbone. This Plea is no more but that which has been denied already upon solemn Debate; and if it be in the Power of the Court to reject any Plea, surely we ought to reject this. Indeed I know not what Power we have to reject a Plea; but if we have Power, this ought to be rejected.

Mr. Just. Powell. I declare my Opinion; I am for receiving the Plea, and considering of it.

Mr. Just. Holloway. I think as this Case is, this Plea ought not to be received, but rejected, because 'tis no more than what has been denied already. I am not ashamed to say, that I should be very glad and ready to do all things that are consistent with my Duty, to shew Respect to my Lords the Bishops, some of whom are my particular Friends; but I am upon my Oath, and must go according to the Course of Law.

L. C. J. We have asked, and informed our selves from the Bar, whether we may or can reject a Plea; and truly what they have said, hath satisfied me that we may, if the Plea be frivolous; and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be said on both Sides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Bishops must plead over.

Mr. Att. Gen. We pray they may plead in chief.

Clerk. My Lord Archbishop of *Canterbury*, is your Grace guilty of the Matter charged upon you in this Information, or not guilty?

Archbishop of Cant. Not guilty.

Clerk. My Lord Bishop of *St. Asaph*, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bish. of St. Asaph. Not guilty.

Clerk. My Lord Bishop of *Ely*, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bish. of Ely. Not guilty.

Clerk. My Lord Bishop of *Chichester*, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bish. of Chichester. Not guilty.

Clerk. My Lord Bishop of *Bath and Wells*, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bish. of Bath and Wells. Not guilty.

Clerk. My Lord Bishop of *Peterborough*, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bish. of Peterborough. Not guilty.

Clerk. My Lord Bishop of *Bristol*, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bish. of Bristol. Not guilty?

Mr. Att. Gen. My Lord, I pray the Clerk may join Issue on the Behalf of the King, that so we may come to Trial; and we would have these Gentlemen take Notice, that we intend to try this Cause on this Day Fortnight; and we pray Liberty of the Court, that we may try it at Bar.

L. C. J. Are you not too hasty in that Motion, Mr. Attorney?

Mr. Att. Gen. My Lord, we should indeed make it the Motion of another Day; but we do now tell them this *ex abundantia*, because my

Lords the Bishops are now here, and will, I suppose, take Notice, that we do intend to move it another Day.

Mr. Soll. Gen. We now give them Notice, that we intend to move.

Sir Robert Sawyer. For that you need not trouble your selves; we are very desirous it should be tried at Bar, and that as soon as you please.

Mr. Att. Gen. Well then you take Notice it will be tried this Day Fortnight.

L. C. J. Well, what shall we do with my Lords the Bishops?

Mr. Att. Gen. They areailable, no question of it, my Lord, if they please.

L. C. J. Then, my Lords, we are ready to bail you, if you please.

Sir Rob. Sawyer. We desire your Lordship would be pleased to take their own Recognizance.

L. C. J. What say you, Mr. Attorney? I think that may do well enough.

Mr. Att. Gen. My Lord, with all my Heart; we will do it.

L. C. J. In what Penalty shall we take it?

Mr. Att. Gen. One thousand Pound I think, my Lord, his Grace, and five hundred Pounds a-piece the rest.

Sir Robert Sawyer. What Necessity is there for so much?

Mr. Att. Gen. Look you, Sir Robert Sawyer, to shew you that we do insist upon nothing that shall look like Hardship, what my Lords have been pleased to offer, concerning taking their own Recognizance, we agree to, and what Sums the Court pleases.

Mr. Soll. Gen. It is all one to us; we leave it wholly to the Court.

Sir Robert Sawyer. Only I have one Thing more to beg of your Lordship, on the Behalf of my Lords the Bishops, that you will please to order, that in the Return of the Jury there may be forty-eight returned.

Mr. Att. Gen. I tell you what we will do; Sir Samuel Asfry shall have the Freeholders Book, if you please, and shall return twenty-four.

Sir Robert Sawyer. Eight and forty has been always the Course, when the Jury is returned by Sir Samuel Asfry.

Mr. Soll. Gen. My Lord, I pray the Officer may return the Jury, according as is usual in Cases of this Nature.

Mr. Att. Gen. Do you admit of a Trial at Bar, Gentlemen?

Sir Robert Sawyer. Yes, and try it when you will.

L. C. J. They say it shall be this Day Fortnight, and let there be a Jury according to the usual Course.

Sir Robert Sawyer. We pray it may be in the Presence of the Attorneys or Solicitors on both Sides.

L. C. J. What is the usual Course, Sir Samuel Asfry? Do you use to return twenty-four, or forty-eight, and then strike out twelve a-piece, which I perceive they desire for the Defendants?

Sir Samuel Asfry. My Lord, the Course is both ways, and then it may be as your Lordship and the Court will please to order it.

L. C. J. Then take forty-eight, that is the fairest.

Mr. Att. Gen. We agree to it ; we desire nothing but a fair Jury.

Sir Rob. Sawyer. Nor we neither ; try it when you will.

L. C. J. Take a Recognizance of his Grace my Lord of *Canterbury* in 200*l.* and the rest of my Lords in 100*l.* a-piece.

Mr. Att. Gen. What your Lordship pleases for that, we submit to it.

Clerk. My Lord of *Canterbury*, your Grace acknowledges to owe unto our Sovereign Lord the King the Sum of 200*l.* upon Condition that your Grace shall appear in this Court on this Day Fortnight, and so from Day to Day, till you shall be discharged by the Court, and not to depart without Leave of the Court. Is your Grace contented?

Archbisch. of Canterbury. I do acknowledge it.

Clerk. My Lord Bishop of *St. Asaph*, you acknowledge to owe unto our Sovereign Lord the King the Sum of 100*l.* upon Condition that your Lordship shall appear in this Court on this Day Fortnight, and so from Day to Day, until you shall be discharged by the Court, and not to depart without Leave of the Court. Is your Lordship contented?

Bish. of St. Asaph. I do acknowledge it.

[*The like Recognizances were taken of all the rest of the Bishops, and then the Court arose.*]

FRIDAY, June 29th, 1688.

Clerk. **C**rier, make Proclamation thrice.

Crier. O yes! O yes! O yes! Our Sovereign Lord the King streightly charges and commands every one to keep Silence, upon Pain of Imprisonment.

Clerk of the Crown. Call the Defendants.

Crier. William Lord Archbishop of *Canterbury*.

Archbisch. Here.

Crier. William Lord Bishop of *St. Asaph*.

Bish. of St. Asaph. Here.

[*And so the rest of the Bishops were called, and answered severally.*]

Clerk. Gardez votres Challenges.

Swear Sir Roger Langley.

Crier. Take the Book Sir Roger. You shall well and truly try this Issue between our Sovereign Lord the King and William Lord Archbishop of *Canterbury*, and others, according to your Evidence. So help you God.

The same Oath was administered to all the Jury, whose Names follow, viz.

Sir Roger Langley, Bar.	William Avery, Esq;
Sir William Hill, Knt.	Thomas Austin, Esq;
Roger Jennings, Esq;	Nicholas Grice, Esq;
Thomas Harriot, Esq;	Michael Arnold, Esq;
Jeoffery Nightingale, Esq;	Thomas Done, Esq;
William Wilters, Esq;	Richard Shoreditch, Esq;

Clerk. You Gentlemen of the Jury who are sworn, hearken to the Record: Sir Thomas Powys, Knight, his Majesty's Attorney General, has exhibited an Information, which does set forth as followeth.

ff. **M**emorandum, That Sir Thomas Powys, Kt. Attorney General of our Lord the King, who for our said Lord the King in this Behalf prosecuted, came here in his own Person into the Court of our said Lord the King, before the King himself at *Westminster*, on Friday next after the Morrow of the *Holy Trinity* in this Term; and on the Behalf of our said Lord the King, giveth the Court here

to understand and be informed, That our said Lord the King, out of his signal Clemency, and gracious Intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, on the 4th Day of *April*, in the third Year of the Reign of our said Lord the King, at *Westminster* in the County of *Middlesex*, did publish his Royal Declaration, entitled, *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience*, bearing Date the same Day and Year, sealed with the Great Seal of *England*; in which Declaration is contained, *James R. prout in the first Declaration before recited.*

And the said Attorney General of our said Lord the King, on Behalf of our said Lord the King, further giveth the Court here to understand and be informed, That afterwards, to wit, on the 27th Day of *April*, in the fourth Year of the Reign of our said Lord the King, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, our said Lord the King, out of his like Clemency, and gracious Intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, did publish his other Royal Declaration, entitled, *His Majesty's Gracious Declaration*, bearing Date the same Day and Year last mentioned, sealed with his Great Seal of *England*, in which Declaration is contained, *James R. Our Conduct has been such, &c. prout in the second Declaration before recited.*

Which said Royal Declaration of our said Lord the King last mentioned, our said Lord the King afterwards, to wit, on the 30th Day of *April*, in the fourth Year of his Reign aforesaid, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, did cause to be printed and published throughout all *England*; and for the more solemn Declaring, Notification and Manifestation of his Royal Grace, Favour and Bounty towards all his Liege People, specified in the Declaration last mentioned, afterwards, to wit, on the 4th Day of *May*, in the fourth Year of his Reign, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, our said Lord the King in due manner did order as followeth.

At the Court at Whitehall, 4th of May, 1688.

By the King's most Excellent Majesty, and the Lords of his Majesty's most Honourable Privy-Council.

It is this Day ordered by his Majesty in Council, That his Majesty's Gracious Declaration, bearing Date the twenty-seventh of *April* last, be read at the usual Time of Divine Service, upon the twentieth and twenty-seventh of this Month, in all Churches and Chappels within the Cities of *London* and *Westminster*, and ten Miles thereabout; and upon the third and tenth of *June* next, in all other Churches and Chappels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their several respective Dioceses, to be read accordingly.

W. BRIDGMAN.

And further, the said Attorney General of our said Lord the King, on Behalf of our said Lord the King, giveth the Court here to understand and be informed, that after the making of the said Order, to wit, on the 18th Day of *May*, in the fourth Year of the Reign of our said Lord the King, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, William Archbishop of *Canterbury*, of *Lambeth* in the County of *Surry*; William Bishop of *St. Asaph*, of *St. Asaph* in the County of *Flint*; Francis Bishop of *Ely*, of the Parish of *St. Andrew Holbourn* in the

County of *Middlesex*; *John* Bishop of *Chichester*, of *Chichester* in the County of *Suffex*; *Thomas* Bishop of *Bath and Wells*, of the City of *Wells* in the County of *Somerſet*; *Thomas* Bishop of *Peterborough*, of the Pariſh of *St. Andrew Holbourn* in the County of *Middleſex*; and *Jonathan* Bishop of *Briſtol*, of the City of *Briſtol*, did conſult and conſpire among themſelves to diminish the Regal Authority and Royal Prerogative, Power and Government of our ſaid Lord the King in the Premifes, and to infringe and elude the ſaid Order; and in Proſecution and Execution of the Conſpiracy aforeſaid, They the ſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of *St. Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath and Wells*, *Thomas* Biſhop of *Peterborough*, and *Jonathan* Biſhop of *Briſtol*, on the ſaid eighteenth Day of *May*, in the fourth Year of the Reign of our ſaid Lord the King aforeſaid, with Force and Arms, &c. at *Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, falſly, unlawfully, maliciously, ſeditiouſly, and ſcandalouſly, did frame, compoſe and write, and cauſed to be framed, compoſed and written, a certain falſe, feigned, malicious, pernicious and ſeditious Libel in Writing, concerning our ſaid Lord the King, and his Royal Declaration and Order aforeſaid, (under pretence of a Petition) and the ſame falſe, feigned, malicious, pernicious and ſeditious Libel, by them the aforeſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of *St. Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath and Wells*, *Thomas* Biſhop of *Peterborough*, and *Jonathan* Biſhop of *Briſtol*, with their own Hands reſpectively being ſubſcribed, on the Day and Year, and in the Place laſt mentioned, in the Preſence of our ſaid Lord the King, with Force and Arms, &c. did publiſh and cauſe to be publiſhed; in which ſaid falſe, feigned, malicious, pernicious and ſeditious Libel is contained, *The humble Petition*, &c. prout before in the Petition, to theſe Words [*reaſonable Conſtruction*] in manifeſt Contempt of our ſaid Lord the King, and of the Laws of this Kingdom, to the evil Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity, &c. Whereupon the ſaid Attorney General of our ſaid Lord the King, on Behalf of our ſaid Lord the King, prays the Advice of the Court here in the Premifes, and due Proceſs of Law to be made out againſt the aforeſaid *William* Archbiſhop of *Canterbury*, *William* Biſhop of *St. Aſaph*, *Francis* Biſhop of *Ely*, *John* Biſhop of *Chicheſter*, *Thomas* Biſhop of *Bath and Wells*, *Thomas* Biſhop of *Peterborough*, and *Jonathan* Biſhop of *Briſtol*, in this Behalf, to answer our ſaid Lord the King in and concerning the Premifes, &c.

T. POWIS.
W. WILLIAMS.

To this Information the Defendants have pleaded Not guilty, and for their Trial have put themſelves upon their Country, and his Majesty's Attorney General likewiſe, which Country you are. Your Charge is to enquire whether the Defendants, or any of them, are guilty of the Matter contained in this Information that hath been read unto you, or not guilty. If you find them, or any of them guilty, you are to ſay ſo; and if you find them, or any of them, not guilty, you are to ſay ſo, and hear your Evidence. Crier, make Proclamation.

Crier. O yes! If any one will give Evidence on Behalf of our Sovereign Lord the King, againſt the Defendants, of the Matters whereof they are impeached, let them come forth, and they ſhall be heard.

Mr. Wright. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Information exhibited by his Majesty's Attorney General againſt the moſt Reverend my Lord Archbiſhop of *Canterbury*, and ſix other Honourable and Noble Biſhops in the Information mentioned: And the Information ſets forth, That the King, out of his Clemency and benign Intention towards his Subjects of this Kingdom, did put forth his Royal Declaration, bearing Date the fourth Day of *April*, in the third Year of his Reign, entituled, *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conſcience*; and that afterwards, the twenty-ſeventh of *April*, in the fourth Year of his Reign, he publiſhed another Declaration, both which have been read to you; and for the further Manifeſtation and Notification of his Grace in the ſaid Declaration, bearing Date the twenty-ſeventh of *April* laſt, his Majesty did order, that the ſaid Declaration ſhould be read on the twentieth and twenty-ſeventh of *May* in the Cities of *London* and *Weſtminſter*, and ten Miles about; and on the third and tenth of *June* throughout the whole Kingdom: And that the Right Reverend the Biſhops ſhould ſend the ſaid Declaration to be diſtributed throughout their reſpective Dioceſes, to be read accordingly. But that the ſaid Archbiſhop and Biſhops the eighteenth of *May*, in the ſaid fourth Year of his ſaid Majesty's Reign, having conſpired and conſulted among themſelves to diminish the King's Power and Prerogative, did falſly, unlawfully, maliciously, and ſcandalouſly, make, compoſe and write a falſe, ſcandalous, malicious and ſeditious Libel, under pretence of a Petition; which Libel they did publiſh in the Preſence of the ſaid King; the Contents of which Libel you have likewiſe heard read. To this they have pleaded not guilty: You, Gentlemen, are Judges of the Fact; if you prove this Fact, you are to find them guilty.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and it has been likewiſe opened to you at the Bar; but before we go to our Evidence, perhaps it may not be amiſs for us, that are of Council for the King, now in the Beginning of this Cauſe, to ſettle the Queſtion right before you, as well to tell you what my Lords the Biſhops are not proſecuted for, as what they are. Firſt, I am to tell you, and I believe you cannot your ſelves but obſerve, that my Lords are not proſecuted as Biſhops, nor much leſs are they proſecuted for any Point or Matter of Religion, but they are proſecuted as Subjects of this Kingdom, and only for a Temporal Crime, as thoſe that have injured and affronted the King to his very Face; for it is ſaid to be done in his own Preſence. In the next Place, they are not proſecuted for any Nonſeaſance, or not doing or omitting to do any thing, but as they are Actors, for cenſuring of his Majesty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government: And I cannot omit here to take Notice, that there is not any one Thing that the Law is more jealous of, or does more carefully provide for the Prevention and

and Punishment of, than all Accufations and Arraignments of the Government. No Man is allowed to accufe even the moft inferior Magiftrate of any Misbehaviour in his Office, unlefs it be in a legal Courfe, though the Fact is true. No Man may fay of a Juftice of Peace to his Face, that he is unjuft in his Office. No Man may tell a Judge, either by Word or Petition, you have given an unjuft, or an ill Judgment, and I will not obey it; it is againft the Rules and Law of the Kingdom, or the like. No Man may fay of the great Men of the Nation, much lefs of the great Officers of the Kingdom, that they do act unreafonably or unjuftly, or the like; leaft of all may any Man fay any fuch thing of the King; for thefe Matters tend to poffefs the People, that the Government is ill adminiftrated; and the Confequence of that is, to fet them upon defiring a Reformation; and what that tends to, and will end in, we have all had a fad and too dear bought Experience: The laft Age will abundantly fatisfy us, whither fuch a Thing does tend. Men are to take their proper Remedies for Redrefs of any Grievances they lie under, and the Law has provided fufficiently for that. Thefe things are fo very well known to all Men of the Law, and indeed to all the People of *England* of any Underftanding, that I need not, nor will not, ftand any longer upon it, but come to the Matter that is now before you, Gentlemen, to be tried. The Fact that we have laid we muft prove, rather to keep to the Formality of a Trial, than to pretend to inform you, or tell you what you do not know: It is publickly notorious to the whole World; but becaufe we muft go on in the regular Methods of Law, we fhall prove the Facts in the Order they are laid in the Information. Firft, we take Notice, that his Majefty, of his great Clemency and Goodnefs to his People, and out of his Defire that all his Subjects might live eafily under him (of which I think never Prince gave greater or more plain Evidence of his Intentions that Way) the fourth of *April*, 1687, he did iffue forth his Royal Declaration for Liberty of Confcience. This Matter, without all Queftion, was welcome to all his People that ftood in need of it; and thofe that did not, could not but fay, the Thing in the Nature of it was very juft and gracious; but prefently it muft be furmifed, that the King was not in Earneft, and would not, nor could not make good his Promise: But to take away all Surmifes, his Majefty was pleafed by his Declaration of the twenty-feventh of *April* laft, not only to repeat his former Declaration, but likewife to renew his former Promifes to his People, and to affure them that he ftill was, and yet is, of the fame Opinion that he had at firft declared himfelf to be of; nay, we further fhew you, that to the End that this thing might be known to all his People, even to the meaneft Men, who, it may be, were not willing or able to buy the Declaration, and that the King himfelf might be under higher Obligations, if it were poffible, than his own Word, he was defirous it fhould be repeated in the Churches, and read in that facred Place, that all his People might hear what he had promifed, and given his own facred Word for; and he himfelf might be under that folemn Tie and Obligation to keep his Word, by remembering that his Promifes had, by his own Command, been publifhed in the Time of Divine Service, in the Houfe of God; and there-

upon was the Order of Council made, that has been likewife read to you, which does direct, that it fhould be read in all the Churches and Chapels in the Kingdom; and you have heard, and we fhall prove, what a Return his Majefty has had for this Grace and Kindnefs of his: You'll find when we come to read that which they call a Petition, all their Thanks his Majefty had for his Favour and Goodnefs to his People, 'tis only hard Words, and a heavy Accufation, fuch as a private Perfon would be little able to bear. I will not aggravate the Matter, but only fay thus much, that his Majefty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was reprefented for all that, as a Prince of the greateft Cruelty, before his Acceffion to the Crown, by his Enemies, is now accufed by his Friends for this Effect of his Mercy. My Lord, and Gentlemen of the Jury, his Majefty reſented this ill Uſage fo far, that he has ordered, and thought fit to have a publick Vindication of his Honour in this Matter, by this Trial; and we fhall go on to our Proofs, and we do not doubt but you will do his Majefty (as you do all other Perfons) Right.

Mr. Soll. Gen. My Lord, we will go on to prove the Parts of this Information; and we will proceed according to the Method which Mr. Attorney has opened, and which is purfuant to the Order of the Facts laid in the Information. Give us the firft Declaration under the Great Seal; the Declaration of the 4th of *April*, 1687.

[*The Declaration was delivered into the Court.*]

Mr. Soll. Gen. Read the Date of it firft.

Clerk reads. *Given at Our Court at Whitehall, the 4th Day of April, 1687, and in the third Year of Our Reign.*

Mr. Soll. Gen. Read the Title of it, Sir.

Clerk. It is entituled, *His Majeſty's Gracious Declaration to all his loving Subjects for Liberty of Confcience.*

Sir Rob. Sawyer. Is it under Seal? Is the Great Seal to it?

Mr. Soll. Gen. Give it down to Sir Robert Sawyer, that he may fee it; for I would have every thing as clear as poffible.—*Sir Robert Sawyer,* will you have it read?

Sir Robert Sawyer. No, we would fave as much of the Time of the Court as may be.

Mr. Soll. Gen. Then pray put in the fecond Declaration of the 27th of *April* laft.

Clerk reads. *Given at Our Court at Whitehall, the 27th Day of April, 1688, in the fourth Year of Our Reign; and it is entituled, His Majeſty's Gracious Declaration.*

Sir Robert Sawyer. Is that under the Great Seal too?

Clerk. Yes it is.

Mr. Soll. Gen. Deliver that down likewife, that they may fee it.

Sir Robert Sawyer. We are fatisfied, you need not read it.

Mr. Soll. Gen. Then where is the Order of Council for the reading of it?

Mr. Att. Gen. Swear Sir John Nicholas.—There he is.

[*Sir John Nicholas fworn.*]

L. C. J. Come Mr. Attorney, what do you ask Sir John Nicholas?

Mr. Soll. Gen. Hand the Order to Sir John Nicholas.—Is that the Order of Council, Sir John?

Sir John Nicholas. The Book, Sir, is not in my Custody.— There is the Register that keeps it, he has it here to produce.

Mr. Soll. Gen. Swear Mr. Gantlett.

[*Mr. Gantlett sworn.*]

Mr. Soll. Gen. Is that the Council-Book?

Mr. Gantlett. Yes, this is the Council-Book.

Mr. Soll. Gen. Then turn to the Order of the fourth of May, the King's Order of Council for the reading the Declaration.

Mr. Gantlett. There it is, Sir.

[*The Book delivered into Court.*]

Mr. Soll. Gen. Read it, I pray.

Clerk reads. At the Court at Whitehall, the fourth of May, 1688.— and so reads the Order of Council.

Mr. Soll. Gen. My Lord, we have one Thing that is mentioned in the Information, that this Declaration was printed; if that be denied, we will call *Henry Hills*, his Majesty's Printer, because we would prove all our Information as it is laid.

L. C. J. You must do so, Mr. Solicitor; you must prove the whole Declaration.

Mr. Soll. Gen. Crier, call *Henry Hills*.

[*He was called, but did not presently appear.*]

Mr. Soll. Gen. Call Mr. *Bridgman*.— Though these Declarations prove themselves, we have them here printed.— But swear Mr. *Bridgman*.

[*Mr. Bridgman sworn.*]

Mr. Soll. Gen. Shew Mr. *Bridgman* the two Declarations.

L. C. J. What do you ask him?

Mr. Soll. Gen. We ask you, Sir, if the two Declarations were printed.

Mr. Bridgman. What Declarations do you mean, Mr. Solicitor?

Mr. Soll. Gen. You know what Declarations I mean well enough; but we'll ask you particularly. You know the Declaration that was made the 4th of April, in the third Year of the King, ——— was it printed?

Mr. Bridgman. Yes, it was printed by the King's Order.

Mr. Soll. Gen. Was that of the 27th of April, in the fourth Year of the King, printed?

Mr. Bridgman. Yes, they were both printed by the King's Order.

Mr. Att. Gen. Then the next Thing in Course is the Bishops Paper.

Sir Rob. Sawyer. Mr. *Bridgman*, pray let me ask you one Question; Did you ever compare the Print with that under Seal?

Mr. Bridgman. I did not compare them, Sir *Robert Sawyer*.

Mr. Soll. Gen. He does swear they were printed by the King's Order.

Sir Rob. Sawyer. Good Mr. Solicitor, give me Leave to ask him a Question. ——— Can you swear then that they are the same?

Mr. Bridgman. I was not asked that Question, Sir.

Mr. Soll. Gen. Come then Mr. *Bridgman*, I'll ask you.— Do you believe they are the same?

Sir Rob. Sawyer. Is that an Answer to my Question?

Mr. Soll. Gen. We must ask him Questions as well as you Sir *Robert*.— What say you, Do you believe it to be the same?

L. C. J. You hear Mr. Solicitor's Question, answer it Mr. *Bridgman*.

Mr. Bridgman. Yes, my Lord, I do believe it.

L. C. J. Well, that's enough.

Mr. Att. Gen. If there were Occasion, we have them here compared, and they are the same.

Sir Rob. Sawyer. With Submission, my Lord, in all these Cases, if they will prove any Fact that is laid in an Information, they must prove it by those that know it of their own Knowledge.— Do you know it to be the same?

Mr. Soll. Gen. That's very well, Sir.

Sir Robert Sawyer. Ay, so it is, Mr. Solicitor. It is a wonderful thing, my Lord, that we cannot be permitted to ask a Question.— Do you know it to be the same, Mr. *Bridgman*, I ask you again?

Mr. Bridgman. I have not compared them, I tell you, Sir *Robert Sawyer*.

Sir Robert Sawyer. Then that is no Proof.

L. C. J. Would you have a Man swear above his Belief? He tells you he believes it is the same.

Sir Robert Sawyer. Is that Proof of an Information?

L. C. J. Well, you'll have your Time to make your Objections by and by.

Mr. Att. Gen. Then swear Sir *John Nicholas*.

Sir John Nicholas. I am sworn already.

Mr. Att. Gen. I see you have a Paper in your Hand, Sir *John Nicholas*; Pray who had you that Paper from?

Sir John Nicholas. I will give you an Account of it as well as I can.

Mr. Pollexfen. Before they go to another thing, my Lord, we think they have failed in their Proof of their Information, about the Printing this Declaration.

Mr. Att. Gen. Where is Mr. *Hills*?

Mr. Jusß. Allybone. They have laid, that it was printed by the King's Order; and it is such a Matter, Mr. Solicitor, as you may clear, if you will, sure.

Mr. Soll. Gen. There is Mr. *Hills*; now I see him.

L. C. J. I was going to give Order, that you should send to the Printing-house for him.

Mr. Jusß. Allybone. They may put this Matter out of Doubt too, if they will, on the other Side; for I see they have a Copy in Print, and there's the Original; they may compare them if they please.

Mr. Soll. Gen. I am very glad to hear such a strong Objection.

Sir Rob. Sawyer. We would clear the Way for you, Mr. Solicitor.

Mr. Soll. Gen. No, you put Straws in our Way; we shall be able enough to clear it without your Help. Swear Mr. *Hills*, and young Mr. *Graham* here.

[*Hills and Graham sworn.*]

Mr. Soll. Gen. Mr. *Graham*, did you compare any of these printed Declarations with the Original?

Graham. Yes, I did compare some of them, and did make Amendments as I went along.

Mr. Soll. Gen. Shew one that you have compar'd with the Original.

Mr. Att. Gen. *Hills* is here himself, we'll ask him. Are you sworn, Sir?

Crier. He is sworn.

Mr. Att. Gen. Pray were the King's Declarations for Liberty of Conscience printed, both of them?

Hills. Ay, an't please you, Sir.

Mr. Att. Gen. You printed them, I think.

Hills. Yes, I did print them.

Sir Rob. Sawyer. Mr. *Hills*, you say they were printed: Upon your Oath, after they were printed, did you examine them with the Original under Seal?

Hills. They were examined before they were printed.

Sir Rob. Sawyer. Did you examine them?

Hills. I did not, here's one that did.

Mr. Soll. Gen. Who is that?

Hills. It is Mr. *Williams* here.

Mr. Soll. Gen. Swear him.

[*Williams* sworn.]

Mr. Soll. Gen. Do you hear, *Williams*? Do you know that the King's Declarations for Liberty of Conscience, two of them, one of the 4th of *April*, and the other of the 27th of *April*, were printed?

Williams. Yes, my Lord.

Mr. Soll. Gen. Did you examine them after they were printed, by the Copy they were printed from?

Williams. Yes, I did.

Mr. Soll. Gen. Where had you the Copy? who had you it from?

Williams. I had it from Mr. *Hills*.

Sir Rob. Sawyer. Mr. *Williams*, did you examine them with the Original under the Great Seal?

Williams. The first Declaration I did.

Sir Rob. Sawyer. The second Declaration is the main.

Williams. The second was compos'd by the first.

Sir Rob. Sawyer. Why, is there no more in the second Declaration than there was in the first?

Williams. Yes, there is, Sir.

Sir Rob. Sawyer. Did you examine that with the Original under the Great Seal?

Williams. No, I did not.

Mr. Soll. Gen. Can any one tell who did examine it under the Great Seal?

Mr. Finch. Pray what did you examine it by, Mr. *Williams*?

Williams. By a Copy that I receiv'd from Mr. *Hills*.

Mr. Att. Gen. Then we will go on; and we desire Sir *John Nicholas* to give an Account where he had that Paper that he has in his Hand.

Mr. Finch. My Lord, it does not appear that the Copy that was printed is the true Copy of the Declaration.

Mr. Att. Gen. He says he had it from Mr. *Hills*.

Mr. Finch. Pray, Mr. *Hills*, what did you examine that Copy by which you gave to Mr. *Williams*?

Hills. I had the Copy from Mr. *Bridgman*.

Mr. Finch. Did you examine it with the Original under the Great Seal?

Hills. I did not examine it, I had it from Mr. *Bridgman*.

Mr. Finch. What, was it under Seal?

Mr. Bridgman. It was the Original signed by the King.

Mr. Finch. But I ask you, was it under Seal?

Mr. Bridgman. Not under the Great Seal it was not, it was the very Declaration the King signed.

Sir Rob. Sawyer. But it ought to be compared with the Original, or it is no good Proof that it is the same.

Mr. Soll. Gen. Sir *Robert Sawyer*, you understand Collation better sure, you should be ashamed of such a weak Objection as this.

Williams. We never bring our Proof to the Great Seal.

Sir Rob. Sawyer. But if you will have it Proof at Law, you must have it compared with the Original.

Mr. Soll. Gen. Do you think there is any great Stress to be laid upon that? We only say it was printed.

Sir Rob. Sawyer. But you have made it part of your Information, and therefore you must prove it.

L. C. J. I think there's Proof enough of that; there needs no such Nicety.

Mr. Pollexfen. Well, my Lord, we must submit, let them go on, we won't stand upon this.

Mr. Att. Gen. Then pray let me go on. Where had you that Paper, Sir *John Nicholas*?

Sir John Nicholas. I had this Paper from the King's Hand.

L. C. J. Put it in.

Mr. Soll. Gen. Who had you it from, do you say?

Sir John Nicholas. From the King.

Mr. Soll. Gen. About what Time had you it from the King, Sir?

Sir John Nicholas. I had it twice from the King.

Mr. Soll. Gen. When was the first Time, Sir?

Sir John Nicholas. The first Time was in Council the 8th of this Month.

Mr. Soll. Gen. What became of it afterwards?

Sir John Nicholas. The King had it from me the 12th, and the 13th I had it from the King again.

Mr. Soll. Gen. Pray deliver it this way into the Court: We will now go on, and prove the Bishops Hands to it. This is the Paper upon which we bring this Information: Gentlemen, it is all the Hand-writing of my Lord Archbishop, and signed by him and the rest of the Bishops.

Mr. Att. Gen. I suppose my Lords the Bishops will not put us to prove it, they will own their Hands.

L. C. J. Yes, Mr. Attorney, their Council will put you to prove it; I perceive your best way is to ask nothing of them.

Mr. Att. Gen. My Lord, we will desire nothing of them, we will go on to our Proofs. Call Sir *Thomas Exton*, Sir *Richard Raynes*, Mr. *Brooks*, Mr. *Recorder*, and Mr. *William Middleton*.

[*Sir Thomas Exton* appeared, and was sworn.]

L. C. J. What do you ask Sir *Thomas Exton*?

Mr. Att. Gen. Pray convey that Paper to Sir *Thomas Exton*.

Mr. Soll. Gen. Shew that Paper to Sir *Thomas Exton*—Sir *Thomas*, I would ask you one Question: Do you know the Hand-writing of my Lord Archbishop of *Canterbury*?

Sir Tho. Exton. I'll give your Lordship what Account I can.

Mr. Soll. Gen. Pray, Sir, answer my Question; Do you know his Hand-writing?

Sir Tho. Exton. I never saw him write five Times in my Life.

Mr. Soll. Gen. But I ask you, upon your Oath, do you believe that to be his Hand-writing?

Sir Tho. Exton. I do believe this may be of his Hand-writing.

Mr. Soll. Gen. Do you believe all the Body of it to be of his Hand-writing, or only Part of it?

Sir Tho. Exton. I must believe it to be so, for I have seen some of his Hand-writing, and this is very like it.

Mr. Soll. Gen. What say you to the Name? Do you believe it to be his Hand-writing?

Sir Tho. Exton. Yes, I do.

Mr. Soll. Gen. Do you know any of the rest of the Names that are upon that Paper?

Sir Tho. Exton. No, I do not.

L. C. J. Do you for the Defendants ask *Sir Thomas Exton* any Question?

Sir Robert Sawyer. No, my Lord.

Mr. Att. Gen. Then call *Sir Richard Raynes*.

Sir Tho. Exton. My Lord, *Sir Richard Raynes* has been sick this Month, and has not been at the Commons.

Mr. Soll. Gen. We have no need of him. Call *Mr. Brooks*.

[*Mr. Brooks* sworn.]

Mr. Att. Gen. Pray shew *Mr. Brooks* that Paper.

Mr. Soll. Gen. *Mr. Brooks*, I ask you this Question, Do you know my Lord Archbishop's Hand-writing?

Mr. Brooks. Yes, my Lord.

Mr. Att. Gen. Pray look upon that Paper; do you take that to be my Lord Archbishop's Hand?

Mr. Brooks. Yes, my Lord, I do believe it to be my Lord Archbishop's Hand.

Mr. Att. Gen. What say you to the whole Body of the Paper?

Mr. Brooks. I do believe it to be his Hand.

Mr. Att. Gen. What do you say to his Name there?

Mr. Brooks. I do believe this Name is his Hand-writing.

Mr. Soll. Gen. Call *Mr. William Middleton*.

Mr. Att. Gen. Pray *Mr. Brooks* don't go away, but look upon the Names of the Bishop of *St. Asaph*, and my Lord of *Ely*.

Mr. Soll. Gen. Do you know my Lord Bishop of *St. Asaph's* Hand-writing?

Mr. Brooks. I have seen my Lord Archbishop of *Canterbury*, and the Bishop of *St. Asaph's* Hand-writing, and I do believe this is his Hand.

Mr. Soll. Gen. Look you upon the Name of my Lord of *Ely*; do you know his Hand-writing?

Mr. Brooks. My Lord, I am not so well acquainted with my Lord of *Ely's* Writing.

Mr. Soll. Gen. But have you seen his Writing?

Mr. Brooks. Yes, I have.

Mr. Soll. Gen. Is that his Writing do you think?

Mr. Brooks. It is like it.

Mr. Soll. Gen. Do you believe it to be his Hand?

Mr. Brooks. Truly I do believe it.

Sir George Treby. Did you ever see him write?

Mr. Brooks. No, Sir.

Mr. Soll. Gen. But he has seen his Writing.

Sir George Treby. How do you know that it was his Hand-writing that you saw?

Mr. Brooks. Because he own'd it.

L. C. J. How do you know it, do you say?

Mr. Brooks. I know it, I say, because I have seen a Letter that he writ to another Person, which he afterwards own'd.

L. C. J. What did he own, *Mr. Brooks*?

Mr. Brooks. That he wrote a Letter to another Person, which I saw.

Sir George Treby. To whom, Sir?

Sir Rob. Sawyer. Have you the Letter here Sir?

Mr. Brooks. No, Sir, the Letter was writ to my Lord Bishop of *Oxford*.

Sir George Treby. Can you tell what was in that Letter?

Mr. Att. Gen. What is that to this Question? You ask him, how he knows his Hand-writing, and, says he, I did not see him write, but I have seen a Letter of his to the Lord Bishop of *Oxford*.

L. C. J. And he does say, my Lord of *Ely* own'd it to be his Hand that is there.

Mr. Soll. Gen. No, my Lord, that's a Mistake, he own'd a Letter that he had writ to the Bishop of *Oxford* to be his Hand-writing, and by Comparison of this with that, says he, I take this to be his Hand-writing.

Mr. Brooks. That is my Meaning, my Lord.

Mr. Soll. Gen. Pray speak out, and tell us what are the Reasons that make you say you believe this to be the Bishop of *Ely's* Writing.

Mr. Brooks. Because it resembles a Letter that I have by me of his Writing to the Bishop of *Oxford*.

Mr. Soll. Gen. And you say he own'd that Letter to be his?

Mr. Brooks. My Lord Bishop of *Oxford* did answer it, and I waited upon the Bishop of *Ely* with the Answer, and he did own it.

Sir George Treby. How did he own it, Sir?

Mr. Brooks. I had some Communication with my Lord of *Ely* about the Substance of that Letter, and therefore I apprehended he own'd it.

Mr. Just. Powell. That's a strange Inference, *Mr. Solicitor*, to prove a Man's Hand.

Mr. Att. Gen. We have more Evidence; but let this go as far as it can.

Mr. S. Pemberton. Certainly, my Lord, you will never suffer such a Witness as this!

L. C. J. Brother *Pemberton*, I suppose they can prove it otherwise, or else this is not Evidence.

Mr. Just. Powell. So they had need, for it is a strange Inference of *Mr. Solicitor*, that this is a Proof of my Lord of *Ely's* Hand-writing.

Mr. Just. Holloway. The Bishop of *Oxon* was dead before any of this Matter came in Agitation.

Mr. Soll. Gen. My Lord, we will bring other Proofs.— Call *Mr. Chetwood* and *Mr. Smith*.

[*Mr. Chetwood* and *Mr. Smith* sworn.]

Mr. Soll. Gen. *Mr. Chetwood*, we would know of you if you know my Lord Bishop of *Ely's* Hand-writing?

Mr. Chetwood. I never saw him write.

Mr. Soll. Gen. That's not an Answer to my Question: Do you know his Hand-writing?

Mr. Chetwood. I do not certainly know it.

Mr. Soll. Gen. Have you seen any of it?

Mr. Chetwood. I have seen my Lord of *Ely's* Writing, that has been said to be his.

L. C. J. But surely you had better take a Witness that has seen him write.

Mr. Just. Powell. I think 'tis hardly possible for a Man to prove his Hand, that has not seen him write.

L. C. J. I think 'tis better Proof indeed, to bring some that has seen him write.

Mr. Chetwood. My Lord, 'tis a long Time since I saw my Lord of *Ely's* Writing.

L. C. J. Pray bring some other Proof, if you have it.

Bish. of Peterborough. My Lord, we are here as Criminals before your Lordship, and we are prosecuted with great Zeal: I beg your Lordship that you will not be of Council against us, to direct them what Evidence they shall give.

L. C. J.

L. C. J. My Lord of *Peterborough*, I hope I have not behaved myself any otherwise hitherto than as becomes me: I was saying this (and I think I said it for your Lordship's Advantage) that this was not sufficient Proof; and I think, if your Lordship observed what I said, it was for you, and not against you.

Bish. of Peterborough. It was to direct them against us, how they should give Evidence.

Mr. S. Pemberton. Pray, my Lord of *Peterborough*, sit down, you'll have no Wrong done you.

Sir Rob. Sawyer. We that are of Council will take Care of that; and pray, my Lord, will you please to pass it by?

L. C. J. We are not used to be so serv'd, and I will not be used so.

Mr. Soll. Gen. If your Lordship pleases to pass that by; for what your Lordship said was in Favour of my Lords the Bishops, but I see they do not take it so.

Mr. Att. Gen. Pray, Mr. *Chetwood*, do you look upon the Name of my Lord of *Ely*; do you believe that to be his Hand-writing?

Mr. Chetwood. I do believe it is.

Sir Rob. Sawyer. That's very well, when he says he never saw him write.

Mr. Just. Powell. What is the Reason of that Belief of his I would fain know?

Mr. Chetwood. I have formerly seen his Hand, I think it was his; but I never saw my Lord of *Ely* write his Hand.

Sir Rob. Sawyer. Then the Question is, whether this be Evidence?

Mr. Finch. How do you know that that which you saw formerly was my Lord of *Ely's* Hand?

Mr. Chetwood. I have no such Certainty as positively to swear that that was his Hand.

Mr. Soll. Gen. We will go on to other Proofs, and if we want better Evidence at the End, we will argue with them.

Mr. Chetwood. I am not certain that what I saw was my Lord of *Ely's* Hand-writing, because I never saw him write.

Mr. Soll. Gen. You do very well to shew your good Affection.

Mr. Att. Gen. Mr. *Smith*, I would ask you this Question, Do you know my Lord of *Ely's* Hand-writing?

Mr. Smith. I have seen it often.

Mr. Att. Gen. Look upon the Name of my Lord of *Ely* in that Paper; do you believe it to be my Lord's Hand-writing, or no?

Mr. Smith. I did not see him write it, Sir; I cannot tell whether it is or no.

L. C. J. Did you ever see his Name?

Mr. Smith. Yes, but it was a great while ago, and here are but seven Letters, and I cannot judge by that: I was better acquainted with his Hand-writing heretofore.

Mr. Soll. Gen. Pray, Sir, answer me; Do you believe it to be his Writing, or do you not?

Mr. Smith. I believe it may, for I did not see him write it.

Mr. Soll. Gen. But my Question is, Do you believe it, or do you not?

Mr. Smith. I say, I was better acquainted with it heretofore than I am now.

Mr. Soll. Gen. But pray answer my Question: Do you believe that to be my Lord of *Ely's* Hand-writing, or do you not?

Mr. Smith. I believe it may, Sir.

Sir Rob. Sawyer. Why do you believe it?

Mr. Smith. I have no other Reason to believe it, but because I have seen something like it.

Mr. Just. Powell. How long ago is it since you saw him write?

Mr. Smith. I have not seen him write, so as to take Notice of it, for some Years: I could better judge of it when he writ his Name *Turner*, than now it is *Ely*, because there was more Letters to judge by.

[*Mr. Middleton* sworn.]

L. C. J. Here's Mr. *Middleton*; what do you call him for?

Mr. Soll. Gen. To prove many of their Hands.

Mr. Att. Gen. Pray shew him that Paper.

Mr. Soll. Gen. First, Mr. *Middleton*, do you know my Lord Archbishop's Hand-writing?

Mr. Middleton. I have seen his Grace's Hand-writing.

Mr. Soll. Gen. Do you believe it to be his?

Mr. Middleton. It is very like it.

Mr. Soll. Gen. But do you believe it, or do you not?

Mr. Middleton. I do believe it.

Mr. Soll. Gen. Do you know my Lord Bishop of *St. Asaph's* Hand-writing?

Mr. Middleton. I never saw it as I know of.

Mr. Soll. Gen. What do you say to my Lord of *Ely*? His Name is next.

Mr. Middleton. It is like his Lordship's Hand.

Mr. Soll. Gen. Do you believe it, or do you not?

Mr. Middleton. It is like it, that's all I can say.

Mr. Soll. Gen. Cannot you tell whether you believe it, or not believe it?

Mr. Middleton. I do believe it is his Hand.

Mr. Soll. Gen. Did you ever see him write? For I would clear this Matter beyond Exception.

Mr. Middleton. I have seen his Lordship write, but I never stood by him so near as to see him make his Letters.

Mr. Soll. Gen. Is that his Hand-writing?

Mr. Middleton. It is like it, I believe it is his.

Mr. Soll. Gen. You did not guide his Hand I believe—Do you know my Lord of *Chichester's* Hand-writing?

Mr. Middleton. Sir, I am acquainted with none of their Hands but with my Lord of *Canterbury's*, and my Lord of *Ely's*.

Mr. Soll. Gen. Do you know my Lord of *Peterborough's* Hand-writing?

Mr. Middleton. I had my Lord of *Peterborough's* Writing two Years ago for some Money, but I cannot say this is his.

Mr. Soll. Gen. Do you believe it to be his?

Mr. Middleton. I never took Notice of it so much as to say, I believe it to be like it; I never saw it but once.

Mr. Soll. Gen. Do you know any other of the Names there? What say you to the Bishop of *Bristol's* Name?

Mr. Middleton. I saw once my Lord of *Bristol's* Hand-writing.

Mr. Soll. Gen. What say you to that Writing there?

Mr. Middleton. It is like it.

Mr. Soll. Gen. Do you believe it to be his or no?

Mr. Middleton. Truly, that I cannot say, for I never saw it but once.

L. C. J. You never saw him write, did you?

Mr. Middleton. No, my Lord, I never did.

Mr. Soll. Gen. Then we will call Sir *Thomas Pinfold*, and Mr. *Clavel*—Sir *Thomas Pinfold* is there, swear him.

[*Sir Thomas Pinfold* sworn.]

Mr.

Mr. Soll. Gen. Sir *Thomas Pinfold*, do you know my Lord Bishop of *Peterborough's* Hand-writing?

Sir Tho. Pinfold. Truly, not very well; I never saw but one Letter from him in my Life: Shew me his Hand, and I will tell you— [*Which was done.*]

Mr. Soll. Gen. Well, Sir, what say you to it?

Sir Tho. Pinfold. Then upon my Oath, I say, I cannot well tell upon my own Knowledge that it is his Hand.

Mr. Soll. Gen. I ask you, do you believe it to be his Hand?

Sir Tho. Pinfold. Sir, upon the Oath that I have taken I will answer you, that upon this Account, that I have heard there was a Paper delivered by my Lords the Bishops to the King, and this Paper that you offer me, I suppose to be the same; upon that Score I do believe it, but upon any other Score I cannot tell what to say.

Mr. Soll. Gen. I ask you upon your Oath, Sir, do you believe it is his Hand-writing or no?

Sir Tho. Pinfold. Sir, I have answered you already, that upon my own Knowledge I cannot say it is his Hand-writing; but because I have heard of such a Paper, I do believe it may be his.

L. C. J. Did you ever see my Lord Bishop write?

Sir Tho. Pinfold. I have been in his Chamber several Times when he has been writing, but I had more Manners than to look upon what he writ.

L. C. J. Did you never see him write his Name?

Sir Tho. Pinfold. I do not know that I ever saw him write his Name, but I have seen him writing, I say, and so my Lord Bishop may have seen me writing, but I believe he does not know my Hand.

Mr. Soll. Gen. You have seen him write you say.

Sir Tho. Pinfold. I tell you, Mr. Solicitor, I have been in his Chamber when he has been writing, but I had more Manners than to look over him.

Mr. Just. Powell. Then you did never see any of that Writing?

Sir Tho. Pinfold. I cannot say I did, my Lord.

Mr. Att. Gen. Pray did you never see any of his Writing but that Letter you speak of?

Sir Tho. Pinfold. No, not that I remember.

Mr. Just. Powell. Mr. Solicitor, you must call other Witnesses, for this does not prove any thing.

Mr. Att. Gen. We will go on—— Swear *Mr. Clavel.*

[*Mr. Clavel* sworn.]

Mr. Soll. Gen. Do you know my Lord Bishop of *Peterborough's* Hand-writing or no?

Mr. Clavel. I have seen it many Times.

Mr. Att. Gen. Do you know it when you see it?

Mr. Clavel. I believe I do, Sir.

Mr. Soll. Gen. Pray look upon that Paper, and upon your Oath tell us, do you believe that Name to be his Writing or no?

Mr. Clavel. I do believe it is, my Lord.

Mr. Att. Gen. Pray look upon the rest of the Hands there, do you know any of the other Names?

Mr. Clavel. No, I do not.

Mr. Att. Gen. Have you ever seen any of their Writing?

Mr. Clavel. It is probable I may have seen some, but do not now remember it.

Mr. Soll. Gen. I think you are a Bookfeller, *Mr. Clavel*?

Mr. Clavel. Yes, I am so, Sir.

Mr. Soll. Gen. I suppose you have had some Dealings with them in the Way of your Trade. Did you never see any of their Writing?

Mr. Clavel. I have seen the Names of some of them, but it is so long since, that I cannot remember.

L. C. J. Did you ever see my Lord of *Peterborough* write?

Mr. Clavel. I cannot tell whether I ever saw him write his Name or no; but I have had several Letters from my Lord of *Peterborough*.

Mr. Soll. Gen. Is that his Hand-writing?

Mr. Clavel. I cannot say it is, I believe it is.

Mr. Soll. Gen. You have had Letters from him you say?

Mr. Clavel. Yes, and it seems to be like his Hand.

Mr. Pollexfen. But you never saw him write his Hand you say?

Mr. Clavel. I cannot say I ever did.

Mr. Soll. Gen. These Letters that you have received from my Lord of *Peterborough*, did he own them? Do you think they were counterfeit, or of his own Hand-writing?

Mr. Clavel. I suppose he has owned them, Sir.

Mr. Just. Powell. But you must answer directly, Sir, Did he own them?

Mr. Soll. Gen. What did those Letters concern? Were they about Books, or what?

Mr. Clavel. They were sometimes about one Business, sometimes about another.

Mr. Soll. Gen. Was the subject Matter of any of these Letters about Money, and was it paid you? Did you receive, or did you give any Account of it?

Mr. Clavel. They were about several Businesses.

L. C. J. Look you, *Mr. Clavel*, you must give us as particular Account as you can.

Mr. Soll. Gen. Pray, Sir, upon those Letters were the Things done that those Letters required?

Mr. Clavel. Yes, they were.

Mr. Soll. Gen. Did you do your Part?

Mr. Clavel. Yes, I did.

Mr. Soll. Gen. Now I would ask you, Do you believe that Name of my Lord Bishop of *Peterborough* to be the Hand-writing of my Lord Bishop?

Mr. Clavel. I believe it is.

Mr. Just. Powell. Do you know that those Letters that you say you received from my Lord, were of my Lord's own Hand-writing, Do you swear that?

Mr. Clavel. My Lord, I cannot swear that.

Mr. Finch. Do you know whether the Letters that you received, as you say, were written by my Lord himself, or by his Secretary?

Mr. Clavel. I have received Letters from him, and his Secretary too.

Sir George Treby. But were you present with him when he writ any Letters with his own Hand?

Mr. Soll. Gen. You do not mean a Letter to yourself sure, *Sir George*?

Sir George Treby. No, Sir, I say any Letters.

Mr. Clavel. I have been present with my Lord often, but I cannot say I have seen my Lord write.

L. C. J. He has here told you, he has had several Letters of my Lord's own Hand, and from his Secretary too.

Mr. Just. Powell. He has said it, but you see he says he never saw him write.

Mr. Soll. Gen. We have given Evidence against my Lord Archbishop, Lord Bishop of Ely, St. Asaph, Peterborough, and Bristol.

Mr. Just. Powell. Certainly, Mr. Solicitor, you mistake—— But go on——

Mr. Soll. Gen. We have given Evidence I say against them, Sir, but whether it be sufficient Evidence, we shall argue by and by—— Call Mr. Hooper and Mr. Chetwood again.

[Mr. Chetwood appeared.]

Mr. Soll. Gen. Do you know the Hand-writing of my Lord Bishop of Bath and Wells?

Mr. Chetwood. I have seen it twice or thrice, but it is a considerable Time since I did see it.

Mr. Soll. Gen. Do you believe that is his Hand-writing?

Mr. Chetwood. I never saw him write his Name in my Life.

Mr. Soll. Gen. Pray look upon the Name, and tell us what you believe of it.

Mr. Chetwood. I believe it may, but I do not certainly know it to be his Hand; I rather believe it is my Lord Bishop of Bath and Wells his Hand, than I believe that other to be my Lord of Peterborough's.

Sir George Treby. Do you believe that to be my Lord of Peterborough's Hand or no?

Mr. Chetwood. I say, I rather believe that this is the Bishop of Bath and Wells his Writing, than that which is above it or below it, to be their Writing; but truly I do not distinctly know my Lord Bishop of Bath and Wells his Hand.

Mr. Soll. Gen. Call Mr. Hooper.

L. C. J. You are very lame in this Matter.

Mr. Soll. Gen. The Witnesses are unwilling, and we must find out the Truth as well as we can.

[Mr. Hooper did not appear.]

Mr. Soll. Gen. Call Mr. James and Mr. Powell.

[Mr. James appeared and was sworn.]

Mr. Soll. Gen. Do you know my Lord Bishop of Bristol's Writing, Mr. James?

Mr. James. Yes, I believe I do, but I am not so certain, because my Lord writes several Times several Hands.

Mr. Soll. Gen. Shew him the Paper: Is that my Lord of Bristol's Hand?

Mr. James. I cannot say it is or no.

Mr. Soll. Gen. What do you believe?

Mr. James. It looks like his Hand, and that's all I can say.

Mr. Soll. Gen. But pray hearken, and answer to what I ask you; you are prepared for one Question it may be, and I shall ask you another: Upon your Oath, do you believe it to be the Hand-writing of my Lord of Bristol?

Mr. James. Upon my Oath, I can only say it looks like it, that's all.

L. C. J. Did you ever see him write?

Mr. James. Yes, my Lord, I have seen his Hand-writing several Times, and it is like his Hand-writing, that is all I can say.

Mr. Soll. Gen. Sir, remember you are upon your Oath, and answer my Question.

Mr. James. Upon my Oath, I know no more than that, Sir William Williams.

Mr. Soll. Gen. I ask your Sir, whether you believe it to be his Hand or not?

Mr. James. My Lord, it looks like his Hand, and it may be his Hand.

Mr. Att. Gen. But you do think and believe one way or other: What do you believe?

Mr. James. It may be his Hand for what I know, and it may not.

Mr. Soll. Gen. It may be your Hand.

Mr. James. No, Sir, it cannot be mine, I am sure.

Mr. Soll. Gen. What do you believe?

Mr. James. I believe it may be his Hand, or it may not be his Hand, that is all I can say.

L. C. J. Come, Sir, you must answer fairly, Do you believe it to be his Hand, or do you not?

Mr. James. Yes, I do believe it.

Mr. Att. Gen. You are very hard to believe methinks.

Mr. James. No, I am not.

Mr. Soll. Gen. You do very well now, Mr. James; when you do well, we'll commend you.

Mr. Att. Gen. Call Mr. Nathaniel Powell.

[Mr. Powell was sworn.]

Mr. Soll. Gen. Pray, Sir, let's know what's your Name?

Mr. Powell. My Name is Nathaniel Powell.

Mr. Soll. Gen. Pray do you know the Hand-writing of my Lord Bishop of Chichester?

Mr. Powell. I have not seen the Paper, Sir.

Mr. Soll. Gen. Do you know his Hand-writing?

Mr. Powell. Yes, I believe I do.

Mr. Soll. Gen. Look upon that Name of his.

Mr. Powell. I did not see my Lord write that.

Mr. Soll. Gen. Who says you did? No body asks that of you; how you answer! Pray Sir, remember your Oath, and answer seriously, Do you believe it to be his Writing or no?

Mr. Powell. I believe it is like my Lord's Hand-writing, but I never did see him write it.

Mr. Soll. Gen. No body says you did.

Mr. Powell. Therefore I cannot swear positively it is his Hand.

Mr. Soll. Gen. We do not ask that neither.

Mr. Powell. I cannot tell whether it be his Hand or no.

L. C. J. Sir, you must answer the Question directly and seriously: Do you believe it, or do you not believe it?

Mr. Powell. I cannot tell what to believe in the Case.

Mr. Soll. Gen. Then I ask you another Question, upon your Oath, Do you believe it is not his Hand?

Mr. Powell. I cannot say that neither.

Mr. Soll. Gen. Once again, I ask you, upon your Oath, Do you believe it to be his Hand? I ask you plainly, and let Mankind judge of you.

Mr. Powell. I tell you, Sir, I cannot tell what to believe.

Mr. Soll. Gen. My Lord, if these Things be endured, there will be an End of all Testimony, if Witnesses do not answer fairly to the Questions that are asked them.

Mr. Just. Powell. Truly to me, for a Man to swear his Belief in such a Matter, is an extraordinary Thing.

Mr. Soll. Gen. He is obliged to answer Questions when they are fairly put to him.

Mr. Pollexfen. I think that is a hard Question, not to be answered.

Mr. Soll. Gen. Make your Exceptions to the Evidence if you please.

L. C. J. First he says, he knows his Hand; then he says, he has seen him write; and then he says, he did not see him write this; but he shuffles, he won't answer whether he believes it or not.

Mr. Pollexfen. The Question is, Whether Belief in any Case be Evidence?

Mr. Soll. Gen. If they have a Mind to a Bill of Exceptions upon that Point, let them Seal their Bill, and we'll argue it with them when they will; in the mean Time we'll go on, and that which we now pray, my Lord, is, that this Paper may be read.

Mr. Att. Gen. We have given sufficient Evidence sure to have it read, therefore we desire it may be read.

Mr. Serj. Levinz. My Lord, before this Paper be read, we hope you will let us be heard to it: We think that what they desire (to have this Paper read) ought not to be: For what is all the Proof that they have given of this Paper? They have a Proof by Comparison of Hands, which in a criminal Case ought not to be received: And besides, my Lord, what is that Comparison of Hands that they have offered? Some Persons come here and say, they cannot tell whether it be their Hands, they believe it may or may not, for ought they know; how shall we convict any Man upon such a Testimony as this? Can we have our Remedy against him for Perjury, for saying, he believes it to be our Hand? Therefore here is not any Evidence to charge us. For first, It is only a Comparison of Hands; and secondly, That Comparison is proved in such an uncertain Manner: Some of them tell you, they do not know what to believe; another tells you, I believe 'tis rather such a Lord's Hand, than the others are such a Lord's Hand; I believe 'tis rather his Hand than that above it, or that below it. What Sort of Proof is all this? Therefore we pray it may not be read, till they prove it better.

Mr. S. Pemberton. Pray, my Lord, spare me a Word or two in this Matter for Evidence sake; there is a great Deal of Reason we should take Exceptions to the Evidence that has been given: For truly, I think I never heard such a Sort of Evidence given before. It is a Case of as great Concernment as ever was in *Westminster-hall*; and for them to come to prove Hands only by those that saw Letters, but never saw the Persons write, this, I hope, will not amount to so much as a Comparison of Hands. Your Lordship knows, that in every petty Cause, where it depends upon the Comparison of Hands, they use to bring some of the Parties Hand-writing which may be sworn to, to be the Parties own Hand, and then it is to be compared in Court with what is endeavoured to be proved, and upon comparing them together in Court, the Jury may look upon it, and see if it be right; and never was there any such a Thing as this admitted in any poor petty Cause, that is but of the Value of forty Shillings. And therefore as to this Evidence, First, We say Comparison of Hands ought not to be given at all in the Cases of Criminals; and I believe it was never heard of that it should. In the next Place, if it be admitted to be Evidence, yet it is not such an Evidence, as that by Comparison of Hands the Jury can take Notice of it; for in such Manner of Proofs by Comparison of Hands, the Usage is, that the Witness is first asked, concerning the Writing he produces, Did you see this writ by the Defendant, whose

Hand they would prove? If he answers yes, I did, then should the Jury upon Comparison of what the Witness swears to, with the Paper that is to be proved, judge whether those Hands be so like as to induce them to believe that the same Person writ both; and not that the Witness should say, I had a Letter from such a Person, and that is like the Hand of that Letter, therefore I believe it to be his Hand: My Lord, I hope this shall never be admitted for Evidence in this Court.

L. C. J. I do take it, that the Witness himself is judge of the Comparison; for if he does know the Parties Hand, and a Paper be offered him to prove the Parties Hand, he is to compare it in his own Mind.

Mr. S. Pemberton. It never was admitted to be so, that I know of, my Lord, or ever read of.

Mr. Soll. Gen. You may remember several Cases about that, particularly *Sidney's Case*.

Mr. Pollexfen. Pray, my Lord, hear me a little as to that: It is a Point of very great Moment, whether in the Case of a Misdemeanor, either in an Indictment or Information, it be good Evidence to offer Comparison of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery against my Lady *Carr*, appears in *Sydesfin's Reports*: They went to prove her Letters written by her to *Cox*; the Court rejected it, and gave their Judgment here, that it was no Evidence; and that for this Reason, because of the evil Consequences of it: For, said they, it is an easy Matter for any Man's Hand to be counterfeited; that they sure will agree, for frequent daily Experience shews how easily that may be done: Is it not easy then to cut any Man down in the World, by proving it like his Hand? And proving that Likeness by comparing it with something that he hath formerly seen? This strikes mighty deep; the honestest Man in the World, and the most innocent may be destroyed, and yet no Fault to be found in the Jury or in the Judges; if the Law were so, it would be an unreasonable Law. Next, my Lord, for the Case of *Sidney*, that was a Case of Treason. Now in the Case of Treason there is always other Evidence brought; and this Evidence comes in but as a collateral Evidence, to strengthen the other; but in this Case it is the single Evidence, for ought that appears, for there is nothing more, for ought I can see, in the Case, but whether this were their Hands, and proved only by what another believes: Now shall any be condemned by another's Belief without Proof? Surely, my Lord, that was never Evidence yet to convict any one; so that their Proof fails in both Points; for first, it ought to be considered whether Comparison of Hands be Evidence in a Case of Misdemeanor; and next, if it be Evidence, whether you will take it, that the Belief of a Man that brings nothing to compare with it, or never saw the Party write, but has received Letters, and says, this is like it, and therefore he believes it to be his Hand, be good Evidence as a Comparison of Hands.

Mr. S. Pemberton. My Lord, they are pleased to mention—

Mr. Soll. Gen. Mr. Serjeant, you have been heard already, and you are not to reply upon us; or if you would, we must be heard first.

Mr. S. Pemberton. I would only speak to that Case of *Sidney*: My Lord, that Case differs from this *toto Cælo*, the Writing was found in his

Possession, in his Study; there was the Proof that nailed him.

Mr. Soll. Gen. You shall see how we'll apply it by and by.

Mr. Att. Gen. Pray, my Lord, favour me a Word in this Matter: That there is stronger and weaker Evidence no Man doubts; but that which these Gentlemen say, that in this Case there is no Evidence, must needs be a Mistake. If they mean, that it is not so strong an Evidence as is possible to be given, I agree with them, it is not: For if we had brought three or four Men that had seen them write this very Paper, and put their Names to it, that had been a stronger Evidence than this that we have given; but whether we do not give such a Sort of Evidence as may induce the Jury to believe that this is their Paper, and their Hands to it, we submit. They say, This is such a Method as never was taken; but I admire that that should be said by Men of their Experience and Knowledge in the Law; for is there any thing more usual, or any other Course taken for the Proof of Hands, than for a Witness to say, He knows the Hand of the Party very well, for he has often seen his Hand-writing, or received Letters from him? And if you shew him the Thing that you would prove to be his Hand, and he says, I do believe this to be his Hand, for this Reason, because I have had other Things of his Writing: Certainly, in the Experience of any Man that has practised, this is an Evidence that is given every Day, and allowed for Evidence. For the Case of *Mr. Sidney*, which your Lordship has heard mentioned, it is certainly very opposite to this Purpose; it is insisted upon and pretended, That that was Evidence, because it was found in his Study: But without all doubt, that would not be the Reason: For may not a Book of another Man's writing be found in my Study? And he insisted upon it in his own Defence: But the Answer was, That it should be left as the Question, Whether the Jury would believe it upon the Evidence that was given, of its being his own Hand-writing: And so in this Case, though it be not so strong Evidence as if we had brought those that had seen them write it; yet Evidence it is, and whether it be sufficient to satisfy the Jury, may be a Question; but no Question, it is good Evidence in Law.

Mr. Soll. Gen. It is a wonderful Thing, they say, that such Evidence should be offered: But truly, my Lord, it is a much stranger Thing to hear *Mr. Serjeant Pemberton* say, it was never done before; and then to make that Remark to your Lordship upon the Case of *Sidney*, which I'll put to your Lordship and the Court as a Case, and let him contradict me if he can; and then we shall see how far it goes. *Sidney* was indicted for High-Treason; and the Treason insisted upon was, a Writing supposed to be his, it being found in his Study: The Question was, Whether it was his Hand-writing or no? There was no positive Evidence that it was his Hand-writing; there was no Evidence produc'd, that prov'd it to be his Hand-writing; for there was no one that swore that they saw him write it; there was nothing proved but the Similitude of Hands. Ay, but says *Mr. Serjeant Pemberton*, it was found in his Study. Will *Mr. Serjeant Pemberton* be content, that all the Libels that are found in his Study, shall, for that Reason, be adjudged to be Libels, to be his Hand-writing, and he to be a Libeller for them? I think he will make a severe Declamation against

that, and he would have very good Reason for it: Certainly that which was Evidence in one Man's Case, will be Evidence in another. God forbid there should be any such Distinction in Law; and therefore I conclude, that this is good Evidence.

Mr. S. Pemberton. The Court went upon this, That it was found in his Study, and compared with Letters and Bills of Exchange produced in Court, which were sworn to be of his Hand-writing.

Mr. Soll. Gen. My Lord, I was by all the Time; for I was ordered to attend him in the Tower; and therefore I can tell what passed as well as any body. My Lord, they proved no more as to that Libel, but only by Comparison of Hands; they had no other Proof in that Case, but by comparing the Hand-writing; and that was insisted upon to be a mighty fallible Thing: That which they would have for us to compare, Paper with Paper, it is true, would make the Proof somewhat stronger, if we could, in such a Case as this, be able to produce such Evidence: But I appeal to your Lordship, and shall leave it to the Jury, to consider which is better Evidence; these Men, that have been produced, that have been conversant with these Lords, and acquainted with their Hand-writing, and who (as your Lordship sees) are not willing Men to give Evidence, they avoid it as much as they can; and they swear it all to be the Hand-writing of the Archbishop of *Canterbury*, as they believe; which is as far as any Man can swear. One says the whole Body of the Paper is my Lord of *Canterbury's* Hand, and he knows it very well; so that we are not upon a single Name, but a whole Paper that contains many Lines; and this is as much as can be proved by any one that did not see the Thing written. Then, my Lord, for the rest of the Company, the Evidence is not so strong against every one of them, as it is against my Lord Archbishop; but is strong enough certainly to convict them of what we accuse them of: And pray, my Lord, what was the Objection in *Sidney's* Case, but what has been mentioned here? That any Man's Hand might be counterfeited. I remember in that Case, there was one *Mr. Wharton*, a young Gentleman, then in the Court, that undertook to the Court, that he would counterfeit that Hand presently; and he that was to swear the Comparison, should not know which was the one, and which was the other; which certainly was a stronger Case than this: And I see some of the Gentlemen that are now standing at the Bar, who pressed this Matter very hard against *Mr. Sidney*, and *Mr. Sidney* lost his Life upon that Comparison of Hands; though *Mr. Wharton* did testify how easy a Matter it was to have a Man's Hand counterfeited, and we all know was a Man of Value and Quality; so there is a Precedent for *Mr. Serjeant Pemberton*, that never heard of this Law before. They say the proving of Similitude of Hands is no Evidence, unless you prove the actual Writing; what a Condition then will *England* be in, when Witnesses are dead? Is it not the most common Practice that can be, to produce Witnesses to prove such Men are dead, whose Names are set as Witnesses to Deeds; and they swear, they believe it to be the Hand-writing of those Witnesses? Can there be any greater Evidence of such a Case, unless it be the Confession of the Party himself? My Lord, we are now only upon reading this Paper. We have been heard, and they

have been heard; now we pray the Paper may be read.

Mr. Recorder. We pray it may be read.

Mr. Serj. Levinz. If your Lordship please—

Mr. Soll. Gen. We are not to be replied upon, Mr. Serjeant.

L. C. J. You have spoke Brother *Levinz*, and you have spoke Brother *Pemberton*, and I would willingly hear you what you have to say; but we must not have vying and revying, for then we shall have no End.

Mr. Serj. Levinz. I would offer your Lordship some new Matter, which has not been touched upon yet, why it is not to be read.

L. C. J. What's that, Brother?

Mr. Serj. Levinz. All the Proof that has been given, whatsoever it amounts to, has been only of its being written, but no Proof has been given of its being written in the County of *Middlesex*, where the Information is laid, and the Matter is local.

Mr. Soll. Gen. Firſt read it, and then make your Objection.

Mr. Recorder. My Lord, as to the Evidence that has been given, I would only put your Lordship in Mind of one Case; and that was the Case of Sir *Samuel Barnardifon*: And the great Evidence there, was the Proof of its being his Hand-writing; and that being proved, was sufficient to convict him of a Libel: For they could not believe Sir *Samuel Barnardifon* was guilty of making Libels, unless they were proved to be his Hand-writing.

Sir Rob. Sawyer. He owned them to be his Hand-writing.

L. C. J. If you do expect my Opinion in it, whether this be good Evidence, and whether this Paper be proved or no, I am ready to give it.

Mr. Finch. My Lord, I desire to be heard before the Opinion of the Court be given.

Mr. Soll. Gen. If there be not Proof enough to induce the Jury to believe this is their Paper, yet sure there is enough to read it.

Sir Rob. Sawyer. My Lord, we have not been heard to this yet.

Mr. Soll. Gen. Why, is this fit to be suffered?

L. C. J. Mr. Solicitor, I am always willing to hear Mr. *Finch*.

Mr. Soll. Gen. But I hope your Lordship, and the Court, are not to be complemented into an unusual Thing.

Mr. S. Pemberton. It is not a Complement, but Right and Justice.

Mr. Soll. Gen. Certainly it is Right and Justice, that there should be some Limits put to Mens speaking, that we may know when to have an End.

Sir Rob. Sawyer. Mr. Solicitor does mistake the Right my Lord, for we desire to be heard to this Point, as not having spoke to it yet.

Mr. Soll. Gen. Pray, Sir, let me make my Objection to your being heard: For I believe you and I have been chid several Times, for speaking over and over the same Thing.

Sir Rob. Sawyer. This that we now offer, is not to the same Point that we have spoken to already.

Mr. Soll. Gen. We are now speaking to the reading of the Paper, and you have spoken to it already.

Sir Rob. Sawyer. If the Court will please to hear us, we have that to offer against the reading of the Paper, which has not been offered yet.

L. C. J. Sir *Robert Sawyer*, I take it, it is in the Breach of the Court to hear when they will, and as much as they will, and whom they will; for if three or four have been heard of a Side to speak what they will, the Court may very well depend upon the Learning of those three or four, that they say what can be said upon the Point, and that's enough; but if six or seven desire to be heard over and over to the same Thing, certainly the Court may stop at three or four, if they will.

Sir Rob. Sawyer. This is a new Objection that none of us have been heard to yet.

Mr. Finch. My Lord, that which I offer is not contrary to the Rules of Law, nor contrary to the Practice of the Court; nor was I going any way to invade that Privilege which Mr. Solicitor claims of making Objections, and not receiving an Answer.

Mr. Soll. Gen. What a fine Declamation you have now made! I never claimed any such Right; but I oppose your being heard over and over to the same Thing.

Mr. Att. Gen. Pray, my Lord, let's come to some Issue in this Matter.

L. C. J. I will hear you; but I would not have you introduce it with a Reflection upon the King's Council.

Mr. Soll. Gen. My Lord, if you impose that upon him, you stop his Mouth; for some Men cannot speak without Reflection.

L. C. J. On the other Side, pray Mr. Solicitor, give us leave to hear fairly what they have to say; for I perceive he cannot offer to speak, but you presently stop his Mouth.

Mr. Finch. My Lord, that which I was going to say, is another Matter than any thing that has been yet offered: We say, that this Paper ought not to be read; for that they are obliged by Law to prove their Information; and consequently, having laid a particular Place where the Thing was done, in the Information, they ought to prove that this was done in that Place. The Evidence that they have given, is of my Lords the Bishops writing this Paper; and they have laid it to be done in *Middlesex*: And this, with Submission to your Lordship, is local; and they must prove it to be written in *Middlesex*, where they have laid it, or else they fail in their Proof. This is another Objection, which as yet hath not been spoken to:

That if there be a Proof of their Hand-writing, yet there is no Proof where that Hand was written; and therefore they are not yet got so far, as to have it read against my Lords.

Mr. Att. Gen. For that Point, my Lord, we say, This would have been as properly said after the Paper had been read, when they come to make Objections against our Proof, by way of Defence: And with Submission, it had been more proper then, than it is now: For what are we now doing? My Lord, we are proving that such a Paper was subscribed by my Lords the Bishops; and Sir *John Nicholas* gives you an Account, that he had it from his Majesty at the Council; and that certainly is in the County of *Middlesex*; and it will concern you to prove that it was written elsewhere.

Mr. S. Pemberton. That's very well Mr. Attorney; sure you do not think as you speak!

Mr. Att. Gen. Here is a Paper composed and written by you, that Sir *John Nicholas* says he had from his Majesty: How he came by it, I suppose

suppose you will tell us by and by. This is your Hand-writing, that I think we have proved sufficiently; and this is found in the County of *Middlesex*, and you come and tell us, that we must prove that it was written in the County of *Middlesex*; and it is taken to be written where it was found, unless you prove the contrary.

Mr. S. Pemberton. That's pretty Doctrine indeed, and very new.

Mr. Soll. Gen. My Lord, here's an Objection made too timely: We are now upon reading of this Paper; and the Question is, Whether it shall be read, or not be read? Surely we have given Evidence enough to induce the Court to read it; and it is another Question, that will come time enough afterwards, where it was written?

L. C. J. Truly, I do not think it was proper for you to stand upon the Place where it was written as yet.

Mr. S. Levinz. When we are upon an Information of a Fact in *Middlesex*, will you hear them give Evidence of a Fact in *Yorkshire*?

Mr. Soll. Gen. We are not to be driven by these Gentlemen; we are to be directed by the Court.

L. C. J. I think truly it is yet too early to make this Objection.

Mr. S. Pemberton. Surely, my Lord, this is our Time to oppose the reading of it, as not proved.

Mr. Just. Powell. Mr. Solicitor, I think you have not sufficiently proved this Paper to be subscribed by my Lords the Bishops.

Mr. Soll. Gen. Not to read it, Sir?

Mr. Just. Powell. No, not to read it; it is too slender a Proof for such a Case. I grant you, in Civil Actions a slender Proof is sufficient to make out a Man's Hand, by a Letter to a Tradesman, or a Correspondent, or the like; but in Criminal Causes, such as this, if such a Proof be allowed, where is the Safety of your Life, or any Man's Life here?

Mr. Soll. Gen. We tell you a Case where it was allowed; and that is Mr. *Sidney's* Case; a Case of Treason, and printed by Authority: We tell you nothing but what was done t'other Day.

L. C. J. I tell you what I say to it: I think truly there is Proof enough to have it read, and I am not ashamed, nor afraid to say it; for I know I speak with the Law. Say what you will of Criminal Cases, and the Danger of People's Lives, there were more Danger to the Government, if such Proof were not allowed to be good.

Mr. Justice Powell. I think there is no Danger to the Government at all, in requiring good Proof against Offenders.

L. C. J. Here's my Lord Archbishop and the Bishop of *St. Asaph*, and my Lord of *Ely*, their Hands are proved: It is proved to be my Lord Archbishop's Writing by Mr. *Brookes*, and he proves my Lord of *Ely's* Hand by Comparison, and so my Lord of *St. Asaph's*. Now, Brother *Pemberton*, there's an Answer to your Objection, it being proved that it is all my Lord Archbishop's Hand. Then they come and say, we'll prove the Hands of the others by Comparison; and for that they bring you Witnesses that say, they have received Letters from them, and seen their Hand-writing several times; and comparing what they have seen with this very Paper, says the Witness, I do believe it

to be his Hand. Can there be a greater Evidence, or a fuller?

Mr. S. Pemberton. Admit it be a full Evidence against my Lord Archbishop, what's that to the rest? There's no Evidence against them.

Mr. Just. Allynbone. Brother *Pemberton*, as to the Objection you make of comparing of Hands, it is an Objection indeed, I do agree; but then consider the Inconvenience which you and Mr. *Pollexfen* do so much insist upon: If a Man should be accused by Comparison of Hands, where is he? He is in a lamentable Case; for his Hand may be so counterfeited, that he himself may not be able to distinguish it. But then you do not consider where you are on the other Side: That may be an Objection in Matters of Fact, that will have very little Weight, if compared and set altogether: For, on the other side, where shall the Government be, if I will make Libels, and traduce the Government with Prudence and Discretion, and all the Secrecy imaginable? I'll write my Libel by my self, prove it as you can; that's a fatal Blot to the Government; and therefore the Case is not the same, nor is your Doctrine to pass for current here, because every Case depends upon its own Fact. If I take upon me to swear I know your Hand, the Inducements are to my self, how I came to know it, so as to swear it. Knowledge depends on Circumstances: I swear that I know you, but yet I may be under a Mistake; for I can have my Knowledge of you no other Way but from the Visibility of you, and another Man may be so like you, that there is a Possibility of my being mistaken; but certainly, that is Evidence, good Evidence. Now here are several Gentlemen that swear as to my Lord Archbishop's Hand-writing: I do agree, as to some of the others, that the Evidence is not so strong; for what that Man said, that he did believe it was rather such a Lord's Hand, than that which went before, or that which came after, it is of no Weight at all, and so some of the others; but it is positively proved against my Lord Archbishop and one or two more; so that that's enough to induce the reading of this Writing.

Mr. Just. Holloway. Good my Lord, let me give my Opinion.

L. C. J. Ay, with all my Heart, Brother.

Mr. Just. Holloway. My Lord, I think as this Case is, there ought to be a more strong Proof, for certainly the Proof ought to be stronger and more certain in criminal Matters, than in civil Matters: In civil Matters, we do go upon slight Proof, such as the Comparison of Hands, for proving a Deed, or a Witness's Name, and a very small Proof will induce us to read it; but in criminal Matters we ought to be more strict, and require positive and substantial Proof, that is fitting for us to have in such a Case; and without better Proof, I think it ought not to be read.

L. C. J. You must go on to some other Proof, Mr. Solicitor; for the Court is divided in their Opinions about this Proof.

Mr. Soll. Gen. Then, my Lord, we will come to the Confessions of my Lords the Bishops; and I hope that will be believed by all Mankind.

Mr. Att. Gen. Truly, my Lord, we did forbear that Evidence, and would not have proceeded this Way, if we had had fair Play on the other Side.

Sir Robert Sawyer. Mr. Attorney, give us Leave to defend our Clients all the Ways we can : I think we do nothing but what is fair ; the Court you see is divided, therefore we did not without Reason insist upon it.

L. C. J. You must go on as you can, for they will put you upon it.

Mr. Att. Gen. Swear Mr. *Blatbwayt*.

[*Mr. Blatbwayt* sworn.]

Mr. Soll. Gen. Pray hand the Writing to him.

[*The Writing shewn to him.*]

Mr. Soll. Gen. Have you seen that Writing formerly, Sir ?

Mr. Blatbwayt. Yes, Sir.

Mr. Soll. Gen. What did you hear my Lord Archbishop say about that Paper ?

Mr. Att. Gen. And the rest of my Lords the Bishops ?

Mr. Soll. Gen. First we'll ask, as to my Lord Archbishop ; Did he own it to be his Hand-writing ?

Mr. Blatbwayt. My Lord, I believe this to be the Paper that my Lord Archbishop did own to be subscribed by him.

Mr. Soll. Gen. When was it owned by him ?

Mr. Blatbwayt. On the Council-day, the 8th of this Month.

Mr. Soll. Gen. Where was it owned ? because we would obviate that Objection of the County.

Mr. Blatbwayt. It was at the Council-Table at *Whitehall*.

Mr. Soll. Gen. What say you to the Bishop of *St. Asaph* ? Did he own it ?

Mr. Blatbwayt. Yes, all my Lords the Bishops did own it.

Mr. Soll. Gen. Name them particularly. What say you of the Bishop of *Ely* ?

Mr. Blatbwayt. In the same manner, my Lord.

Mr. Soll. Gen. The Bishop of *Chichester* ?

Mr. Blatbwayt. In the same manner.

Mr. Soll. Gen. The Bishop of *Bath and Wells* ?

Mr. Blatbwayt. Yes, my Lord.

Mr. Soll. Gen. The Bishop of *Peterborough* ?

Mr. Blatbwayt. Yes, my Lord.

Mr. Soll. Gen. And the Bishop of *Bristol* ?

Mr. Blatbwayt. Yes, my Lord.

Mr. Soll. Gen. So, we have proved they all owned it.

Mr. Just. Holloway. Could not this have been done at first, and saved all this Trouble ?

Sir Rob. Sawyer. Have you done with Mr. *Blatbwayt*, Mr. Attorney, that we may ask him some Questions ?

Mr. Att. Gen. Ask him what you will.

Mr. S. Pemberton. Pray Mr. *Blatbwayt*, upon what Occasion did they own it ? You are sworn to tell the whole Truth : Pray tell all your Knowledge, and the whole Confession that they made.

Mr. Blatbwayt. My Lord, I am called here by a *Subpœna* to answer on Behalf of the King ; my Lord, I am ready to do my Duty, and I beg of your Lordship that you would please to tell me what is my Duty ; for whatsoever I shall answer, I shall speak the Truth in.

Mr. S. Pemberton. There is nothing desired, but that you would speak the Truth.

Mr. Blatbwayt. My Lord, I am easily guided by your Lordship what I ought to answer to.

L. C. J. What is it you ask him, Brother *Pemberton* ?

Mr. S. Pemberton. We desire Mr. *Blatbwayt* to tell the whole Discourse that passed at the Council, when he says my Lords the Bishops own'd this Paper.

Mr. Soll. Gen. That's a very pretty Thing indeed.

L. C. J. Look you, Mr. *Blatbwayt*, you must answer them what they ask you, unless it be an ensnaring Question, and that the Court will take Care of.

Mr. Blatbwayt. If your Lordship please to ask me any Question, I shall readily answer it.

L. C. J. You must answer them.

Mr. S. Pemberton. We ask you upon what Occasion they came to own their Hands ? What Discourse was made to them, and what they answered ?

Mr. Blatbwayt. My Lord, I beg your Lordship's Directions.

L. C. J. Come tell it, Sir.

Mr. Blatbwayt. My Lord, the Occasion was this : This Paper was read in Council, and I had the Honour to read it before the King ; and it having been read before his Grace the Archbishop, and my Lords the Bishops, they were asked whether they did own that Paper, and, my Lord, they did own it.

Sir Robert Sawyer. Mr. *Blatbwayt*, was that the first Time that my Lords the Bishops came in ?

Mr. Blatbwayt. Sir, I was not asked that Question.

L. C. J. What would you have, Sir *Robert Sawyer* ?

Sir Robert Sawyer. We would have an Account what passed at the Council.

L. C. J. Would you have all the Discourse betwixt the Council and my Lords the Bishops ?

Mr. S. Pemberton. All that relates to their Accusation, my Lord ; their whole Confession, and what was said to them.

Mr. Att. Gen. Do you think, Mr. Serjeant, that when we call a Witness, you are at Liberty to examine him to every impertinent thing ?

Mr. Soll. Gen. My Lord, we desire they may only ask reasonable and proper Questions.

Mr. S. Pemberton. Mr. Solicitor, he is sworn to answer, and tell the whole Truth, and that's all we ask of him.

Sir Rob. Sawyer. Sir, I will ask you a plain Question upon your Oath ; Did not my Lord Archbishop, and the rest of my Lords the Bishops, at first refuse to own it, or to answer whether it were their Hands or not ?

Mr. Soll. Gen. That is not a fair Question Sir *Robert Sawyer* ; 'tis a leading Question.

Mr. S. Pemberton. Then I ask you in short, What did they refuse ? I am sure that is a fair Question ; for God forbid that any should hinder the King's Evidence from telling Truth.

Sir Robert Sawyer. And God forbid that half Evidence should condemn any Man.

L. C. J. God forbid the Truth should be concealed any way.

Mr. S. Pemberton. Pray, Sir, when they were first asked, whether that was their Hands or not, what Answer did they give ?

Mr. Blatbwayt. Sir, I have begg'd the Favour of my Lords the Judges to tell me what I am to answer, and what Questions are proper for me to answer to.

L. C. J. You must answer any Questions that are not ensnaring Questions.

Sir Robert Sawyer. Mr. *Blatbwayt*, you are upon your Oath to testify the Truth.

Mr. Blatbwayt. Sir, I am not acquainted with the Methods of Law; I desire my Lords the Judges would instruct me.

Mr. Jusf. Allybone. Answer to the Question that they ask you.

L. C. J. We observe what they ask you; we'll take Care that they ask you nothing but what they should.

Mr. Blatbwayt. I desire the Question may be repeated.

Mr. S. Pemberton. When they were first asked if they were put to answer, what Answer did they give the King?

Mr. Blatbwayt. His Grace the Archbishop and my Lords the Bishops, at first did not immediately answer whether the Paper were theirs or no.

Mr. S. Pemberton. What did they say?

Mr. Blatbwayt. They said, they did humbly hope, if they were put to answer, no Advantage should be taken against them.

Mr. S. Pemberton. What did they say farther at that Time concerning his Majesty's Pleasure?

Mr. Soll. Gen. That's a leading Question, Mr. Serjeant Pemberton; you cannot leave your Way of leading Witnesses.

Mr. S. Pemberton. It is a very strange thing; if we ask a Question that's general, that's excepted to; if we ask any Question in particular, then they find Fault with us, that it is a leading Question; so that we can never ask a Question that will please them. Pray Mr. Blatbwayt, what did they say concerning the King's Pleasure, whether they would answer if the King commanded them?

Mr. S. Trinder. How can it be material what they said?

L. C. J. It is material that it should be asked, and that it should be answered.

Mr. S. Levinz. You are to tell the whole Truth, Sir. Pray tell us what did my Lords the Bishops say about submitting to the King's Pleasure?

Mr. Soll. Gen. What is that to the Purpose?

Mr. Pollexfen. Mr. Solicitor, his Oath is to tell the Truth, and the whole Truth, and therefore he must answer my Question.

Mr. S. Pemberton. You are mighty loath, Mr. Solicitor, to let us hear the Truth: I would not willingly lead him in anything; and I cannot see that this is any leading Question, unless his Oath be against Law, which, says he, is to tell the whole Truth.

Mr. Att. Gen. My Lord, I do beg your Lordship's Favour of a Word in this Thing. It is certain, if they ask any thing that shall take off the Evidence that was first given, that it is not true, I cannot oppose it; but if they ask Questions only to enflame, and to possess People with foolish Notions and strange Conceits, that is not to the Fact that we are now trying—

Sir Robert Sawyer. 'Tis only to have the Truth out that we do it.

Mr. S. Pemberton. There is no body here that will be enflamed, Mr. Attorney; I have asked a fair Question, the Court has ruled it so.

Mr. Blatbwayt. I shall readily answer any Question that the Court thinks fit.

Mr. S. Pemberton. Sir, by the Oath you have taken you are to tell the whole Truth.

L. C. J. Is he to tell you all that was done at the Council-Board that Day?

Mr. S. Pemberton. No, my Lord, only what passed there about my Lords the Bishops Confession, the whole of that Matter.

Mr. Blatbwayt. There has been so much said between the asking of the Question and this Time, that I desire it may be repeated, that I may know what to answer to.

Mr. S. Pemberton. I ask you in short, Sir, What did my Lords the Bishops say at the Time of their appearing in Council concerning the King's Pleasure, whether they should answer or not?

Mr. Blatbwayt. The first Time my Lords the Bishops came into the Council, they were asked the Question whether they did own that Paper; they did immediately answer, They humbly hoped, as they stood there Criminals, his Majesty would not take Advantage against them, but however they would obey his Majesty's Command.

Sir Robert Sawyer. Were they commanded to withdraw?

Mr. Blatbwayt. Yes; thereupon they were commanded to withdraw, which they did.

Mr. S. Pemberton. When they came in again, what Questions were asked them?

Mr. Blatbwayt. They came in several times, more than twice, I have reason to remark this, that they did so: Do you mean the second Time, Sir?

Mr. S. Pemberton. Yes, Sir.

Mr. Blatbwayt. The second Time they seemed unwilling to own the Paper.

Sir Robert Sawyer. And what did they do the third Time?

Mr. S. Pemberton. But first let us know what more was done the second Time.

Sir George Treby. How was that Unwillingness of theirs overcome?

Mr. S. Pemberton. When they expressed their Unwillingness, what did they say farther?

Mr. Blatbwayt. If I remember right, they said as they did the first Time, they humbly hoped his Majesty would not take Advantage against them.

Mr. S. Pemberton. Then what did they say the third Time?

Sir Robert Sawyer. Pray, were they asked whether they published it?

Mr. Blatbwayt. As to the publishing it, it was laid before them, and I think they were asked the Question, whether they published it?

Sir Robert Sawyer. And what Answer did they make?

Mr. Blatbwayt. I remember his Grace, and my Lords the Bishops, did not own they had published it, but they denied it.

Sir George Treby. After they discovered their Unwillingness the second Time, what followed next?

Mr. Blatbwayt. They did withdraw after the second Attendance.

Mr. S. Levinz. But what was said to them? Was that all that was said to them the second Time?

Mr. Blatbwayt. I have said two Things already, that they were unwilling to answer, and that they denied the publishing.

L. C. J. This is a strange Usage of a Witness, to put him to tell every thing that was said.

Mr. S. Pemberton. I would ask you this Question, Sir. When they came in the second Time, whether they did desire to know if it were

his Majesty's Command that they should own it?

L. C. J. That I must not permit you to ask, Brother; that is to lead the Witness.

Mr. S. Pemberton. My Lord, he will not answer general Questions; I have asked him all along general Questions, and I cannot yet get an Answer from him to them.

Mr. Blatbwayt. I am ready to answer any Questions that the Court thinks I should answer; I am not backward to answer according to my Duty.

L. C. J. Let one of you ask a Question at a time, and not chop in one upon another.

Mr. Soll. Gen. In all the Trials that ever I have been in, in all the Cases of Criminals, the King's Witnesses used to be treated with Respect, and not to be fallen upon in this manner.

L. C. J. He shall be sure to have all Respect paid him.

Mr. Soll. Gen. He is in Office under the King.

Mr. S. Pemberton. I do not think *Mr. Blatbwayt* does believe I would shew him any Disrespect more than he would shew me.

Mr. Att. Gen. I beg one Word, my Lord.

L. C. J. Mr. Attorney, What do you say?

Mr. Att. Gen. My Lord, I say I do oppose the asking of this Question; not but that every Man has a Right to cross-examine a Witness, but if they ask such a Question, let them tell us what Use they would make of it.

L. C. J. Mr. Attorney General, for that Matter—

Mr. S. Pemberton. My Lord, if you please, I'll give Mr. Attorney an Answer.

L. C. J. Brother *Pemberton*, I was speaking to Mr. Attorney, and pray hear me; I will not ask you what Use you'll make of the Question you ask, but do you ask fair and regular Questions, and I'll take Care you shall have an Answer to them.

Mr. S. Pemberton. I will deal plainly with the Court, and tell you what Use we intend to make of our Question. If they answered under a Promise from his Majesty, that it should not be given in Evidence against them, I hope they shall not take Advantage of it.

Mr. Soll. Gen. I say that is a very unmannerly Question; but however it shall be answered.

Mr. S. Pemberton. Why so, Mr. Solicitor?

Mr. Soll. Gen. My Lord, it is to put something upon the King, which I durst hardly name.

L. C. J. We do not know what Answer will be made to it yet, but it does look like an odd kind of Question.

Mr. Soll. Gen. If Men will be so pressing, I, for the King, desire the Question may be entred.

Sir Rob. Sawyer. What do you mean, Mr. Solicitor?

Mr. Soll. Gen. I know very well what I mean, Sir; I desire the Question may be recorded in Court.

Mr. S. Pemberton. Record what you will, I am not afraid of you, Mr. Solicitor.

Mr. Soll. Gen. Are you afraid of the Law?

Mr. S. Pemberton. No, nor of you neither.

L. C. J. Pray be quiet, Gentlemen.

Mr. Att. Gen. Pray, *Mr. Blatbwayt*, answer whether there was any Promise made to my Lords the Bishops from the King.

Mr. Blatbwayt. My Lord, I take the Question to be, whether the King was pleased to make my

Lords the Bishops any Promise of not taking Advantage of what Answer they made.

Mr. Att. Gen. That is the Question.

Mr. Blatbwayt. As that Question is stated, there was no such made.

L. C. J. Look you, he tells you there was no such Promise made. There is an Answer to your Question, Brother.

Mr. S. Lewinz. We made no such Question; but the Question I would ask is this,—

Mr. Soll. Gen. For the Satisfaction of the Court repeat what you said just now, *Mr. Blatbwayt*.

Mr. Blatbwayt. I take the Question to be, whether the King made any Promise to my Lords the Bishops, that no Advantage should be taken of what they said, and I say, the King made no such Promise.

Mr. S. Pemberton. We did not ask you the Question, but we only told you what Use we would have made of another Question.

Mr. Pollexfen. *Mr. Blatbwayt*, I see you can very well distinguish what Questions are to be answered. I ask you in shorr, upon your Oath, when they were first called in, what was said to them, and what was answered by them?

L. C. J. Here has been a great deal of Wrangling, but this is a fair Question, and may reduce us to Order again. Tell us over again from the Beginning, what passed when my noble Lords the Bishops came in the first, second and third Time, when they were examined about this Paper?

Mr. Blatbwayt. My Lord, I shall comply with your Lordship's Directions. I apprehend I am to answer together concerning the first, second and third Comings of my Lords the Bishops into the Council. The first Time, as I said before, my Lords the Bishops were unwilling to own the Paper, and did say, they humbly hoped his Majesty would not take Advantage against them, but that they were ready to obey his Command. The second Time they were called in they did repeat it again, that they hoped his Majesty would not take Advantage against them: After that there was mention made of the Paper being published, I remember my Lords the Bishops said they had not published it—

Sir Rob. Sawyer. Is that all?

Mr. Soll. Gen. You have no Mind to hear all, I think.

L. C. J. How do you expect to be answered your Questions, if you interrupt them? Go on, *Mr. Blatbwayt*.

Mr. Blatbwayt. Sir, I said last, that they having prayed the King that no Advantage might be taken against them for what they should say, there was mention made of the Paper its being published, and my Lords the Bishops did say they had not published it; and his Grace my Lord Archbishop said it was written with his own Hand, and that he had not made Use of his Clerk.

Sir Rob. Sawyer. Is that all you can remember that passed at that Time?

Mr. Blatbwayt. This is the Substance of what I remember.

L. C. J. Was this the third Time?

Mr. Blatbwayt. No, that was the second Time, my Lord.

Mr. Pollexfen. If there be not some Order in this Evidence, my Lord, we shall not be able to observe any thing upon it.— Pray what was done afterwards?

Mr. Blatbwayt. My Lord Chancellor, upon their coming in, did require them to answer, whether they did own that Paper or not; my Lords the Bishops did own the Paper.

Mr. Pollexfen. Do you remember in what Words or Expressions, as near as you can, they did own it?

Mr. Soll. Gen. Is this a Practice to be endured?

Mr. Finch. Why, he may apprehend and take that to be an owning of it, which was not.

Mr. Soll. Gen. Has not he sworn the Manner of it, and almost the very Words?

Mr. Serj. Levinz. We desire nothing of him but that he will tell us what Words they said when they owned it.

Mr. Blatbwayt. It was the third Time that they came in that they owned it.

Mr. S. Pemberton. Why, what did they say?

Mr. Blatbwayt. My Lord Chancellor required them to answer, whether they owned the Paper or no.

Mr. S. Pemberton. What did they say then?

Mr. Blatbwayt. As near as I can remember, his Grace and the Lords the Bishops did own the Paper.

Mr. S. Pemberton. What Words did they own it in? Tell the Manner of it.

Mr. Soll. Gen. What's this to the Purpose?

Mr. Finch. *Mr. Blatbwayt*, did you take Notes of what passed there?

Mr. Blatbwayt. I answer, Sir, I did not take Notes, for I attended the King at his Elbow, and did not take Notes. *Mr. Finch*, you know the Manner of the Council in such Cases very well.

Mr. Att. Gen. Then we ask you for the King, because they shall not enflame People by such an Expression, in what Words did they own it, if you can remember?

Mr. Blatbwayt. Sir, I have declared my Memory as well as I can; when the other Clerks come to be examined, if they can tell any more, let them.

Mr. Soll. Gen. But we will have no Discourse to enflame the World: Did the King promise or declare that no Advantage should be taken of their Confession?

L. C. J. I would ask him that Question, What was the Manner that my Lord Chancellor express'd himself in to them, when they came in the third Time?

Mr. Blatbwayt. As soon as my Lord Chancellor had required them to declare whether they owned that Paper, as well as I remember, his Grace took the Paper in his Hand, and they owned and declared so, just as if they should lay it before the Court, just so. I do not recollect my self of all the Circumstances that passed; I only can tell you the Substance.

Mr. Soll. Gen. He does not remember what they said particularly.

Mr. Att. Gen. Mr. Solicitor, I know well enough what they mean by the Question; I know they would fain possess the World with a Belief that there was such a Promise made them, and yet they are profecuted notwithstanding that Promise: Therefore I do ask you, *Mr. Blatbwayt*, and for the King's Honour I must ask it: Did the King make any Promise or Declaration, that no Advantage should be taken, or Use made of it?

Mr. Blatbwayt. The King did not make any Promise or Declaration that no Advantage should be taken, or Use made of it.

Mr. Soll. Gen. He only put them upon it, whether they did own it or not.

Mr. Att. Gen. I ask you upon your Oath, Did my Lord Archbishop own it to be his Hand-writing?

Mr. Blatbwayt. Yes, he did, and said he writ it with his own Hand, and would not let his Clerk write it.

Mr. Att. Gen. Did he own the whole to be his Hand-writing, or not?

Mr. Blatbwayt. Yes, he did.

Mr. Att. Gen. Did every one of the Bishops own their Names subscribed to it?

Mr. Blatbwayt. Yes.

Mr. Soll. Gen. Then, my Lord, we pray now that it may be read.

L. C. J. I suppose now they will be content it should be read.

Mr. Finch. If your Lordship please to favour me one Word, I think it cannot yet be read; and my Objection is this —

L. C. J. I thought you had made all your Objections before, as to the reading of it.

Mr. Finch. Pray, my Lord, spare us. Here are two Parts of this Information; the one is for Consulting and Conspiring to diminish the King's Royal Prerogative, and for that End they did make and write a seditious Libel: The other Part is, that they did publish this seditious Libel. We are hitherto upon the first Part, the Making and Writing of it. Both Parts are local; until they have proved the Making and Writing of it to have been in *Middlesex*, it is not Evidence upon this Information.

Mr. Soll. Gen. We have proved it written and published in *Middlesex*.

Mr. S. Pemberton. The Contrivance and Writing of a Libel is in itself penal, and they may be punished for it, if they be found guilty. Now if they could give an undeniable Evidence concerning the publishing of it, that is nothing to this Point; but if they should not give such Evidence, or any Evidence at all of the Publication, yet if it be proved that it was written and contrived by them, they would be guilty for so much, if it be a Libel; and this we say is local, as well as all the rest: And therefore we insist upon it, that the Writing and Contriving must as well be proved to be in *Middlesex*, as the Publication, for all is local.

L. C. J. There is no Publishing yet proved.

Mr. Serj. Levinz. It is true, my Lord, here is nothing of a Publication yet, with your Lordship's Favour; for their Answer to his Majesty in Council was, that they did not publish it: All that is said yet is, that they owned the Paper to be their Hands. My Lord, does the owning of that own that it was written in the County of *Middlesex*? or that it was contrived or made there? No surely, upon this Evidence the Place is clearly at large. My Lord, this might have been done in the County of *Surry*, or *Somerset*, or any other County: Their Information is, that they did consult and contrive to diminish the King's Prerogative at *Westminster* in the County of *Middlesex*, and there they did write, and cause to be written, this Libel, and there they did publish it. Suppose it should be

Holding it forth to the Court.

granted that it is proved that this is the Archbishop's Hand-writing, and these are their Names to it, is there any one Evidence that any thing of this was done in *Middlesex*? And, my Lord, that is the Thing they are to prove.

Mr. Sommers. If your Lordship please, all Matters of Crime are so local, that if it be not proved to be done in the County where it is laid, the Party accused is as innocent as if he never had done the Thing; and, with Submission, it is the very Point of the Information, that it be proved they are guilty of the Fact in the Place where it is laid to be done.

L. C. J. This is the same Thing over and over again; but I am content to hear you, *Mr. Sommers*, at any Time: I have told you my Opinion about reading of the Paper already, if you'll have it again you may.

Mr. Pollexfen. Pray, good my Lord, spare us before it be read.

Mr. Just. Holloway. *Mr. Pollexfen*, you have not yet had the Directions of the Court for the reading of it.

Mr. Att. Gen. My Lord, when this Paper is read, which we pray it may be, we will answer their Objections, but at present we say they are out of Time.

Mr. Pollexfen. Good Lord, what a strange thing is this! We object against the reading of it, and you'll answer us after it is read.

Mr. Soll. Gen. Certainly, my Lord, we have done enough to prove that this is a Paper owned by them in the County of *Middlesex*, and we pray it may be read.

L. C. J. Truly I am of the same Mind I was before, that it is too soon to make the Objection, and that the Paper ought to be read.

Mr. Soll. Gen. We submit to your Rule.

Mr. Pollexfen. If it be the Will of the Court, I have nothing to say.

Mr. Just. Powell. My Lord, the Contrivance and Publication are both Matters of Fact, and upon Issue joined, the Jurors are Judges of the Fact, as it is laid in the Information; but how can they be Judges of a Matter of Fact done in another County? and it must be presumed, in favour of Innocence, not to be done in this County, but in another, except they prove it.

Mr. Att. Gen. We are not yet ripe for arguing that Point.

Mr. Soll. Gen. We are speaking only to the Court now for the reading of this Paper, and the Jury are not Judges of that, whether the Paper ought to be read or no; that is merely a Matter of Law, and under the Direction of the Court; and therefore I pray, since it is now in your Lordship's Judgment, whether that Paper should be read, that you would please to order it to be read.

L. C. J. I can only give you my own Opinion, let my Brothers give theirs.

Mr. Just. Holloway. There is no body against the reading of it, my Lord. I suppose my Brother *Powell* is not against its being read.

Mr. Just. Powell. But they say the King's Council must make it out first, that the writing of it, and the conspiring about it, was in the County of *Middlesex*, or there can be no Judgment, so much as to read it.

Mr. Pollexfen. My Lord, if the Objection be saved to us, we shall not so much oppose the

reading it, only we would not be surprized in Point of Time.

Mr. Just. Powell. Nay, if they consent to the reading, we have no Reason to hinder it.

L. C. J. Brother, I believe they know well enough what they have to say for their Clients; let the Paper be read.

Clerk reads. *The humble Petition of William Archbishop of Canterbury*—

Sir Rob. Sawyer. Read the whole Petition; pray, my Lord, that the whole may be read. Read the Top first, Sir, to whom it was directed.

L. C. J. Read the whole.

Clerk reads.

To the KING's most Excellent MAJESTY.

The humble Petition of William Archbishop of Canterbury, and of divers of the Suffragan Bishops of that Province, now present with him, in Behalf of themselves and others of their absent Brethren, and of the Clergy of their respective Dioceses,

Humbly sheweth,

THAT the great Averfulness they find in themselves to the distributing and publishing in all their Churches your Majesty's late Declaration for Liberty of Conscience, proceedeth neither from any want of Duty and Obedience to your Majesty (our holy Mother, the Church of *England*, being both in her Principles and in her constant Practice unquestionably Loyal; and having, to her great Honour, been more than once publicly acknowledged to be so by your Gracious Majesty) nor yet from any Want of due Tenderness to Dissenters, in relation to whom they are willing to come to such a Temper as shall be thought fit, when that Matter shall be considered and settled in Parliament and Convocation; but amongst many other Considerations, from this especially, because that Declaration is founded upon such a Dispensing Power as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the Beginning of your Majesty's Reign, and is a Matter of so great Moment and Consequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour or Conscience, so far make themselves Parties to it, as the Distribution of it all over the Nation, and the solemn Publication of it once and again, even in God's House, and in the Time of his Divine Service, must amount to, in common and reasonable Construction.

Your Petitioners therefore most humbly and earnestly beseech your Majesty, that You will be graciously pleased not to insist upon their Distributing and Reading your Majesty's said Declaration:

And your Petitioners (as in Duty bound) shall ever pray, &c.

Mr. Att. Gen. My Lord, we shall leave our Evidence here, and hear what they can object to it.

Mr. Finch. Have you no farther Evidence, Mr. Attorney?

Mr. Att. Gen. We leave it here for the present.

Mr. Soll. Gen. The Gentlemen of the Jury desire to see the Petition.

L. C. J. Shew it them.

[*The Petition was shewn to the Jury.*]

Mr. Finch. But will you give no further Evidence, Mr. Attorney?

Mr. Att. Gen. I tell you, we'll leave it here, till we see what you say to it.

Mr. Finch. There is nothing that we should say any thing to.

Mr. Att. Gen. Make your Advantage of it; if it be nothing, we can have nothing.

L. C. J. What say you for the Defendants, Gentlemen?

Mr. Finch. My Lord, in short, we say, that hitherto they have totally failed; for they have not proved any Fact done by us in *Middlesex*, nor have they proved any Publication at all.

Sir Rob. Sawyer. They have given no Evidence of any thing.

L. C. J. Pray Gentlemen speak one at once, and then we shall understand the better what we hear.

Sir Rob. Sawyer. My Lord, we say, they have given no Evidence of the Conspiring, Writing, or Publishing in *Middlesex*: Nay, as to the Publication, there is none at all proved.

Mr. Finch. Here is no Proof of any Publication, nor of the Writing or Making in *Middlesex*; so that there is no Proof at all against my Lords the Bishops.

L. C. J. You heard what Mr. *Blatbwayt* said; they owned it in *Middlesex*.

Mr. Finch. That is not a Publication sure, or any Evidence where it was done.

Mr. Serj. Levinz. Suppose, my Lord, that I own in *Middlesex*, that I robb'd a Man in *Yorkshire*, will that make me guilty in *Middlesex*?

Mr. Att. Gen. But if you had stole a Horse in *Yorkshire*, and had that Horse in *Middlesex*, and owned it, I doubt it would go hard with you in *Middlesex*.

Mr. Soll. Gen. Mr. Serjeant thinks he has put a very home Comparison; but we shall shew how little significant it is by and by.

Mr. Serj. Levinz. My Lord, in the first Place, we insist upon it; here is no Proof in this Case at all, as to the doing of any Fact at all in the County of *Middlesex*: In the next Place, this Information and Petition do not agree; for they have brought an Information, and set forth, that my Lords the Bishops, under pretence of a Petition, did make a Libel, and they have set forth no Petition at all; all the petitionary Part is omitted. If I will take Part of a Man's Words, and not the Whole, and make a Libel of that Part, certainly that is very disingenuous and injurious: For that Part that I omit may alter the Sense of the whole. They here ought to set forth the Petition, with the Direction to the King, and the Prayer at the End, whereby it will appear what the whole is, and what was desired by their Petition. But, my Lord, to make this Matter a little more clear, whatsoever they say of its being my Lord Archbishop's Hand, we shall prove that if it were so, it could not be done in *Middlesex*; for we shall prove that my Lord of *Canterbury* hath not been in *Middlesex* for three or four Months before.

Sir Rob. Sawyer. Pray let the Information be read, then you will see the Variance.

Mr. Att. Gen. There is not the latter Part, we acknowledge, in the Information.

Mr. Soll. Gen. There may be, and is, a *fic continetur*, and there is no Objection in that at all.

L. C. J. It is *fic continetur*, and that's—

Sir Rob. Sawyer. The Truth of it is, this Information has made a very deformed Thing of it,

has left it neither Head nor Tail: They stile it a Petition, but it is without any Direction to any body, and without any Prayer for any thing; and without those two it cannot be told what it is.

Mr. Just. Albybone. Sir Robert Sawyer, if I mistake not, it is said only under pretence of a Petition.

Sir Rob. Sawyer. There may be more in the Paper than in the Information; and if all were in, one Part might explain another.

Mr. Soll. Gen. So there may be more; and I wonder to hear that Objection from Sir Robert Sawyer, who has exhibited so many Informations for Libels in Pieces taken out of Books.

Mr. Recorder. All that we alledge in the Information is contained in the Paper, and that's enough for our Purpose; we are not bound to recite the whole.

L. C. J. Indeed I think it is no material Objection at all.

Mr. S. Pemberton. Truly I think it is very material in this Case: Here's a Petition that is preferred to his Majesty; take the whole Petition together, and, say they, it is a reasonable Petition; chop off the Direction and the Prayer, and then here's nothing but the Body of a Petition, without Beginning or Ending; or if a Man will say any thing concerning the King, and do it by way of Petition to himself, that will alter the Case mightily from a Paper spread about, that should contain only the Body of the Petition, and nothing else.

Sir Rob. Sawyer. Pray read that Part of the Information.

Mr. Pollexfen. If so be there be an Information, and that Information charges a Man with a pretended Petition, and the Evidence comes and proves a Petition both Top and Bottom, that is not the Petition in the Information; for that lacking the proper Parts of a Petition, is called a pretended Petition, but that which is proved, is proved a real one.

Mr. Serj. Baldock. My Lord, there is nothing in this Objection, as this Record hath it.

Mr. Att. Gen. Pray, my Lord, give us Leave to state it on our Side, as they have done on theirs, and it will be the better understood upon the reading: I hope it is not come to that Pass that they would have it. Sure these Gentlemen have not forgot altogether the Practice that has been so frequent in this Court: If there be an Information for a Libel, is there anything more frequent, than only to recite the material Part? Sure they may say, in such a Libel is contained so and so, without setting forth the whole Book.

Mr. Soll. Gen. How many Trials have we had here, wherein there has been only a Clause taken out of a Book? as particularly, *Baxter's Bible*, and *Johnson's Book*, and all by Virtue of a *fic continetur*.

Mr. Finch. That comes not up to our Objection here.

Mr. Just. Powell. Let us hear the Record read, and then we can judge of it.

Sir Rob. Sawyer. We pray, Sir, the Information may be read.

Mr. Att. Gen. We are here upon all Occasions chopp'd in upon, and I do not know how they come to take this Liberty; I am sure other People had it not in former Times, when these Gentlemen stood where we do: As soon as ever we offer to speak, presently there are two or three upon us.

L. C. J. Let me hear them, Mr. Attorney, make their Objection, and let the Record be read, and that will answer that Objection.

Mr. Att. Gen. My Lord, as for that other thing, they come and tell us, we have set forth a Petition; we say no such thing; in the Information we say, you composed a certain Libel *pretensu Petitionis*, in which are contained such and such Things; and now I pray let it be read.

Mr. Soll. Gen. Pray, my Lord, hear me a little first; Take the Information as we have laid it, and I believe there are twenty Precedents that I could give you in an Instant of late Days Practice: So was the Information against Mr. *Baxter*; so was the Information against Mr. *Johnson*; so was the Information against Dr. *Eades*; and so was the Information against Sir *Samuel Barnardiston*. They are all in this Form, *sic continetur*; so that as for that Matter, we are well enough. But here's another thing, say they, You do not set out the Petition; we say, it is a Libel, and it is not the Name we rely on, but there is such a Libel; so we in our Information call it: If it be not a Libel, then are they very innocent; and whether it be or no, is now in Judgment before your Lordship; but if it be as we say, then it is not the speaking ill Things in the Body of a Petition, and then giving it a good Title, and concluding it with a good Prayer at the End of it: 'Tis not, I say, any of these that will sweeten this Crime, nor alter, nor alleviate it at all; if there be that which is seditious and libellous in the Body of it, call the Paper what you will, and smooth it with a Preamble, or a Conclusion, that will not make it any thing less a Libel; these Things are plain and manifest. We say there is such a Thing done, a Libel made, *pretensu Petitionis*, do you call it what you will; but we say, these, and these Things are a Libel upon the King and the Government: We have proved our Case, we have proved there was such a Paper under their Hands; we have proved it was owned in *Middlesex*, and then we are in your Judgment, whether this be not Evidence sufficient to convict the Defendants.

L. C. J. But they do make an Objection about the writing and contriving of it, that it is not proved to be in *Middlesex*.

Mr. Serj. Trinder. My Lord, our Information does not go with a continued Clause, that they framed a Libel, *ut sequitur in hæc verba*, but we only say, they made a Libel *pretensu Petitionis*; and then we say, *In quo quidem Libello continetur*, so and so; we do not tie ourselves up to a particular Recital of all that's in the Paper.

L. C. J. Read the Record.

Clerk. Reads.

Ipsi idem Willielmus Archiepiscopus Cantuariensis (and the rest) dicto decimo octavo die Maii, Anno Regno dicti Domini Regis nunc quarto supradictio vi & armis, &c. apud Westminsterium prædictum in Comitatu Middlesexia prædicto illicite malitiose seditiose & scandalose quoddam falsum fictum pernitiosum & seditiosum Libellum in scriptis de eodem Domino Rege & Regali Declaratione & Ordine prædictis pretensu Petitionis fabricaverunt composuerunt & scripserunt & fabricari componi & scribi causaverunt, & eundem falsum fictum malitiosum pernitiosum & seditiosum Libellum per ipsos prædictos Willielmum Archiepiscopum Cantuariensem (and the rest) manibus suis propriis respectivè subscriptum die anno & loco ultimo mentionatis in præsentia dicti Domini Regis nunc vi & armis, &c. publicaverunt & publicari causaverunt; in quo qui-

dem falso ficto malitioso pernitioso & seditioso Libello continetur. The humble Petition of, &c. —

Mr. Serj. Lewinz. It is quite another thing; that which is produced from that which is in the Information, by this leaving out a Part; for here is the Prayer omitted, and the Direction.

Mr. Soll. Gen. Then, my Lord, I think there is nothing in the Case, but this mighty Objection of the County; and, says Mr. Serjeant *Lewinz*, if my Countryman confesses in this County, that he stole a Horse in *Yorkshire*, you shall not try him in *London*, but in *Yorkshire*, because, by his own Confession, the Fact is in another County.

Mr. Serj. Lewinz. I did not put the Case so.

Mr. Soll. Gen. But take the Fact of the Case as it is here: My Lord, the Bishops come in *Middlesex* and own this Paper; my Lord Archbishop owns it to be his Writing, and the rest of the Bishops own their Hands; if they had done as Mr. Serjeant's *Yorkshire*-man did, and said, we own we did this, but it was in the County of *York*; then it would have been like the Case that these Gentlemen put; but here we are in a plain Case of another Nature: My Lord Archbishop comes here in *Middlesex*, and owns that he writ the Paper, the other Bishops they signed it: Now it does lie certainly in their Knowledge where this was done, and they should have declared then; but they have owned it as their Paper, and the signing and writing of it, which is enough for us.

Mr. Finch. I own this to be my Paper, therefore I writ it in the County of *Middlesex*: Is that a Consequence? I am very glad they are no better at their Inferences.

Mr. Soll. Gen. They have owned the Thing in *Middlesex* that we insist upon, and they have not owned it with any Qualifications: If they had said, it was done in another County, then you must have taken it to be as they said it; then if they do not distinguish the Place of the Fact, your Lordship can only take it to be where they owned it; it would be supposed to be done in that Place; for when they owned the Fact, it will be supposed, if they do not say where it was done, that it was done where they owned it, because the King can't tell where it was done; but the Evidence comes out of their own Mouths, they may give Satisfaction where it was done, for they know it; and till that be done, the Supposition is against them, that it was done in the Place where they owned it; and that is a plain Case, wheresoever a Man is to speak of his own Fact. Indeed, if I publish the Writing of another Person which is libellous, then there must be a particular Proof of the Place, because it is not my own Fact; but if those Lords publish a Libel that they make themselves, it is their own Knowledge, and in their own Power to tell where it was done, because it is their own Act and Deed. It is true, if my Lords had published a Paper that was contrived by some of their Council, it had been some Excuse, and they must only have suffered for that Publication in the Place where it was done; but they are here for writing this they have owned in this County, and therefore it lies upon them to prove it done elsewhere. There is another Objection, my Lord, made, That here is no Evidence of a Publication. My Lord, I take it to be a Publication in itself: Is it possible for a Man to write a Libel? to set his Name? and part with it? and it coming to the Hands of the King, that this is not a Publication? It is not
their

their saying, we did not publish it, that will excuse them; for can there be a greater Publication in itself than this, when Men have set their Hands to it, and owned their Names? What makes the Fact in this Case? If a Deed be denied to be *factum* of such a one, what is the Proof of it, but setting the Hand and Seal, and the Delivery? There is owning the Paper, and setting their Hands is a Publication in itself, and therefore they cannot make any such Objection. My Lord, if there were Occasion, we have Authorities enough to this Purpose, and we will give them Scope enough if they will argue this Matter; and if they have any Evidence, we desire to hear what they can say to it.

Mr. Att. Gen. As for this Matter of Fact, my Lord, if I take it right, they do not controvert the Publishing, but, say they, pray make it out, where it was written or composed. I confess, this would be a Business worth the while, for all Persons that act in this Manner, and are concerned in making of Libels, to understand for their Advantage. No Man doubts in the Matter of Treason, but it is local: Then put the Case a Man is found in *Middlesex* with a treasonable Paper in his Pocket; I do not make a Comparison, as if this was such a Paper, I hope I am not to understand; but I only put it as a Case, and that the Law is so, is beyond all Controversy; then the Man is indicted here in *Middlesex*, for framing and composing such a treasonable Libel, and he comes to be tried, and, says he, pray prove where I made and composed it; for though you found it in my Pocket, in the County of *Middlesex*, yet I might do it in the County of *York*, and upon my Word, this had been a very good Defence for *Mr. Sidney*, who was indicted, convicted, and attainted, for making a treasonable Paper which was found in his Study; might not he have put the same Objection? Might not *Mr. Sidney* have said (it was great Pity he did not understand it) pray prove where I did it, for I did it elsewhere than in this County—

Mr. Soll. Gen. He did say it, I remember.

Mr. Att. Gen. Truly, my Lord, I would not hear any Answer given to this, for it would make the King in a very woful Case: Here is a Paper that is found in the County of *Middlesex*, and this is there owned by you to be written and subscribed by you; pray do you prove it, that it was written elsewhere.

Mr. S. Pemberton. My Lord, we will do it, we will be governed by Mr. Attorney for once.

Mr. Serj. Levinz. We will prove that my Lord Archbishop was not in *Middlesex* in seven Months before; and truly I think Mr. Attorney's Case of a Paper found about a Man, or in his Custody, will not come up to our Case; for was this Paper found about us? surely that is not pretended.

Mr. S. Pemberton. Your Lordship sees by the very Frame of the Petition, that this Petition, which they call a Libel, was made after the King's Order concerning reading this Declaration. Now we shall prove that my Lord Archbishop, whose Hand-writing they prove this to be, was not out from *Lambeth-house* in two Months before, nor till he was before the Council.

Sir Rob. Sawyer. Which was long after that Time when it was made.

Mr. S. Pemberton. So that this cannot be written in the County of *Middlesex*.

Call *Francis Nicholls*.

[*Mr. Nicholls* was sworn.]

Sir Rob. Sawyer. Do you remember the 18th of *May* last?

Mr. Nicholls. Yes, Sir.

Sir Rob. Sawyer. Pray how was it with my Lord Archbishop of *Canterbury* at that Time, and before that, did he go abroad?

Mr. Nicholls. My Lord, I am very sure that my Lord his Grace of *Canterbury*, whom I have served in his Bed-chamber these seven Years, never stirred out of the Gate of *Lambeth-house* since *Michaelmas* last.

Sir Rob. Sawyer. Till when, *Mr. Nicholls*?

Mr. Nicholls. Not till the Time he was summoned before the Council.

Mr. S. Pemberton. Now I hope we have given them a full Proof that it could not be in *Middlesex*.

Call *Thomas Smith*.

Mr. Smith was not examined.

Mr. Finch. Truly, my Lord, I think that what we have proved, or what Proof we further offer of my Lord of *Canterbury's* not being in *Middlesex* for so long a Time, is *ex abundanti*, and we need it not; for with humble Submission, in Point of Law, it is incumbent upon them that are to prove the Charge in the Information, to prove where it was done; because the Locality of it is Part of the Thing, they ought to prove it. In its Nature it is local, there is a Place assigned in the Information, and unless they prove it was done in the Place that they have laid, they have not proved the Charge in the Information. Now, my Lord, they have not made Proof of that, and for Proof of Publication, I think they have offered none to your Lordship; they never did call it so yet, and truly I never did hear or know that the owning of their Hands at the Council-Table was a Publication of a Libel: It is owning the Writing, but it is not an owning where the Writing was made; but where it was written, and where it was made, is of Necessity to be proved. Before the Charge upon a Record, in a Court of Justice, can be said to be made out, it is a local Charge, and in Justice, the Locality must be proved, or the Information fails. My Lord, they have offered no Proof to it, and they have not yet gone to the second Part of the Information; for as to the Publication of it, there is not a Tittle of Proof offered, but only the owning of their Hands upon their Examination at the Council, and no Man did ever think that the answering a Question, and owning a Paper at the Council-Table, upon a Question put by the King himself, was a Publication of a Libel.

Mr. Serj. Baldock. Pray, my Lord, hear me a Word to that: Though the Thing be never so local, yet there must be some Place where a Thing that was done, was done. Then if nothing else appears but what was done in *Westminster*, in the County of *Middlesex*, unless they shew the contrary, that must be the very Place where it was done.

Mr. Soll. Gen. Here is a great deal of Prevarication in this Matter, and I would observe to your Lordship how they do use the Court ill in it: Pray, my Lord, what is it we are upon? We are proving that these seven Lords, the Bishops, signed this Paper; and I think we have proved it sufficiently out of their own Mouths: But, say they, it was not signed in the County of *Middlesex*, but in the County of *Surry*. All this is but Imagination, and they would have the

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Court to imagine it too: For how do they prove it? They would have your Lordship and the Jury believe, that it was signed elsewhere, because my Lord Archbishop has not been out of his House in some Months before: It is all but Inference, and Argument, and Imagination. But still, Gentlemen, do you answer what I objected to you? Does it not lie in their Power to shew where it was signed? Here are six more, besides the Archbishop, where was it signed by them? Here are six of the Bishops, that it does not appear where they signed it; but they confess at *Whitehall*, in *Middlesex*, that they did set their Hands.—

Mr. Serj. Lewins. Ay, they did so, and what then?

Mr. Soll. Gen. Ay, and ay too; if they did so, the Presumption and common Intendment upon such Evidence is, that it was done in the Place where it was owned; and the rather, for that Reason that I said before, that it lies in their Knowledge; and therefore it is incumbent upon them to prove, that it was not in the County of *Middlesex*: So that this Objection I take rather to be an Invention of the Council than the Truth of the Fact, because they that can make this out do not. And as to what they say of my Lord Archbishop, that he has not been out of Doors for so long, who can prove such a Thing? Certainly my Lord was able to come, for any thing that appears; he has been here twice, and he was able to come to the Council-Board: But when all is done, my Lord Archbishop is certainly able to put this Matter out of Doubt; for he may easily prove it, if the Fact be so; and that will satisfy the Court and every body, that it was signed by him at *Lambeth*, if he designs to deal sincerely with your Lordship and the Court, and the Jury; but certainly it is not to be proved by a Circumstance, such a one as this is, but he ought to give your Lordship and the Jury Satisfaction about this Fact: He ought to say, 'Tis true, I did sign it, but it was at *Lambeth-House*; that indeed would be a down-right Stroke to us: But to go upon a Supposition, that because my Lord Archbishop was not out of his House for so long together, therefore they are all not guilty, is a very hard and foreign Inference. My Lord, there's another Matter that they insist upon; and that is about the Publication; that is as plain as any thing can be, that here is a full Proof of a Publication; for if the Paper be Libellous, wherever that Paper is, that is a Publishing; wherever the Paper travels, how far soever it goes, it is a Publication of it by these Persons that signed it. I believe no body thinks that this should fly into the King's Hand, but some body brought it to him; and certainly, my Lord, if your Opinion should be, that this Paper is Libellous, then wherever it is, it is a Publishing, which is our Offence; wherever it is found, it is a Publication; for there is the Mistake of these Gentlemen, they fancy, that unless there was a publick Delivery of this Paper abroad, nothing can be a Publication; but I rely upon it, they setting their Names to it, made it their Paper; and wherever it was afterwards found, that did follow the Paper wherever it went, and was a Publication of it; it was in their Power, being their own Contrivance; it was made and formed by themselves, and no body will believe, when it was their own Hands that they put to it, that any body else could have any Power over it: For ought appears, no body else was at work about it, and when

there were so many learned Prelates that had signed such a Paper, no one can believe they would let it go out of their Hands, but by their Consent and Direction: Is not this a Proof of the Publishing? Do they give your Lordships any Evidence that they had stifled this Paper? If they had so done, they had said something; but will any body believe that this Thing was done in vain? Can any body assign a Reason why so solemn a Thing as this should be done to no End and Purpose? Why a Paper should be framed that rails at the King's two Declarations? Why a Paper that gives Reasons; why they could not read it in their Churches, and signed with such Solemnity by all these Noble Lords, we submit this to you in point of Law; and the Law is plain in it, that if this Paper be Libellous, and it is found in the County of *Middlesex*, there is a Publication of that Libel. I shall mention to your Lordship that Case of *Williams*, which is reported in the second Part of *Roll's Reports*; Mr. *Finch* made use of it in the Case of *Sidney*; it was the great Case relied upon, and that guided and governed that Case (as I apprehend) from the Verdict and Judgment that was given in it. This Case was 15 *Jacobi*. It seems *Williams* was a Barrister of the *Inner Temple*, and it seems, being an high Catholick for Opinion and Judgment, he was expelled the House; and he being so expelled (being a sort of a *Virtuoso*) wrote a Book called *Baalams Ass*; and therein he makes use of the Prophet *Daniel*, and he makes Application of it according to his own particular Fancy. He writes there, that this World was near at an End; and he said, Those ill Days were come that that Prophecy spoke of; and because of the Impurity of Prince, and Priest, and People, and other Things that happened, those were the worst of Days, and therefore the last; and that certainly we had the worst Prince that ever was in the World: When he wrote this Book, what does he do? He was a little more close than my Lords the Bishops, and pins it up, or seals it up, and it was brought to the King; and what is this more than the Case before your Lordship? They indeed say, I do this by way of Advice to the King; so said he, I do this by way of Advice to the King, for God forbid that any of this should happen to the King; and so what he does, was by way of Advice, and he prayed God to avert it from him. Here was as good a Prayer as there is in this Paper, and there was a good Design; he made use of the Prophet *Daniel*, and applied his Words. Well, what was done upon it? This was never published; for the Question was before the Court, whether this Sealing of it up, and not delivering it to any other body were a Publication, the Court was of Opinion, that the very Writing of it was a Publication; they did not value the Delivery of it to the Prince, but it was proved he writ it, and that made it Treason. My Lord, we have Cases enough in my Lord *Hobart* for this Matter, Sir *Baptist Hicks's* Case, and my Lady *Hatton's* Case; there was only a Letter sealed up and delivered to the Party.

L. C. J. You need not trouble your self about that, Mr. Solicitor.

Mr. Soll. Gen. If the Case then be thus, I take it, it will turn upon this Fact; they have given your Lordship no Proof where this Paper was Signed by them: Here are seven Persons that had a Hand in it, and here is only one Person whom they

they have insisted upon to be infirm, and kept his House for a great while together. We say the Publishing follows the Libel wherever it goes; the Libel is in the County of *Middlesex*, they have confessed it in the County of *Middlesex*, and they did not distinguish when it was done. Then if they will not distinguish upon the Evidence, no Man ought to distinguish, but ought to presume it was done in that Place where they owned it.

Mr. Att. Gen. I did not apprehend we were got so far, that they opposed us in the Publication.

Sir Rob. Sawyer. Yes, we did, for you have given no Evidence of it.

Mr. Att. Gen. Surely, my Lord, for that we have given a sufficient Evidence, and they have given some Proof of it, as to my Lord Archbishop; that because he had not been from *Lambeth*, therefore he did not publish, nor could cause it to be published; for your Lordship sees by this Information, they are not only to answer the *Publicavit*, but also the *Publicari causavit*; for do you doubt, Gentlemen, of the Law in this Case, that if I compose a Libel in *Surry*, for Example, and send a Person over into *Middlesex*, I am not guilty of the Publishing?

Sir Rob. Sawyer. That is not your Case, Mr. Attorney.

Mr. Finch. That were clear if it were so, but it is not so.

Mr. Att. Gen. My Lord Archbishop's Case signifies nothing, if we shew it was published in *Middlesex*, and you give no Evidence to the contrary but it might be there; and I am sure as to the rest of my Lords the Bishops, there is no Evidence at all given. Here is a Petition that we say is a Libel, they it may be will make that a Question: This is delivered to the King's own Hand in the County of *Middlesex*, and there are as many Cases as any one Man can name, that this amounts to a Publication by the Party; for if I send a Letter by the Post sealed, that no body can see but the Party himself, and he that writ it, it is adjudged over and over again, it is a Libel.

Mr. Just. Powell. That you need not labour, Mr. Attorney, for that's the Case of *Williams of Essex*; but how do you apply it to the Case now before us?

Mr. Att. Gen. That's an Answer to their Objection as to the Publication.

Mr. Just. Powell. But what say you to the first Part, you have not proved that it was written in *Middlesex*.

Mr. Att. Gen. There is the Case of *Barrow and Lewellin in Hobart*, and likewise the Case of *Sir Baptist Hicks*, which is reported both in *Hobart* and in *Popbam*; and in *Popbam*, towards the End of the Case, there is a remarkable Passage. Says that Case, If it should not be punishable at the Suit of the King, there would be no Remedy; for the Party cannot bring an Action, because he can be no Witness for himself, and it is only known betwixt them two; but a Witness for the King he may be, to prove his own Receipt of the Letter, and the Party's Hand.

Mr. Just. Powell. You need not labour that Point, I'll tell you, Mr. Attorney; for the Law is very clear in that Point, I think, if you bring it home to your Case.

Mr. Att. Gen. Then here's the Case, in short, my Lord; that my Lords the Bishops have

caused to be made and written this Petition, they are made Parties to it by setting their Names, and this is a continued Act: Whatsoever is written there is my Lord Archbishop's Writing, wherever it goes, as I'll put a Case that's very well known. If I take away Goods from a Man in the County of *Cumberland*, and I am found with them in the County of *Middlesex*, it is a continued Act, and makes all but one Felony, and I shall be tried here in *Middlesex* for it. If a Man write a Thing in one County, and it is sent and dispersed in another County, that still continues to be his Fact, though it may be the first Part was not in the same County with the other: But suppose all this while that Part should not affect my Lord of *Canterbury*, the causing it to be published does.

Mr. Just. Powell. Do you think, Mr. Attorney, that writing in one County is such a continued Act, that he may be said to write it in another County?

Mr. Att. Gen. Sir, I take it, where there is a complicated Crime of writing and publishing a Libel, and the Beginning of it is in one County, and the carrying it on is in another, that is a continued Act, and may be tried in either County.

L. C. J. It is all one Act of Libelling, as they say.

Mr. Just. Holloway. In Cases of Felony 'tis so; taking in one County, and being found with the Goods in another, it is Felony in either County.

Mr. Just. Powell. But in that Case they are two Felonies; for it is Robbery in the one County, and but bare Felony in the other.

Mr. Soll. Gen. Suppose that my Lords the Bishops signed this Paper in another County, and my Lord Archbishop consents to have it sent into *Middlesex*, is not this a Causing it to be published in another County?

Mr. Just. Powell. Yes, it may be, if you prove his Consent.

Mr. Soll. Gen. Then suppose further, which may very well consist with my Lord Archbishop's Evidence of his not being out of *Lambeth* in so long Time, the rest of the Bishops might sign it in *Middlesex*, or it may be in that Place; and then they carry it by my Lords Consent over hither, into this County, is not this a Causing it to be published? The Delivery with his Consent certainly is a Proof of that, for our Information goes two ways; for Making, Contriving, Writing and Publishing, that's one; and then for causing it to be Made, Contrived and Published, that's the other. And if I prove that he caused it to be published, he may be found guilty as to that Part, and not guilty as to the other; for the Information is not so entire, but that the King has his Choice. If the Archbishop had not signed it, or written it, but had caused it to be published, he may be found guilty of so much: But if he be guilty of any one of these things, it is enough; and if he be guilty of none of the other things laid in the Information, yet if he be guilty of causing it to be published, by his consenting that the rest of the Bishops should do it, that will be enough to maintain this Information. Then, my Lord, is there any Evidence brought against what we have proved, that he did not consent?

Mr. Just. Powell. But where was this Consent of his given, Mr. Solicitor?

Mr. Soll. Gen. Pray, good Sir, give me your Favour, I think I am in a plain Case.

Mr. S. Pemberton. So you are truly.

Mr. Soll. Gen. Why, good Sir, you ought to make out the Locality, if you'll take Advantage of it.

Mr. S. Pemberton. That's very well indeed, this is the first Time I ever heard that Doctrine.

Mr. Soll. Gen. I cannot help that, but certainly the Law is plain: We have proved there was such a Fact as this was done, and they do not go about to prove that it was done elsewhere than where we have laid it; for if they did, their Witnesses would be cross-examined by us; and then we know what would become of them, then the Truth of the Matter would come out: Therefore I would make all this *constare*. The Archbishop might be at *Lambeth*, and yet guilty in *Middlesex*, by his Concurrence with what was done in *Middlesex*: And I say, my Lord, this is natural, upon the Evidence that has been given, because when they were interrogated at the Council, and confessed the Paper to be theirs, they made no such Explanation of their Confession, of which they can make any Advantage in their Defence. Here has been no body produced that proves any thing to be done out of *Middlesex*; so that still if he's guilty of the Fact proved, he must be guilty in *Middlesex*.

Mr. Serj. Baldock. And it does not appear, in this Case, but that my Lord Archbishop might write the same Thing in *Middlesex*, though he was at *Lambeth* so long as the Witness speaks of.

Mr. Just. Powell. How do you make out that, Brother?

Mr. Serj. Baldock. He might do it when he came over to the Council.

Sir Rob. Sawyer. He must do it after it was presented.

Mr. Serj. Baldock. Might he not be so long here on this Side the Water, as to make such a short Thing as this, before it was delivered? Half a Quarter of an Hour would have done it.

L. C. J. That's a Thing not to be presumed, Brother, especially since he is proved not to have been in *Middlesex* for so long together.

Sir Rob. Sawyer. Mr. Serjeant is mightily mistaken, for it is not pretended, that it was delivered at the Time when the Archbishop, and my Lords the Bishops, were before the Council.

Mr. Recorder. Either the Making and Contriving, or the Publishing of this Libel will do upon this Information; for they shall be taken to be one continued complicated Act, and then the Party may be tried in either of the Counties, as the King will; as in the Case of Treason, it has been over and over again adjudged, that if a Man does one Act of Treason in one County, and afterwards goes into another County, and does another Act of Treason, the Jury of either of the Counties may enquire of the Fact done in the other. If they then should take those two as several Acts, they were several Offences, and they may be found guilty of the one and acquitted of the other; but if they are taken as one continued Act, they are but one Offence, and the Jury of either County may try it. If then, in this Case, the Jury of this County may take Notice of the Publication which was here, as certainly they may, if they will agree, as the Law certainly is, that the Writing of a Letter will be a sufficient Publication, if the Matter be

Sir Bartholomew Shower.

libellous. And there are Multitudes of Precedents for that; and that the bare setting of a Man's Hand has been adjudged to be a Publication: Then give me leave, my Lord, to bring it to a similar Case: Suppose a Man write a scandalous Letter from *London*, to a Judge or Magistrate in *Exeter*, and sends it by the Post, and the Letter is received from the Post at *Exeter*, and there opened; would any Man make a Question whether the Gentleman that sent the Letter may not be indicted and prosecuted for a Libel at *Exeter*, where the Libel was received?

Mr. Just. Powell. There's no Question of that, Mr. Recorder; that comes not home to the Fact in our Case: Undoubtedly in the Case that you put, the Law is as you said, but it is far different from this Case.

L. C. J. There's no body opposes the Publication, but the framing of it where it was made.

Mr. Recorder. Supposing then the Party were at *Exeter*, and he were interrogated before the Magistrate, whether that were his Hand or no, and he should own it to be his Hand, can any body doubt whether his owning that to be his Hand, would be a sufficient Evidence to prove a Publication?

Mr. Just. Powell. But is that any Evidence where it was written? Or if it be not proved that it was received at *Exeter*, would that be a Proof of a Publication at *Exeter*?

L. C. J. They do not deny the Publication.

Sir Rob. Sawyer. We do deny that there was any Publication; and they have proved no Place where it was made.

Mr. Soll. Gen. My Lord, we are not for turning my Lords the Bishops out of the Way of Proof that is usual in such Cases; let them take it if they will, that this was contrived and made in *Surry*. But can they publish it in *Middlesex*, without committing an Offence? and that is it we stand upon: We are not for laying a greater Load upon my Lords the Bishops than our Proof will answer.

Sir Rob. Sawyer. We thank you for your Complement, Mr. Solicitor.

Mr. Soll. Gen. Is this a fair Way of interrupting us when we are speaking? Durst any one have served you so when you were in the King's Service? We would make our Duty as easy as we can to my Lords the Bishops, and it may be easier than other Men would have made it. But, my Lord, let it be a doubtful Case, that we cannot tell which County it was made and contrived in, if it were made and contrived in another County; yet when they brought it into *Middlesex*, there was a Publication in *Middlesex*; and if my Lord of *Canterbury* consented to it, and if he caused it to be published, how can any body ever get him off from that causing of it to be published? Here is a Paper that must be supposed to be my Lord Archbishop's Paper: Now either the World must look upon it to be an Imposture put upon my Lords the Bishops, or a real Paper made by them. If it were an Imposture and an Affront put upon the Bishops, they ought to make it out for their own Vindication, and to prove themselves innocent: If they do that, they do well, and they ought to have Satisfaction made them by those that have so highly injured them; and the King cannot be better pleased, I am sure, than to find them so: But if Men will look one way and act another, they must expect to be dealt with accordingly. Will any Man that has heard this Evidence, and sees that these

these Gentlemen will not go the right Way to work to prove their own Innocence, believe them to be not guilty? 'Tis plain they contrived it and signed it; for can any one imagine that they set their Hands to a Paper that was not formed and contrived by themselves? Then let it go, That this was done in another County, and we cannot punish the Writing of it in this County; yet still they are guilty of causing it to be published in this County, and for that we may punish them here: We will be content with having that found that we have proved, which certainly is an Offence.

Sir Rob. Sawyer. We oppose that, Sir.

Mr. Soll. Gen. You oppose it! I know you'll oppose common Sense; we don't speak to you, we speak to the Court. We are content with what is plain, and do not desire to insist upon any strained Construction: We say this is natural Evidence for us; If this thing be a Libel, as we say it is, then the causing it to be published, is an Offence. The Publication we say was here in *Middlesex*, and of that there is a clear Evidence, because it was found there, and came from the King's Hand, to whom it was directed, and it could not come to the King's Hand out of their Custody, without their Consent: This, we say, is a clear Evidence of causing it to be published, let the rest go as it will, because we will take the easiest Part of the Case, and not go upon Strains.

Mr. Serj. Trinder. The greatest Question is, I think, now come to the Publishing—

L. C. J. The Court is of Opinion, that its coming to the King is a Publishing.

Mr. Just. Powell. Ay, my Lord, if it be proved to be done by them.

Mr. S. Pemberton. Before the Court deliver their Opinion, we desire to be heard.

L. C. J. Brother, you shall be heard in good Time, but let them make an End on the other Side, and when the King's Council have done, we'll hear you.

Mr. Serj. Trinder. My Lord, upon the Question of Publishing, it has been insisted upon, and the Court seems to be very much of the same Opinion, that the Writing of it is a Publishing: That it is without Controversy, if the Writing of it fell out to be in *Middlesex*, where the Information is laid; but that they would not have to be so by Argument, because the Archbishop had kept in at *Lambeth* so long. But, suppose that it were so as they would have it; that is only as to the Archbishop, he being the Writer of it; but yet notwithstanding that, the other six might subscribe it in *Middlesex*, taking it, that there is such a Face in their Argument as they would have it.

Mr. Soll. Gen. We will lay no greater Load on the other six than we do upon my Lord Archbishop, and we say they are all guilty of the Publication in *Middlesex*.

Mr. Serj. Trinder. Pray, Sir, spare me. This Paper was in the Archbishop's Custody and Power, he taking of it himself; and regularly it could not have come out of his Custody, in common Supposition, but it must come with his Consent. It was afterwards in the Power of the other Six, they had it to subscribe; where the Subscription was *non constat*; they it may be can prove it themselves, but I will only deduce this Argument; That if it afterwards comes into *Middlesex*, it must be taken by Presumption to be subscribed by them there and published; it must be taken by Presumption so to be.

L. C. J. No, Brother, we ought not to do any thing by Presumption here.

Mr. Just. Powell. No, no, by no means, we must not go upon Presumptions, but Proofs.

L. C. J. I will not presume it to be made in *Middlesex*.

Mr. Serj. Trinder. But it is proved to be published in *Middlesex*.

Sir Rob. Sawyer. My Lord, with Submission, there is no Evidence of the Publication.

Mr. Att. Gen. That the Court is to judge of.

Sir Rob. Sawyer. Pray, good my Lord, what Instance of a Publication have they given?

Mr. Soll. Gen. The Court has heard the Evidence, we leave it there.

Sir Rob. Sawyer. Was it their owning and acknowledging it was their Hands, when the King asked them the Question at the Council-Table? Surely the King's Council won't pretend that was a Publication, when it was done at the King's Command! It was certainly the King that published it then, and not my Lords the Bishops.

Mr. Att. Gen. Well said.

Sir Rob. Sawyer. Don't you remember that, when Mr. *Blatbwayt* said the King gave it to be read, and it was shewed to the Bishops?

L. C. J. I remember what Evidence Mr. *Blatbwayt* gave of the Passages at the Council-Board very well; and I know what Mr. Attorney did press about the King's promising to take no Advantage.

Mr. Att. Gen. My Lord, Mr. Attorney is on the other Side, he did not press it.

L. C. J. Sir *Robert Sawyer* I mean; I beg both your Pardons, Gentlemen, I think I have done Injury to you both.

Sir Rob. Sawyer. My Lord, we say there is no Evidence at all, that ever this was sent to the King by the Archbishop, or any of my Lords the Bishops: And as for the Cases that they have put, they might have put five hundred Cases, and all nothing to the Purpose.

Mr. Soll. Gen. So they might, and done just as others had done before them.

Sir Rob. Sawyer. And so are these; for here is the Question, We are in a Case where the Publication is that which makes it a Crime: Now I would have them, if they can, put me any such Case, and then apply it to this. In *Williams's* Case, the Question is quite otherwise, and so in any Case of Treason it must be: Wherever there is an Overt-Act proved, it is the treasonable Intention, and the ill Mind of the Traitor, that is the Crime, and the Treason (the Overt-Act) is only to be the Evidence of it. In that Case of *Williams*, with Submission, my Lord, the Publication was not at all necessary, but the very secretest Act that could be done by him (if it were an Act) is an Evidence of the Mind; and so the sending of the Book to the King himself, though no body else did see it, was an Evidence of the Crime of Treason, yet it could not be called a Publication. But in the other Case of *Sir Baptist Hicks*, which was in the *Star-Chamber*, about sending a Letter of Challenge, it was plainly resolved that it was no Publication of the Letter, and that was not the Ground of the Judgment given against him there, that it was the Publication of a Libel, but the very Fact was a particular Offence; for, said the Court there, if you will send a Letter to a private Man, and that is a Letter that will provoke him to break the

the Peace, that is an Offence punishable in the *Star-Chamber*; but that is not the Reason which was alledged, because no Action will lie for want of Proof, but quite the contrary; because they may produce the Porter or Party that brought it, and prove it that it came from this Man's Hands; and I do not question but that in the *King's-Bench* at this Day, if a Man will write a Letter privately to provoke another Man to fight, there will lie an Information, but not for a Libel; for there it will be necessary for to make an Offence, that there may be a Publication; for that is the very Form of the Crime, and upon that Ground were all those Judgments against Libels in the *Star-Chamber*. My Lord, I agree to write a Letter to the King of another Person, or to make a Petition to the King concerning another Person, as of my Lord Chancellor, or the Judges, or the like, to complain to the King of them scandalously, with provoking and reviling Language, that is a Publication; and so if I write a Letter to one Man of another; if there be Scandal in a Letter, that is a Publication of a Libel; and that is the Difference that has been always taken, where it is essential to make it a Libel, that there be a Publication, such a Publication must be proved, and the Delivery of a Letter to a Man that concerns himself, is no Publication; but in this Case they have not so much as proved that it was delivered to the King.

Mr. S. Pemberton. My Lord, with your Lordship's Leave, I take it, that they have given no manner of Evidence of a Publication; to say, the Writing and Subscribing of their Names to a Paper, is a Publication of that Paper, is such a Doctrine truly as I never heard before. Supposing this Paper had lain in my Study, subscribed by me, but never went further; would this have been a Publication? They never said any such thing. As to *Algernon Sidney's* Case, there was no Colour for it, that it should be a Publication; but it was an Overt-Act of Treason to compose such a Book. They have proved by our Confession here, that we have subscribed this Paper; they would take it now, that therefore it must be presumed we sent this to the King, and so turn it us into an Information for making and publishing a Libel, which we sent to the King; but they do not prove it all. My Lord, there are a thousand Ways that it might come into *Middlesex*, and perhaps come to the King's Hands too, without our Knowledge of Delivery; and sure you will not presume these noble Persons without Evidence to be guilty of such an Offence as this is suggested to be! So that, my Lord, and Gentlemen of the Jury, 'tis impossible for you to find this a Publication in *Middlesex*; and for the other Thing (the Writing this Paper) they that would make it an Offence, must prove where it was done.

Mr. Serj. Levinz. My Lord, The Answer that I shall give to what has been said on the other Side, is very short: The Cases that have been cited are all Law, but not one Tittle to this Purpose. In Sir *Baptist Hicks's* Case, and *William's* Case, it was proved they all sent them to the Places whither they were directed; but is there a Tittle of Proof that these Bishops sent it here? In all those Cases, they must send it either by a Porter or a Carrier, and they send it as their own Act, and when it comes there, by their sending, that is sufficient Proof of their Act in the Place whither it is sent: And for *Sidney's* Case, there

was Treason in the very Libel and Book that he made; and he was not indicted for Publishing, but for Treason, in the Place where it was found, because it was found in his Possession: But was this ever in my Lord Archbishop's Possession in *Middlesex*, or the rest of the Bishops, and were they publishing of it? If it had, then it had been their Act clearly: But that is the Thing wherein they are defective, that they do not prove that my Lords the Bishops sent or brought it here; but upon the Question asked them by the King, they acknowledged it to be their Hands: So that, my Lord, there is no Proof of any Fact done here, but an Acknowledgment of a Fact done, no body knows where, upon the King's Question here in *Middlesex*: Is that any Proof of this Information?

Mr. Finch. Pray, my Lord, spare me a Word on the same Side; let us see what the Evidence is. The Evidence is this, That the King brought the Paper to the Council-Table, and the Bishops owned their Hands to it: This is the Effect of the Evidence, and all that is to prove the Forming and Making a Libel in *Middlesex*, and the Publication of that Libel. And what is therefore inferred from thence? Why, having proved that the King brought the Paper to the Council-Table, and the Bishops owned their Hands; therefore, First, the Bishops made this Libel in *Middlesex*. Secondly, they brought it to the Council-Table, and published it at the Council-Table, or else there is no Proof at all: For here is nothing of Evidence given of any Fact, but because they acknowledged it, therefore they made it, therefore they gave it to the King in *Middlesex*: This were good Evidence if they had had the Help of a Supposition to make it good; but they want that, nor must any such thing be admitted; but I think they are such gross false Consequences, that I doubt not you'll be of Opinion, here's no Proof of a Publication in *Middlesex*, and then there is no Proof at all against my Lords the Bishops.

Mr. Pollexfen. I must confess, I hear them say, two Acts prove a Publication in this Case; the one is, the Writing of the Libel, and the Subscribing. If so, then I think, upon the Evidence that has been given, the Court must needs be satisfied, that the Writing of it was in *Surry*: The next is, their owning their Hands; for there is no Act done that appears, or any Evidence against them of any Act done, from the Time of the Writing, to the Time that they were asked, is this your Hand? Surely no Man would ever think this to be a Publication, where one is asked by Authority, whether such a Paper be his Hand, and he acknowledges it in Answer to that Question! To turn this to be a Crime, I think it can never be done, nor never was before. Then there is nothing in the Case, that they can hold to for Evidence, and Proof against my Lords the Bishops, but the Writing; and that is apparent to have been in *Surry*; or otherwise they must hold that the Answer to the King's Question, this is my Hand, is a Publication. But truly, my Lord, I think neither of these will do: But, my Lord, to me this is a great Evidence in itself against the Proof of a Publication, the Care and Wariness that has been used, that there should be nothing at all of this Matter known, from the Time that it was written, to the Time that they came to be examined and summoned to appear as Offenders. My Lord, the Nature of Libels is to publish

publish and proclaim Scandal and Defamation, or else it loses its End, and consequently its Name. This, as it stands upon their Evidence, is a monstrous Proof for my Lords the Bishops, against the King's Council; for it seems, 'tis a very private Matter, so cautiously and warily carried, that there is not any Evidence of the Fact, but only the Names of the Persons that writ it, till they come to be examined by the greatest Authority, Is this your Hand? and then they own it so to be. How can this be taken to be a Publication? And it will be a Thing of wonderful Consequence, if an Answer to a Question put by Authority, should amount to a Crime, as it would in this Case: That would be as if Authority that should be employed to do Right, would be turned to do the greatest Wrong; for it is the Duty of all Men to answer when examined by a lawful Authority, and it would never be offered at sure in any other Case. If a Man comes before a Magistrate, and confesses any thing, that indeed is Evidence, but is not a Crime; for there is a great deal of Difference between Evidence and the Crime; but that this should be both an Evidence and a Crime too, is, I think, a very strange Construction; and for the other Part (the Writing of it) I suppose the Court is satisfied that it was in another County.

Sir George Treby. I desire your Lordship to spare me a Word, which I think has not been observed by the Council that have spoke before. The Question that remains, is, Whether my Lords the Bishops did publish this Paper? This is a Matter of Fact that lies upon the Prosecutors to prove. Now I think they are so far from having proved that the Bishops did publish it, that on the contrary, they have proved that their Lordships did not publish it. The Evidence they have offered for this Matter is a Confession. This Confession is testified by Mr. *Blatwys*, and he says the Bishops were ask'd at the Council whether they did subscribe and publish this Paper, and that their Answer was, that they did subscribe, but not publish it.

Now a Confession must be taken together, and must be admitted to be entirely true by them that produce it; they shall never be allowed to take out and use one Piece, and wave the rest.

Why then by this Evidence of Confession, taken as it ought, it appears that the Bishops, though they did subscribe, did not publish the Paper: So that, I say, the King's Council have hereby plainly proved, that the Bishops did not publish this Paper, and yet this is the only Evidence upon which they would infer that they did publish it.

Mr. Att. Gen. Look you, it does lie upon you, Gentlemen, to prove it was done elsewhere than in *Middlesex*.

Mr. Finch. Sure Mr. Attorney is in Jest.

Mr. Att. Gen. No, I am in good Earnest; all the Proof that we have given has been in *Middlesex*, and you can best tell whether you did it in *Middlesex* or no.

Mr. Finch. My Lord, we have done as to this Objection; for we say they have not proved their Case.

L. C. J. Mr. *Finch*, you may observe (and I am sure you do observe as well as any body in all Cases) but I say you may observe that they are off of every thing but causing it to be published; now that does lie upon the King's Council to prove, that my Lords the Bishops did cause it to

be published; for their owning their Hands does not amount to a Publication.

Mr. S. Pemberton. My Lord, we are upon this Point with them, whether here be any Evidence of a Publication at all.

Mr. Jus. Powell. Pray let us clear this first; for if there be no Publication, there can be no causing of it to be published.

Mr. Att. Gen. My Lord, if you think fit, we shall go on, and reserve this Point till afterwards.

Mr. Soll. Gen. They may make Objections, if they think fit.

L. C. J. So they may, and they say if these Objections are with us, we need go no farther.

Mr. S. Pemberton. But, my Lord, if they be not with us, we have a Reserve to give a farther Answer to it, and to offer Evidence against the Evidence they have offered.

Mr. Soll. Gen. With all our Hearts, give in Evidence what you can.

Mr. Att. Gen. Then pray, my Lord, let us go on to answer this Objection.

L. C. J. Pray do, Mr. Attorney.

Mr. Att. Gen. My Lord and Gentlemen of the Jury, I would first observe how far we have gone. That there was such a Paper written is clear beyond all Question, and written by my Lord Archbishop of *Canterbury*, and that it was signed by the rest of the Bishops, but not in the County of *Middlesex*, and that this Paper was published, is agreed on all Hands.

Mr. Jus. Holloway. No, they do not agree to that.

Mr. Att. Gen. Do I say it was published by them? But there was such a Paper published.

Mr. S. Pemberton. No, we say it was never published at all.

L. C. J. Pray, Brother *Pemberton*, be quiet; if Mr. Attorney in opening does say any thing that he ought not to say, I will correct him, as I would do any body that does not open Things right as they are proved; but pray don't you that are at the Bar interrupt one another, it is unbecoming Men of your Profession to be chopping in and snapping at one another——— Go on Mr. Attorney.

Mr. Att. Gen. I say, that the Paper is proved to be written and signed by my Lords the Bishops; that I take for granted, and that the Paper so signed and written is now published to the World, is also evident; but the Question is who it was done by, or who caused it to be done, we are reduced to that Question. Now; first, it is agreed on all Hands, that if I send a Letter to a private Man containing scandalous Things in it, though there is no Proof more, but that it was sent sealed, and received by the Party: In that Case it was a Fault punishable in the *Star-Chamber*, as a Crime; but now that this was received by the King, and written by them, there is no room for Doubt; for you hear it was produced by the King at the Council-Board, and they asked upon it, if it were their Hands? That the King did receive it, there is no room for Question, or that they did write it; but the Question is, from whom the King had it? I am sure they must shew that some body else did it; and unless they do shew that, I hope there is no manner of Question but it came from them, and they did it; though no Man living knew any thing of this Matter, but whom they thought fit to communicate it to; yet still they putting the King upon

the Necessity of shewing this Power, in order to his obtaining Satisfaction for it, or else he must remain under the Indignity without Reparation, it ought to be put upon them to clear the Fact; for if he does not produce it, then must the King put up the highest Injury and Affront that perhaps a Man can give the King to his Face, by delivering a Libel into his own Hands; and if he does produce it, then say they, that is not our Publication, we prove it to be your Writing and Signing, and we prove it to come from the Hand of the King, against whom it was composed; for we say it is a Libel against his Majesty, his Government and Prerogative: If then, all those Cases that have been cited be Law, then sure there never was a stronger Case in the World than this; and I hope the Law goes a little farther in the Case of the King, than it does in the Case of a private Man. No Man must think by Policy to give private Wounds to the Government, and disparage the Administration of it, and then, when he is called in Question about it, says he, pray prove that I published it, or else you shall not punish me for it. We prove you framed it, and writ it, and signed it, and we prove it came to the King's Hand, of whom it was composed, must we produce two Witnesses of the Delivery of it to the King? Surely there will be no need of any thing of that.

Mr. Soll. Gen. My Lord, we have reduced it now to a very narrow Question; for, as Mr. Attorney has said, my Lord, there is no Doubt but that my Lords the Bishops are the Authors of this Paper; there is no Doubt but they signed it, and there is no Doubt but that their signing of it, though it were at *Lambeth*, as they say, is a Publishing of it: But however, this is plain and manifest, that this Paper was published, and that this was published in *Middlesex*, this is as plain too: Now then there is nothing left but this Question, whether my Lords the Bishops who framed the Thing, who wrote the Thing, who signed the Thing, were not the Occasion or Cause of its Publication, or privy or consenting to it? My Lord, I will reduce it to a very plain Point; for we are upon a rational Question, before a rational Court, and a rational Jury, whether these Lords did all of them in the County of *Surry*, consent to the Publishing of this Paper in *Middlesex*? for it is published in *Middlesex* (that we see) and if they are guilty of that Part of the Information of causing it to be published, now what do they say to it? Say they, it is agreed, that it is published in *Middlesex*, but it is not proved to be published by us.

L. C. J. No, they do not say so, they agree it was in *Middlesex*, but not published.

Mr. Just. Powell. Mr. Solicitor, they do agree it was in *Middlesex*, but not published to be sure, nor by them.

L. C. J. Mr. Solicitor, I'll tell you what they stand upon; they say you ought to prove it to be delivered to the King by the Bishops, or somebody employed by them; for upon that went the Resolution that was in *William's*'s Case, that he sent it to the King; but here is no body that proves that it was delivered to the King in this Case, so that how it came to the King *non constat*.

Mr. Soll. Gen. There will be the Question between us, whether this be not a Publication.

Sir Rob. Sawyer. Pray, Mr. Solicitor, prove your Case before you argue it.

L. C. J. First settle what the Case is before you argue it.

Mr. Soll. Gen. My Lord, I'll put you the Case. Here does appear in *Middlesex* a Paper that is a Libel in it self, and this Libel is proved to be written and formed by these Persons; this Libel coming into *Middlesex*, the Question is, whether they are privy to it? I say, in point of Presumption it must come from them.

L. C. J. I cannot suppose it; I cannot presume any thing.

Mr. Soll. Gen. My Lord, I speak of that which is a common Presumption, a natural Presumption, what we commonly call a violent Presumption, which is a legal Presumption, and has always been allowed for Evidence. Now whether there be not such a Presumption in our Case, as to induce your Lordship and the Jury to believe that it cannot be otherwise; or at least to put the Labour upon them, to shew how it came out of their Studies, and how it came to the King's Hands; for it is in their Power to shew the Truth of this Matter, how it was; if they do not, the Presumption will lie upon them. That the Paper came to the King, that is plain enough, and its coming to the King's Hands, is a plain Proof of a Publication in *Middlesex*; and who should bring it to the King, but these Gentlemen in whose Power it was? There is no Man undertakes to say, he lost it, then what else is to be believed, but that it came from them? I speak of common Supposition and Belief; they may very well shew it, if it were not so. All that we can say in it is, here is a Paper in *Middlesex*, this you agreed was once your Paper, and in your Power, pray shew what became of it, it lies upon you to clear this Doubt.

Mr. Recorder. My Lord, there is but this Question in the Case; the Question is not, whether the owning it be a Publication, but whether here be any Evidence that they did deliver it to the King. Now if they did deliver it to the King, that will be agreed to me to be a Publication.

Mr. Just. Holloway. No doubt of it, if you can prove it.

Mr. Recorder. Pray, Sir, spare me: That they did it, you have this Evidence; first, that they were the Authors of this Paper by their own Confession, that this was in the County of *Middlesex*, and that when they were asked concerning it, they owned it to be their Hand-writing. Now whether you can in the least question after all this, their delivering of it to the King, or that it came to the King's Hands without their Knowledge or Consent, is that which lies before your Lordship for your Judgment.

L. C. J. I will ask my Brothers their Opinion; but I must deal truly with you, I think it is not Evidence against my Lords the Bishops.

Mr. Just. Holloway. Truly I think you have failed in your Information; you have not proved any thing against my Lords the Bishops in the County of *Middlesex*, and therefore the Jury must find them not guilty.

Mr. Att. Gen. I'll put you but one Case, my Lord: A Man has an Opportunity secretly to deliver a Libel into the King's Hands, when no body is by, and so there can be no Proof of the Delivery.

Mr. Just. Powell. 'Tis a dangerous thing, Mr. Attorney, on the other side, to convict People of Crimes without Proof.

Mr. Att. Gen. But shall a Man be permitted thus to affront the King, and there be no way to punish it?

L. C. J. Yes, there will sure, but it will be a very strange Thing if we should go and presume that these Lords did it, when there is no Sort of Evidence of it; 'tis that which I do assure you I cannot do: We must proceed according to Evidence, and Forms and Methods of Law; they may think what they will of me, but I always declare my Mind according to my Conscience.

Mr. Serj. Trinder. But as to that other Point, whether their owning of it be a Publication, has not been particularly spoke to.

L. C. J. Mr. Attorney, and Mr. Solicitor, if there were enough to raise Doubt in the Court, so as to leave it to the Jury, I would sum up the Evidence.

Mr. Soll. Gen. My Lord, we know it is with the Court, these Lords insisted upon it, that it was a great while in their Hands; but it seems as far as our Evidence has gone hitherto, their Confession went no farther than that it was their Paper, and we must not extend their Confession further than it was; but I think we shall offer a fair Evidence that they did deliver it in the County of *Middlesex*.

L. C. J. Indeed, indeed, you ought to have gone to this, Mr. Solicitor, before the Court gave their Opinions.

Mr. Soll. Gen. Pray call Mr. *Blatbway* again.

[*Mr. Blatbway* called.]

L. C. J. Mr. Solicitor, unless you are sure that Mr. *Blatbway* is a Witness to the Publication, 'tis but spending the Court's Time to no Purpose to call him.

Mr. Soll. Gen. We are sure of nothing, my Lord, but we must make use of our Witnesses, according to our Instructions in our Briefs.

[Then Mr. *Blatbway* appeared.]

Mr. Att. Gen. Mr. *Blatbway*, you were sworn before.

Mr. Blatbway. Yes, Sir.

Mr. Att. Gen. You were present when this Paper or Petition was delivered by the King, at the Council-Board.

Mr. Blatbway. Yes, I was so Sir.

Mr. Att. Gen. Do you remember any thing of the Bishops acknowledging their Delivery of it to the King?

Mr. Soll. Gen. Mr. *Blatbway*, I would ask you, was there any mention of Discourse with my Lords the Bishops, how that Paper came into the King's Hands? Was there any mention of what it was done for, upon the Account of Religion or how?

Mr. Blatbway. I don't remember any thing of that Mr. Solicitor, [at which there was a great Laughing.]

L. C. J. Pray let us have no Laughing, it is not decent; can't all this be done quietly without Noise? Pray, Mr. *Blatbway*, let me ask you, Do you remember there was any Discourse how that Writing came into the King's Hands?

Mr. Blatbway. I received it from the King's Hands, and I know it was presented to him by my Lords the Bishops.

L. C. J. How do you know it was presented to the King?

Mr. Blatbway. I heard the King say so several Times.

Mr. Soll. Gen. Pray mind my Question, Sir, first I ask you who produced the Paper at the Council-Table?

Mr. Blatbway. The King.

Mr. Soll. Gen. What said the Bishops when that Paper was shewed them?

Mr. Blatbway. Then, as I remember, they were asked, whether that was the Paper that they delivered to the King?

Mr. Soll. Gen. Then what said the Bishops?

Mr. Blatbway. They at first scrupled to answer, and they said it might be made use of to their Prejudice if they owned it.

Mr. Att. Gen. Pray, Mr. *Blatbway*, consider again; was that the Question put to my Lords the Bishops, whether that was the Paper that was presented by them to the King?

Mr. Blatbway. I do think, to the best of my Remembrance, that my Lord Chancellor did ask them to that Purpose, I cannot speak to the very Words.

Mr. Soll. Gen. And upon this, what Answer did they make?

Mr. Blatbway. My Lords the Bishops scrupled to answer the first and second Time, as I told you before, but they did own it was the Petition that they presented to the King, to the best of my Remembrance.

Mr. Soll. Gen. Did the Archbishop do any thing to own it?

Mr. Blatbway. Yes, both my Lord Archbishop of *Canterbury* and the rest of the Bishops did own all the same Thing.

Mr. Soll. Gen. Was this done at *Whitehall*?

Mr. Blatbway. Yes, at the Council-Table.

L. C. J. Pray recollect yourself, and consider what you say, did they own that that was the Paper they delivered to the King?

Mr. S. Pemberton. Pray, my Lord, give us leave to ask a Question to clear this Matter; was the Question put to them, whether it was the Paper that they delivered, or whether it were their Hands that were to it?

Mr. Blatbway. My Lord, I do not exactly recollect the Words.

L. C. J. But pray tell us, if you can, what the Question was?

Mr. Blatbway. My Lord, I do not remember the very Words, but I think if Mr. Serjeant *Pemberton* be pleased to repeat his Question, I shall give him a satisfactory Answer, as well as I can.

Mr. S. Pemberton. Sir, that which I ask you is this, Whether the Question that was put to my Lords the Bishops at that Time was, Whether this was the Paper that they deliver'd to the King, or whether those were their Hands that were to it?

Mr. Blatbway. My Lord, I did always think that it was a plain Case, that that was the Paper that they deliver'd to the King; and my Lords the Bishops did never deny but that they gave it to the King, and I had it from the King's Hands.

L. C. J. But we must know from you (if you can tell us) what the Question was that was put to my Lords the Bishops; were they asked, Whether those were their Hands that were to that Paper, or was it, Whether they delivered that Paper to the King?

Mr. Blatbway. As to the first Part, that they owned 'twas their Hands, that I am sure of; but as to the other, I do not remember what the Words were.

[At which there was a great Shout.]

Mr. Att. Gen. Pray Mr. *Blatbway* recollect yourself, you say the King produced it.

Mr. Blatbway. Yes, Sir.

Mr. Att. Gen. Do you remember that the King asked them any Question upon the producing of it?

Mr. Blatbwayt. My Lord Chancellor asked them, if those were not their Hands to the Petition.

Mr. Soll. Gen. Was there any other Matter in Discourse, whether that was the Paper that was delivered by them to the King?

Mr. Blatbwayt. I cannot so positively say what were the Words that my Lord Chancellor used.

Mr. Serj. Levinz. Pray do not twist a Man so, Mr. Solicitor.

Mr. Soll. Gen. And you are not to untwist a Man neither, Mr. Serjeant.

Mr. Att. Gen. Do you remember that the King said any thing of the Paper being delivered to him?

Mr. Blatbwayt. The King has said it several times; I believe I have heard him say it ten times at least.

Mr. Att. Gen. Did he say it at that Time?

Mr. Blatbwayt. I cannot positively say that he did, Sir.

Mr. S. Pemberton. He cannot answer it; why will you will press it?

Mr. Blatbwayt. My Lord, here is the Clerk of the Council that was then in waiting he took Minutes, and perhaps can remember more than I.

Mr. Soll. Gen. Here they cry he cannot answer it, as if they could tell what he can answer better than himself. Pray *Mr. Bridgman*, was there any Question to this Purpose, either from my Lord Chancellor, or from the King, whether that was the Paper that was presented by my Lords the Bishops, or delivered to the King; for I see you are very nice as to Words, and you do very well; but was there not a Question to that Purpose?

Mr. Bridgman. Sir, I do not remember; for I speak to the best of my Remembrance in all this Matter. I say, I do not remember that that Question was asked in those very Words, but I do remember something was said to that Purpose, but by whom I cannot particularly say.

Sir Rob. Sawyer. To what Purpose?

Mr. Soll. Gen. It is very strange that they won't let the Witness speak, but are continually interrupting him.

Sir Rob. Sawyer. Mr. Solicitor, no body interrupts him.

L. C. J. Why, do not I behave my self between you all as I ought to do? Pray *Sir Robert Sawyer* sit down, you cannot be contented, when the Man does you no Harm.

Mr. Soll. Gen. Pray consider, did my Lords the Bishops say any thing, or was there any Discourse concerning the Paper, whether it was delivered to the King or no?

Mr. Bridgman. Mr. Solicitor, I have told you as near as I can what I do remember. I know not by whom it was said, but that Question, or to that Purpose, was asked, whether that was the Petition they delivered; but I do not remember whether the Question was directly asked, or answered; there was something about it, and several Passages there were; but whether spoken by my Lord Chancellor, or who, I cannot remember.

Mr. Soll. Gen. You say there was that which sufficiently denoted a Question to that Purpose, and they said nothing against it.

Mr. Bridgman. No, there was no Denial of it.

Mr. Soll. Gen. I see you do not remember the Particular, nor do we desire it of you.

Mr. Bridgman. They did not deny it, nor confess it.

Mr. Soll. Gen. Then, in your Apprehension, did they own that they delivered that Paper to the King?

L. C. J. You must not ask that, Mr. Solicitor, it is not a fair Question to ask him what he apprehended.

Mr. Soll. Gen. He said it before himself.

L. C. J. But his Apprehensions are no Evidence, and it is a sort of a leading Question which we must not allow of.

Mr. Soll. Gen. Then if your Lordship do not like it, I will not ask it, but I will ask him another Question.

L. C. J. Ay, ten if you will, so they be fair ones.

Mr. Soll. Gen. Was it upon the first or second Time of their being examined?

Mr. Bridgman. I cannot tell, it was not the first Time, all of it, I believe; for at the first Time my Lords the Bishops made some Scruple of answering or owning any thing; and whatsoever they owned, they said, they hoped it should not be made use of to their Prejudice. I remember no Reply that was made, nor any thing farther, only my Lord Chancellor said, they were not to capitulate with their Prince; but they were required to answer the Questions that were asked them.

Mr. Soll. Gen. What were those Questions?

Mr. Bridgman. I have told you already, as well as I can remember.

Mr. Soll. Gen. But did you take it upon the main that they owned the Delivery of that Paper to the King?

Mr. Just. Powell. Mr. Solicitor, you have been told you are to ask no such Questions.

Sir Rob. Sawyer. Nor never was there such wire-drawing of a Witness in this World before.

L. C. J. Pray sit still, *Sir Rob. Sawyer*, you are not to teach us what we are to do; Mr. Solicitor must ask Questions that are proper for him, and not such as these; but the Court must correct him, and not you.

Mr. Soll. Gen. *Mr. Bridgman* is very cautious, and he is to be commended for it; but we would get the Truth out of him if we could. Pray, Sir, if you can remember, recollect your self, whether by any Question to that Purpose, it was believed that they did own the Delivery of the Paper to the King.

Mr. Bridgman. I told you, Mr. Solicitor, as to that at first, that I do not remember the very Words of the Question; but I believe there was no body doubted that that was not the Paper.

Mr. Soll. Gen. You speak well in your way; but these Gentlemen are very unwilling you should tell your Opinion.

L. C. J. His Opinion is no Evidence, therefore you must not ask any such Questions, Mr. Solicitor.

Mr. Bridgman. As soon as the Petition was delivered, within a few Hours after I saw it, the King shewed it to several People, and he said, it was the Petition the Bishops had delivered; he took it into his own Custody, and afterwards commanded me to write a Copy of it, and there was no Copy made of it but that one; but notwithstanding that, I do remember I did see a Copy of the Petition, within a

Day or two after it was presented, about the Town.

Mr. Soll. Gen. Pray how many Days was this before the Discourse in Council upon their Examination?

Mr. Bridgman. How many Days was what, Sir?

Mr. Soll. Gen. When the King gave the Paper to be copied.

Mr. Bridgman. It was upon the Sunday.

Mr. Soll. Gen. But you say, as you believe, it was in a few Hours after the Paper was delivered to the King, that you did see it?

Mr. Just. Powell. But what makes him say, that this was delivered to the King, but only Hear-say?

L. C. J. Pray, Mr. Solicitor, will you produce that which is Evidence, and not spend our Time in that which is not.

Mr. Soll. Gen. My Lord, I would make no more of it than it is.

Mr. Serj. Levinz. 'Tis a shameful thing to offer such things in a Court of Justice.

Mr. S. Pemberton. 'Tis a Practice that ought not to be endured.

L. C. J. Pray Brothers be quiet, or I'll turn him loose upon you again, if you'll not be quiet: What is the Matter? Cannot you let us alone? We shall do every body right. Come, to shorten this Matter, I ask you but this one Question, and that may satisfy any one that has common Honesty about him; Do you remember whether or no they were asked, if that was the Petition that they delivered to the King?

Mr. Bridgman. My Lord, I have answered that Question as directly as I can; I do not positively remember that that was the Question.

L. C. J. Mr. Solicitor General, you must be satisfied when proper Questions are fairly answered, and therefore pray be quiet.

Mr. Att. Gen. However, we pray we may ask the Clerks of the Council; it may be they may remember more— Sir *John Nicholas*, you were at the Council-Table that Day my Lords the Bishops were examined about this Paper.

Sir John Nicholas. Yes, Sir, I was.

Mr. Att. Gen. Pray did you observe that the King produced the Petition?

Sir John Nicholas. No, indeed, I did not see it.

Mr. Att. Gen. Did you observe any thing that passed there in Discourse?

Mr. Soll. Gen. Did you observe any Questions that were asked the Bishops, either by the King or by my Lord Chancellor?

Sir John Nicholas. I think my Lord Chancellor did ask them, if that was their Hands to the Petition, and they owned it.

Mr. Soll. Gen. Do you remember whether they owned, that they delivered that Paper to the King?

L. C. J. I'll ask you, Sir *John Nicholas*, Did my Lord Chancellor ask them this Question, Is this the Petition you delivered to the King?

Sir John Nicholas. I do not remember that.

[Then there was a great Shout.]

Mr. Soll. Gen. Here's wonderful great Rejoycing that Truth cannot prevail.

Mr. S. Pemberton. No, Mr. Solicitor, Truth does prevail.

Mr. Soll. Gen. You are all very glad that Truth is stifled, Mr. Serjeant.

Mr. Serj. Trinder. Pray, Sir *John Nicholas*, let me ask you one Question; Was there any Discourse about delivering that Petition to the King?

Sir John Nicholas. Indeed I do not remember it.

Mr. Soll. Gen. There's Mr. *Pepys*, we'll examine him.

[Mr. *Pepys* sworn.]

L. C. J. Come, I'll ask the Questions; Were you by at the Council-Board when my Lords the Bishops were committed?

Mr. Pepys. Yes, I was.

L. C. J. What were the Questions that were asked, either by the King or by my Lord Chancellor?

Mr. Pepys. My Lord, I would remember as well as I could; the very Words, and the very Words of the Question, were, I think, My Lords, do you own this Paper? I do not remember any thing was spoken about the delivering; but I believe it was understood by every body at the Table; that that was the Paper that they had delivered.

L. C. J. Well, have you done now? But to satisfy you, I'll ask this Question; Was this Question asked, My Lords, was this the Paper you delivered to the King?

Mr. Pepys. No, my Lord.

Mr. Att. Gen. Pray, Sir, do you remember whether the King himself asked the Question?

Mr. Pepys. You mean, I suppose, Mr. Attorney, that these were the Words, or something that imported their delivering it to the King.

Mr. Att. Gen. Yes, Sir.

Mr. Pepys. Truly I remember nothing of that.

Mr. Soll. Gen. Did you observe any Discourse concerning their Delivery of it to the King?

Mr. Pepys. Indeed, Mr. Solicitor, I do not.

Mr. Att. Gen. Swear Mr. *Musgrave*.

[Mr. *Musgrave* sworn.]

L. C. J. You hear the Question, Sir, what say you to it?

Mr. Musgrave. My Lord, I will give as short an Account of it as I can: The first Time after his Majesty had produced the Petition, and it was read at the Board, his Grace my Lord Archbishop of *Canterbury*, and the other six Reverend Lords the Bishops, were called in, and it was asked of them, if they owned that, or if it was their Hands; my Lord Archbishop, in the Name of the rest, did decline answering, upon the Account that they were there as Criminals, and were not obliged to say any thing to their own Prejudice, or that might hurt them hereafter; but if his Majesty would command them, and if he would promise that no Advantage should be made of whatsoever they confessed, then they would answer the Question: His Majesty made no Answer to that, but only said he would do nothing but what was according to Law; whereupon the Bishops were ordered to withdraw, and being called in a second Time, the Petition was shewn to them, and they were asked if they did own it, or if it was their Hands, and I think my Lord Archbishop did say then, we will rely upon your Majesty, or some such general thing was said, and then they did all own that it was their Hands: I cannot say the Petition was read to them.

Mr. Just. Powell. Mr. *Blatbwayt*, as I remember, said it was the third Time.

Mr. Musgrave. It was the second Time, to the best of my Remembrance.

L. C. J. Pray Sir, was there any Question to this Purpose? Is this the Paper you delivered to the King?

Mr. Musgrave. I do not remember that ever any such direct Question was asked.

Mr. Just. Alibone. But, as my Brother *Pemberton* did very well before distinguish, there is a great deal of Difference between the owning the Subscription of a Paper, and between the owning of that Paper. *Mr. Pepys* did say that they did own the Paper, and upon my Word that will look very much like a Publication.

Mr. Musgrave. I remember, my Lord, there was at the same Time a Question asked, because several Copies had gone about the Town, whether they had published it; and my Lord Archbishop did say, he had been so cautious, that he had not admitted his own Secretary, but writ it all himself; and the rest of the Bishops did say, they did not publish it, nor ever gave any Copies of it.

Mr. Att. Gen. My Lord, I confess, now it is to be left to the Jury upon this Point, whether there not being a positive Witness that was by when the thing was done, yet upon this Evidence the Jury can't find any otherwise than that the thing was done; truly, I think, we must leave as a strong Case for the King: I could have wished indeed, for the Satisfaction of every body, that the Proof would have come up to that; but we must make it as strong for the King, upon the Evidence given, as it will bear. Now, my Lord, take all this whole Matter together, here is a Paper composed, framed, and written by seven learned Men, and this must be written by such Persons, sure for some Purpose. It is directed as a Petition to the King, and this Petition did come to the Hands of the King (for the King produces it in Council) and my Lord Archbishop, and the rest of the Bishops, owned their Hands to it. Then the Question is, my Lord, whether or no there be any room for any body living to doubt in this Case that this was not delivered by my Lords the Bishops to the King, though it be not a conclusive Evidence of a positive Fact; yet unless they shew something on the other side, that may give way for a Supposition to the contrary, that it came out of their Hands by Surprise, or that anybody else delivered it to the King, without their Knowledge or Consent, here must needs be a very violent Presumption that they did do it; and when nothing of that is said on their side, can any Jury upon their Consciences say, that it was not published by them? And it being found in *Middlesex*, though it might be written and composed in *Surry*, yet surely we have given a convincing Evidence, that either they published it, or caused it to be published in *Middlesex*.

[*Pray call Mr. Grayham.*]

Crier. He is gone out of the Hall.

Mr. Soll. Gen. My Lord, there is in Law a Presumption that is Evidence, though there be no positive Proof.

Sir Rob. Sawyer. But not in an Information for a Libel.

Mr. Soll. Gen. This is a meer Question of Fact; there is no Difficulty in the Law of it at all; for it is plain, if these Lords, or any of them, did consent and agree to the Publishing of this Paper in *Middlesex*, they are guilty of this Information; and whether they are guilty or not guilty, we do rely upon the Circumstances proved, which are violent: First, that they were the Men that

contrived, and set their Hands to it, and so were the Authors of it, is undeniable; for they have owned it: Men of their Learning and Parts never did any such thing in vain: And then that they were concerned in the publishing of it in *Middlesex*, we offer for Proof that which was said by *Mr. Pepys* and *Mr. Blathwayt*, who, though they do not come directly and expressly to the formal Words of such a Question, yet they tell you, especially *Mr. Blathwayt*, that they did apprehend it, and it was the Collection of all their Thoughts, and they took it for granted, as a Thing that every body was satisfied in, that they did deliver that Paper to the King. I must confess, and agree, there is no Proof of the Delivery of it by my Lords the Bishops to the King; but we know very well, that it is no Wonder, when a Paper is Libellous, that Men should use all the Skill they can to publish it with Impunity: And this is a Thing that was done after some Time of Premeditation and serious Consultation; for it was some Days after the Order for reading the Declaration was published, that this was framed and delivered, and it concerned them to be wary (as it seems they have been) but take this altogether, my Lord, the Paper being found in the King's Hands, it is in these Persons Power, and it lies upon them to make it out plain, what became of this Paper, which once lay in their own Hands and Custody: They can give an Account of it, they can give Light unto it. If they do not, I shall submit to the Jury, whether this is not sufficient Evidence to convict them; especially when, being examined, they did not make that their Excuse. They never said, this Paper indeed we signed, but we did not intend to publish it, we intended to stifle it; that had been some Excuse: But for them to say now, they did not present it to the King, I must submit to the Jury, whether they will believe upon this Evidence, that these Lords the Bishops did present it, or cause it to be presented to the King; then they are guilty of this Matter: And I leave it to them, and their Consciences, what they will think upon the whole.

Mr. Recorder. My Lord, if your Lordship please—

L. C. J. What, again? Well, go on Sir *Bartholomew Shore*, if we must have a Speech—

Mr. Recorder. Nay, my Lord, I would not trespass upon your Lordship.

L. C. J. Gentlemen of the Jury, here is an Information against my Lords the Bishops: I think I need not trouble my self to open all of it, because I see you are Men of Understanding, Men of great Diligence, and have taken Notes your selves, some of you; therefore I shall say only something of the Proof that is required in such a Case, and of the manner of the Proof that has been given in this Case, and then tell you my Opinion in Point of Law. Here is an Information brought by *Mr. Attorney General*, on Behalf of the King, against these Reverend Fathers of the Church, the Archbishop and the rest; and it is for publishing a seditious Libel, under the Pretence of a Petition, in which are contained the Words that are seen. Gentlemen, the Information is long; it tells you, that the King, out of his Gracious Clemency to all his loving Subjects, and for other Considerations, had thought fit to publish a Declaration of Indulgence, that all his loving Subjects might have Liberty of

Conscience, upon the 4th of *April*, in the third Year of his Reign, and that this was set forth by the King; and that the King, of his farther Grace, about the 27th of *April* then next following—

Mr. Finch. I humbly beg your Lordship's Favour.

L. C. J. What say you, *Mr. Finch*?

Mr. Finch. I ask your Pardon for breaking in upon you when you are directing the Jury. I know I should not do it, but I hope you will not be angry with me for it.

L. C. J. If I thought you did any Service to your Client, I should willingly hearken to you.

Mr. Finch. That which I humbly offer to your Lordship, is only to remember your Lordship where we were.

L. C. J. Go on, Sir.

Mr. Finch. I would only say this, my Lord, the Question is, whether this be Evidence, or no?

L. C. J. I am sorry, *Mr. Finch*, you have that Opinion of me, as to think I should not leave it fairly to the Jury.

Mr. Finch. I only speak it, my Lord, because if it be Evidence, we have other Matters to offer in Opposition to that Evidence, and in our own Defence.

L. C. J. If you have more to offer, why did you conclude here, and let me begin to direct the Jury? But since you say you have other Matter to offer, we will hear it.

Mr. S. Pemberton. My Lord, we submit to your Lordship's Direction.

L. C. J. No, no, you do not; you say you have further Matter to offer.

Mr. Pollexfen. My Lord, we shall rest it here.

L. C. J. No, no, I will hear *Mr. Finch*. Go on, my Lords the Bishops shall not say of me, I would not hear their Council: I have been already told of being Council against them, and they shall never say that I would not hear their Council for them.

Mr. Serj. Levinz. My Lord, we beseech your Lordship go on with your Directions; for all that *Mr. Finch* said, was only that this was not sufficient Evidence.

L. C. J. No, Brother, he says you have a great deal more to offer, and I will not refuse to hear him. The Court will think there was something more than ordinary, therefore I will hear him; such a learned Man as he shall not be refused to be heard by me, I'll assure you. Why don't you go on, *Mr. Finch*?

Mr. Finch. My Lord, I beg your Pardon for interrupting you; but all that I was going to say would have amounted to no more than this, that there being no Evidence against us, we must of Course be acquitted.

Mr. Just. Holloway. My Lord did intend to have said as much as that, I dare say.

L. C. J. Well, Gentlemen of the Jury, we have had Interruption enough—

Mr. Soll. Gen. My Lord, I must beg your Pardon for interrupting you now; and I am very glad these Gentlemen have given us this Occasion, because we shall now be able to clear this Point. There is a Fatality in some Causes, my Lord, and so there is in this; we must beg your Patience for a very little while, for we have Notice that a Person of very great Quality is coming, that will make it appear, that they made

their Addresses to him, that they might deliver it to the King.

L. C. J. Well— you see what comes of the Interruption, Gentlemen, now we must stay—

[Then there was a Pause for near half an Hour.]

Mr. Att. Gen. Pray, my Lord, put the Case that a Man writes a Libel in one County, and it is found in another, is not he answerable, unless he can shew something that may satisfy the Jury how it came there?

Mr. Soll. Gen. Ought he not to give an Account what became of it?

L. C. J. No: Look you, *Mr. Attorney*, you must look to your Information, and then you will find the Case that you put does not come up to it: It is for Writing, Composing and Publishing, and causing to be Published, and all this is laid in *Middlesex*: Now you have proved none of all these Things to be done in the County.

Mr. Att. Gen. They did in *Middlesex* confess it was theirs.

L. C. J. Ay, but the owning their Hands is not a Publication in *Middlesex*, and so I should have told the Jury.

Mr. Finch. I beg your Lordship's Pardon for interrupting you.

Mr. Att. Gen. But, my Lord, does it not put the Proof upon them, to prove how it came out of their Hands into the King's Hands?

L. C. J. No, the Proof lies on your Part.

Mr. Pollexfen. Pray, my Lord, give us your Favour to dismiss us and the Jury.

Mr. Soll. Gen. My Lord, our Witnesses will be here presently.

Mr. Att. Gen. Sure, my Lord, the Presumption is on our Side.

Mr. Just. Powell. No, the Presumption is against you; for my Lord Archbishop lived in *Surry*, and it is proved was not out of *Lambeth-House* since *Michaelmas*, till he came before the Council.

Mr. S. Pemberton. Pray, good my Lord, we stand mightily uneasy here, and so do the Jury, pray dismiss us.

L. C. J. I cannot help it, it is your own Fault.—

[Then there was another great Pause.]

L. C. J. Sir *Bartholomew Shore*, now we have Time to hear your Speech, if you will.

Mr. Pollexfen. My Lord, there is no body come, nor I believe will come.

Mr. Soll. Gen. Yes, he will come presently; we have had a Messenger from him.

[Call *Mr. Graham*.]

Crier. He is gone, and said he would come presently.

Mr. Soll. Gen. My Lord, he will bring our Witnesses with him—

[Then there was another Pause.]

Mr. S. Pemberton. My Lord, this is very unusual to stay thus for Evidence.

L. C. J. It is so; but I am sure you ought not to have any Favour— *Mr. Solicitor*, are you assured that you shall have this Witness that you speak of?

Mr. Soll. Gen. Yes, my Lord, he will be here presently.

L. C. J. We have staid a great while already, and therefore it is fit that we should have some Oath made that he is coming.

Mr. Soll. Gen. The *Crier* tells you, that *Mr. Graham* did acquaint him, that he would return presently.

L. C. J. Give him the Book.

Mr. Soll. Gen. Let your Left-Hand give your Right-Hand the Oath.

[*The Crier sworn.*]

L. C. J. By the Oath that you have taken, did *Mr. Graham* tell you, there was any further Witnesses coming in this Case?

Crier. Yes, my Lord, he did; he went out of the Hall, and returned when your Lordship was directing the Jury, and he asked me what the Court were upon; and I told him you were directing the Jury, and then he said, my Lord *Sunderland* was a coming, but he would go and prevent him; and afterwards he returned, and finding your Lordship did not go on to direct the Jury, he said he would go again for my Lord *Sunderland*, whom he had sent away, and he is now gone for him, and he said he would bring him with him presently.

L. C. J. Well then, we must stay till the Evidence for the King comes, for now there is Oath made that he is coming.—

[*And after a considerable Pause the Lord President came.*]

Mr. Att. Gen. My Lord, we must pray that my Lord President may be sworn in this Case, on Behalf of the King.

[*The Lord President sworn.*]

Mr. Att. Gen. My Lord, with your Lordship's Favour, I would ask my Lord President a Question: Your Lordship remembers where we left this Cause; we have brought it to this Point, That this Petition came to the King's Hands; that it is a Petition written by my Lord Archbishop, and subscribed by the rest of my Lords the Bishops; but there is a Difficulty made, whether this Petition thus prepared and written was by them delivered to the King, and whether my Lords the Bishops were concerned in the doing of it, and were privy, or Parties to the Delivery. Now that which I would ask your Lordship, my Lord President, is, Whether they did make their Application to your Lordship to speak to the King.

Mr. Soll. Gen. Did they make their Application to your Lordship upon any Account whatsoever?

Lord President. My Lord, my Lord Bishop of *St. Asaph*, and my Lord Bishop of *Chichester* came to my Office, and told me, they came in the Names of my Lord Archbishop of *Canterbury*, and four others of their Brethren, and themselves, with a Petition, which they desired to deliver to his Majesty, and they did come to me to know which was the best way of doing it, and whether the King would give them Leave to do it or not? They would have had me read their Petition, but I refused it, and said, I thought it did not at all belong to me, but I would let the King know their Desire, and bring them an Answer immediately, what his Pleasure was in it; which I did. I acquainted the King, and he commanded me to let my Lords the Bishops know, they might come when they pleased, and I went back and told them so; upon which they went and fetch'd the rest of the Bishops, and when they came, immediately they went into the Bed-Chamber, and into another Room, where the King was. This is that I know of the Matter.

Mr. Soll. Gen. About what Time was this, pray my Lord?

Lord President. I believe there could not be much Time between my coming from the King,

and their fetching their Brethren, and going in to the King.

Mr. Soll. Gen. They were with the King that Day?

Lord President. Yes, they were.

Mr. Soll. Gen. Was this before they appeared in Council?

Lord President. Yes, it was several Days before.

Mr. Soll. Gen. Then I think now, my Lord, the Matter is very plain.

Mr. Just. Althbone. Did they acquaint your Lordship that their Business was to deliver a Petition to the King?

Lord President. Yes, they did.

Mr. Soll. Gen. And they would have had my Lord read it, he says.

Mr. Att. Gen. And this was the same Day that they did go in to the King?

Lord President. The very same Day, and I think the same Hour; for it could not be much longer.

L. C. J. Now it is upon you, truly; it will be presumed to be the same, unless that you prove that you delivered another— Pray, my Lord, did you look into the Petition?

Lord President. No, I refused it; I thought it did not concern me.

Mr. Just. Powell. Did you see them deliver it to the King, my Lord?

Lord President. I was not in the Room when it was delivered.

Mr. Just. Powell. They did open their Petition to your Lordship, did they?

Lord President. They offered me to read it, but I did refuse.

L. C. J. Will you ask my Lord President any Question, you that are for the Defendants?

Sir Rob. Sawyer. No, my Lord.

Mr. Soll. Gen. Then, my Lord, we must beg one Thing for the sake of the Jury, if your Lordship can turn your self a little this Way, and deliver the Evidence you have given over again, that they may hear it.

Lord President. My Lord, I will repeat it as near as I can; I think I shall not vary the Sense. The Bishops of *St. Asaph* and *Chichester* came to my Office, I do not know just the Day when, but it it was to let me know, that they came in the Names of the Archbishop, and four others of their Brethren— Is it necessary I should name them?

L. C. J. Do it, my Lord, if you can.

Lord President. They were the Bishops of *Ely*, *Bath* and *Wells*, *Bristol*, and *Peterborough*: They came to let me know, in the Name of the Archbishop, those four, and themselves, that they had a Petition to deliver to the King, if he would give them Leave, and desired to know of me which was the best way to do it. I told them I would know the King's Pleasure, and bring them Word again: They offered me their Petition to read, but I did not think it fit for me to do it, and therefore I refused, and would not read it; but I went immediately to the King, and acquainted his Majesty with it, and he commanded me to let them know they might come when they would, which I immediately did: They said they would go and speak with some of their Brethren that were not far off: In the mean time I gave Order that they should be admitted when they came, and they did in a little Time return, and went first into the Bed-Chamber, and then into the Room where the King was.

Mr. Soll. Gen. And this was before they came and appeared at the Council?

Lord President. Yes, it was.

Mr. Pollexfen. Your Lordship did not read any thing of the Petition?

Lord President. No, Sir, I did not, I refused it.

Mr. Pollexfen. Nor does your Lordship know what Petition was delivered to the King?

Lord President. I did not know any thing of it from them then.

L. C. J. Now you may make your Observations upon this two Hours hence: Now we shall hear what *Mr. Finch* had further to offer, I suppose.

[Then my Lord President went away.]

Mr. Soll. Gen. I think now it is very plain.

L. C. J. Truly, I must needs tell you, there was a great Presumption before, but there is a greater now, and I think I shall leave it with some Effect to the Jury. I cannot see but here is enough to put the Proof upon you. They came to the Lord President, and asked him how they might deliver a Petition to the King: He told them he would go see what the King said to it. They would have had him read their Petition, but he refused it: He comes and tells them the King said they might come when they would: Then those two that came to my Lord President went and gathered up the other four (the Archbishop indeed was not there) but they six came, and my Lord President gave Direction they should be let in, and they did go into the Room where the King was. Now this, with the King's producing the Paper, and their owning it at the Council, is such a Proof to me, as I think will be Evidence to the Jury of the Publication.

Mr. Pollexfen. Then, my Lord, thus far they only can go; the Archbishop was not there, and so there is no Evidence against him.

Mr. Soll. Gen. As to the Writing, we have given Proof against him, for it is all his Hand.

Mr. Pollexfen. That still is in another County, and there is nothing proved to be done by my Lord Archbishop in *Middlesex*; and next, for the other six Lords, my Lord President does not say that this is the Petition that they said they had to deliver to the King; nor did he see them deliver any thing to the King; but that is still left doubtful, and under your Judgment, so that it stands upon Presumption, not upon Proof, that this is the same, and left under Consideration.

Mr. Att. Gen. Then we will leave it fairly to the Jury upon this Fact.

Mr. Pollexfen. If so, then we desire to be heard in our Defence.

Sir Rob. Sawyer. May it please your Lordship, and you Gentlemen of the Jury, you have heard this Charge which Mr. Attorney has been pleased to make against my Lords the Bishops, and that is this, That they did conspire to diminish the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council; and in Prosecution of this, they did falsely, maliciously and seditiously make a Libel against the King, under Pretence of a Petition, and did publish the same in the King's Presence.

This, Gentlemen, is a very heinous and heavy Charge; but you see how short their Evidence is: The Evidence they bring forth is only, that my Lords the Bishops presented the Paper to the King in the most private and humble Manner

they could: That which they have been so many Hours a proving, and which they cry up to be as strong an Evidence as ever was given, proves it to be the farthest from Sedition in the doing of it that can be; and you see what it is, it is a Petition to be relieved against an Order of Council, which they conceive they were aggrieved by. They indeed do not deal fairly with the Court nor with us, in that they do not set it forth that it was a Petition.

L. C. J. That was over-ruled before.

Sir Rob. Sawyer. I do not insist upon it now so much an Exception to the Information, as I do the Evidence. They set this forth to be a scandalous Matter, but it only contains their Reasons, whereby they would satisfy his Majesty why they cannot comply in a Concurrence with his Majesty's Pleasure; and therefore they humbly beseech the King, and beg and request him (as the Words of it are) that his Majesty would be pleased not to insist upon their distributing and reading of this Declaration: So the Petitioners, on Behalf of themselves and the whole Clergy of *England*, beg of the King that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this Petition that contains any thing of Sedition in it; and it would be strange this Petition should be *Felo de se*, and by one Part of it destroy the other. It is laid indeed in the Information, that it was with Intent and Purpose to diminish the King's Royal Authority; but I appeal to your Lordship, the Court, and the Jury, whether there be any one Word in it, that any way touches the King's Prerogative, or any Tittle of Evidence that has been given to make good the Charge. It is an Excuse barely for their Non-compliance with the King's Order, and a begging of the King with all Humility and Submission, that he would be pleased not to insist upon the reading of his Majesty's Declaration upon these Grounds, because the dispensing Power upon which it was founded, had been several times in Parliament declared to be against Law, and because it was a Case of that Consequence that they could not in Prudence, Honour, or Conscience concur in it.

My Lord, Mr. Attorney has been pleased to charge in this Information, that this is a false, malicious and seditious Libel: Both the Falsity of it, and that it was malicious and seditious, are all Matters of Fact, which, with Submission, they have offered to the Jury no Proof of, and I make no Question but easily to demonstrate the quite contrary.

For, my Lord, I think it can be no Question, but that any Subject that is commanded by the King to do a Thing which he conceives to be against Law, and against his Conscience, may humbly apply himself to the King, and tell him the Reason why he does not that thing he is commanded to do, why he cannot concur with his Majesty in such a Command.

My Lord, that which Mr. Attorney did insist upon in the Beginning of this Day (and he pretended to cite some Cases for it) was, that in this Case, my Lords the Bishops were not sued as Bishops, nor prosecuted for their Religion. Truly, my Lord, I do not know what they are sued for else: The Information is against them as Bishops, it is for an Act they did as Bishops, and no otherwise; and for an Act they did, and do

conceive they lawfully might do with relation to their Ecclesiastical Polity, and the Government of their People as Bishops.

The next Thing that Mr. Attorney offered was, That it was not for a Non-feasance, but for a Feasance. It is true, my Lord, it is for a Feasance in making of the Petition, but it was to excuse a Non-feasance, the not reading according to the Order; and this sure was lawful for all the Bishops as Subjects to do; and I shall shew it was certainly the Duty of my Lords the Bishops, or any Peer of this Realm, to do the same in a like Case. It was likewise said, they were prosecuted here for affronting the Government, and intermeddling with Matters of State; but I beg your Lordship and the Jury to consider, whether there is one Tittle of this mentioned in the Petition, or any Evidence given of it. The Petition does not meddle with any thing of any Matter of State, but refers to an Ecclesiastical Matter, to be executed by the Clergy, and to a Matter that has Relation to Ecclesiastical Causes; so that they were not Busy-bodies, or such as meddled in Matters that did not relate to them, but that which was properly within their Sphere and Jurisdiction.

But after all, there is no Evidence, nor any Sort of Evidence that is given by Mr. Attorney, that will maintain the least Tittle of this Charge; and how he comes to leave it upon this Sort of Evidence I cannot tell; all that it amounts to is, That my Lords the Bishops being grieved in this Manner, made this Petition to the King in the most private and respectful Manner; and for him to load it with such horrid black Epithets, that it was done libellously, maliciously, and scandalously, and to oppose the King and Government, 'tis very hard; 'tis a Case of a very extraordinary Nature, and I believe my Lords the Bishops cannot but conceive a great deal of Trouble, that they should lie under so heavy a Charge, and that Mr. Attorney should draw so severe an Information against them, when he has so little Proof to make it out.

My Lord, by what we have to say to it, we hope we shall give your Lordship and the Jury Satisfaction, that we have done but our Duties, supposing here has been a sufficient Evidence of the Fact given, which we leave to your Lordship and the Jury.

My Lord, we say in short, That this Petition is no more than what any Man, if he be commanded to do any thing, might humbly do it, and not be guilty of any Crime: And, my Lord, as to the Matter of our Defence, it will consist of these Heads:

First, We shall consider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here; and,

Thirdly, The Persons that have delivered this Petition. And we hope to make it appear, beyond all Question, that the Matter contained in this Petition, is neither false nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We shall likewise shew you (though that appear sufficiently to you already) that the Manner of delivering it was so far from being seditious, that it was in the most secret and private Manner, and with the greatest Humility and Duty imaginable. And then as to the Persons,

we shall shew you that they are not such as Mr. Attorney says, who meddle with Matters of State, that are out of their Sphere; but they are Persons concerned, and concerned in Interest in the Case, to make this humble Application to the King. And when we have proved all this Matter, you will see how strangely we are blackened with Titles and Epithets which we no ways deserve, and of which, God be thanked, there is no Proof.

For, my Lord, for the Matter of the Petition, we shall consider two Things.

The First is, The Prayer, which is this; They humbly beg and desire of the King, on Behalf of themselves and the rest of the Clergy, that he would not insist upon the Reading and Publishing of this Declaration.

Surely, my Lord, there is nothing of Falsity in this, nor any thing that is contrary to Law, or unlawful for any Man that is pressed to any thing, especially by an Order of Council; and this is nothing but a Petition against an Order of Council; and if there be an Order that commands my Lords the Bishops to do a Thing that seems grievous to them, surely they may beg of the King that he would not insist upon it.

And for this Matter, they were so well satisfied about it, and so far from thinking that it was any Part of a Libel, that they left it out of the Information, and so have made a deformed and absurd Story of it, without Head or Tail, a Petition directed to no body, and for nothing, it being without both Title and Prayer; so that this is plain, it was lawful to petition.

Then, my Lord, the next Thing is, the Reasons which my Lords the Bishops come to acquaint the King with; why, in Honour and Conscience they cannot comply with, and give Obedience to this Order; and the Reasons, my Lord, are two.

The first Reason that is assigned, is, the several Declarations that have been in Parliament (several of which are mentioned) that such a Power to dispense with the Law, is against Law, and that it could not be done but by an Act of Parliament; for that is the Meaning of the Word *Illegal*, that has no other Signification but unlawful; the same Word in Point of Signification with the Word *Illicite*, which they have used in their Information, a Thing that cannot be done by Law; and this they are pleased to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Bishops of the Church, are bound to understand the Laws, especially when (as I shall come to shew you) they are made Guardians of these Laws; and if any thing go amiss, and contrary to these Laws, they ought to inform the King of it.

My Lord, the next Thing is, Because it is a Thing of so great Moment, and the Consequences that will arise from their publishing of this Declaration, and that too, my Lord (for the latter I shall begin first with) there can be no Question about, or any Pretence that this is libellous or false; for certainly it is a Case of the greatest Consequence to the whole Nation that ever was, therefore it cannot be false or libellous to say so.

My Lord, I would not mention this, for I am loth to touch upon Things of this Nature, had not the Information itself made it the very Gift of the Charge; for the Information (if there be any thing

in it) says, that it was to diminish the King's Prerogative and Regal Power in publishing that Declaration.

Now, my Lord, what the Consequence of this would be, and what my Lords the Bishops meant by saying, it was a Cause of great Moment, will appear, by considering that which is the main Clause in the Declaration, at which my Lords the Bishops scrupled, which is the main Stumbling-block to my Lords, and has been to many honest Men besides, and that is this.

“ We do likewise declare, It is our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of Penal Laws, in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion established; or for any or by reason of the Exercise of Religion in any Manner whatsoever, be immediately suspended; and the further Execution of the said Penal Laws, and every of them, is hereby suspended.

Here the Lord Chief Justice speaking aside, said,

L. C. J. *I must not suffer this; they intend to dispute the King's Power of suspending Laws.*

Mr. Just. Powell. *My Lord, they must necessarily fall upon that Point; for if the King hath no such Power) as clearly he hath not in my Judgment) the natural Consequence will be, that this Petition is no Diminution of the King's Regal Power, and so not seditious or libellous.*

L. C. J. Brother. *I know you are full of that Doctrine; but however, my Lords the Bishops shall have no Occasion to say, that I deny to hear their Council. Brother, you shall have your Will for once, I will hear them, let them talk till they are weary.*

Mr. Just. Powell. *I desire no greater Liberty to be granted them than what in Justice the Court ought to grant, that is, to hear them in Defence of their Clients.*

mit of such a Quibble as to pretend, that the suspending the Execution of the Law, is not a suspending of the Law; for we all know the End of every Law, in its primary Intent, is Obedience to it; that of the Penalty comes in by way of Punishment and Recompence for their Disobedience.

Now, my Lord, if this Declaration does discharge the King's Subjects from their Obedience to, and the Obligation from those Laws; then pray, my Lord, where are we? Then all the Laws of the Reformation are suspended, and the Laws of Christianity itself, by those latter Words [or for or by reason of Religion in any Manner what-

soever] so that it is not confined to the Christian Religion, but all other Religions are permitted under this Clause; and thus all our Laws for keeping the Sabbath, and which distinguish us from Heathens, will be suspended too.

My Lord, this is such an Inconvenience as, I think, I need name no more; and it is a very natural Consequence from that Clause of the Declaration; it discharges at once all Ministers and Clergymen from performing their Duty in reading the Service of the Church; it discharges their Hearers from attending upon that Service.

When a Law is suspended, the Obligation thereof is taken away; and those that before thought themselves bound to obey, now conclude they are not so obliged; and what a Mischief that will be to the Church, which is under the Care of my Lords the Bishops, your Lordship will easily apprehend.

These Things, my Lord, I only mention, to shew the great and evil Consequences that apparently follow upon such a Declaration, which made my Lords the Bishops decline obeying the Order, and put them under a Necessity of applying thus to the King, to acquaint him with the Reasons why they could not comply with his Commands to read this Declaration to the People, because the Consequences thereof were so great, it tending naturally to lead the People into so great an Error, as to believe those Laws were not in Force, when in Truth and Reality they are still in Force, and continue to oblige them.

And that being the second Reason in this Petition, I come next to consider it, to wit, that the Parliament had often declared this pretended Power to be Illegal; and for that we shall read the several Records in Parliament mentioned in their Petition, and produce several antient Records of former Parliaments that prove this Point; and particularly in the Time of Richard the Second, concerning the Statute of Provisors, where there were particular Dispensations for that Statute, the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir Robert Sawyer, go to your Proofs, and reserve your Arguments till afterwards.

Sir Rob. Sawyer. My Lord, I do but shortly mention these Things; so that, my Lord, as to the Matter of this Petition, we shall shew you, that it is true and agreeable to the Laws of the Land.

Then, my Lord, as to the Manner of delivering it, I need say no more, but that it is plain from their Evidence, that it was in the most private and humble Manner. And, as my Lord President said, Leave was asked of the King for them to be admitted to present it: Leave was given, and accordingly they did it.

We come then, my Lord, to the third Thing, the Persons, these noble Lords; and we shall shew they are not Busy-bodies, but in this Matter have done their Duty, and meddled with their own Affairs. That, my Lord, will appear,

First, By the general Care that is reposed in them by the Law of the Land: They are frequently in our Books called the King's Spiritual Judges; they are entrusted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

But, besides this, my Lord, there is another special Care put upon them, by the express Words of an Act of Parliament; for, over and above the general Care of the Church, by Virtue of their Offices as Bishops, the Act of 1 *Eliz. Cap. 2.* makes them special Guardians of the Law of Uniformity, and of that other Law in his late Majesty's Reign; where all the Clauses of that Statute of 1 *Eliz.* are revived, and made applicable to the present State of the Church of *England*. Now in that Statute of 1 *Eliz.* there is this Clause.

And for the due Execution hereof, the Queen's most Excellent Majesty, the Lords Spiritual and Temporal, and all the Commons in this present Parliament assembled, do, in God's Name, earnestly require and charge all the Archbishops, and Bishops, and other Ordinaries, that they do endeavour themselves, to the Utmost of their Knowledge, that the due and true Execution hereof may be had throughout their Diocesses and Charges, as they will answer before God, for such Evils and Plagues wherewith Almighty God may justly punish his People, for neglecting this good and wholesome Law.

This is the Charge that lies upon the Bishops, to take Care of the Execution of that Law; and I shall pray by and by, that it may be read to the Jury.

Mr. Soll. Gen. That is very well, indeed! To what Purpose?

Sir Rob. Sawyer. So that, my Lord, by this Law it is plain, that my Lords the Bishops, upon Pain of bringing upon themselves the Imprecation of this Act of Parliament, are obliged to see it executed; and then, my Lord, when any thing comes under their Knowledge, especially if they are to be Actors in it, that hath such a Tendency to destroy the very Foundation of the Church, as the Suspension of all the Laws that related to the Church must do, it concerns them that have no other Remedy, to address the King, by Petition, about it.

For that, *Mr. Attorney*, my Lord, has agreed, that if a proper Remedy be pursued in a proper Court, for a Grievance complained of, though there may be many hard Words that else would be scandalous, yet, being in a regular Course, they are no Scandal: And so it is said in *Lake's Case*, in my Lord *Hobart*.

My Lord, we must appeal to the King, or we can appeal to no body, to be relieved against an Order of Council with which we are aggrieved; and it is our Duty so to do, according to the Care that the Law hath placed in us.

Besides, my Lord, the Bishops were commanded by this Order, to do an Act relating to their Ecclesiastical Function, to distribute it to be read by their Clergy: And how could they in Conscience do it, when they thought Part of the Declaration was not according to Law?

Pray, my Lord, What has been the Reason of his Majesty's consulting of his Judges? And if his Majesty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King so? I always look'd upon it as the Duty of an Officer or Magistrate, to tell the King what is Law, and what is not Law.

In *Cavendish's Case*, in the Queen's Time, there was an Office granted of the Return of the Writs of *Superſedeas* in the Court of *Common-Pleas*; and he comes to the Court, and desires to be put into the Possession of the Office: The Court told him, They could do nothing in it, but he must bring

his Assize. He applies to the Queen, and she sends, under the Privy-Seal, a Command to sequester the Profits, and to take Security to answer the Profits, as the Judgment of the Law should go: But the Judges there return an Answer, That it was against Law, and they could not do it. Then there comes a second Letter; reciting the former, and commanding their Obedience: The Judges returned for Answer, They were upon their Oaths, and were sworn to keep the Laws, and would not do it.

My Lord, The like was done in the Time of my Lord *Hobart*: We have it reported in *Anderſon*, in a Case where a Prohibition had gone: There came a Message from Court; that a Consultation should be granted; and that was a Matter wherein there were various Opinions, whether it was *ex Necessitate*, or Discretionary; but there they return'd, That it was against Law, for any such Message to be sent.

Now here, my Lord, is a Case full as strong: My Lords the Bishops were commanded to do an Act, which they conceived to be against Law, and they declined it, and tell the King the Reason; and they have done it in the most humble Manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *Rescribere* generally, that had been lawful; but here they have done it in a more respectful Manner, by an humble Petition. If they had said the Law was otherwise, that sure had been no Fault; but they do not so much as that, but they only say, it was so declared in Parliament; and they declare it with all Humility and Dutifulness. So that, my Lord, if we consider the Persons of the Defendants, they have not acted as Busy-bodies; and therefore, as this Case is, when we have given our Evidence, here will be an Answer to all the Implications of Law that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but by what I have said, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper, that they have put into the Case. We shall prove the Matters that I have open'd for our Defence, and then, I dare say, your Lordship and the Jury will be of Opinion, we have done nothing but our Duty.

Mr. Finch. May it please your Lordship, and you, Gentlemen of the Jury, This Information sets forth (as you may observe upon opening it) that the King having, by his Royal Prerogative, set forth his Declarations that have been read, and made an Order of Council for the reading the said Declarations in the Churches, and that the Archbishop and Bishops should severally send them into their Diocesses, to be read; my Lords the Bishops, that are the Defendants, did consult and conspire together to diminish the Kingly Authority, and Royal Prerogative of the King, and his Power and Government in his Regal Prerogative, in setting forth his Declaration; and that, in Prosecution of that Conspiracy, they did contrive (as it was laid in the Information) a malicious, seditious, false, and feigned Libel, under Pretence of a Petition, and so set forth the Petition; and that they published the Petition in the Presence of the King.

To this Charge in the Information, Not Guilty being pleaded, the Evidence that hath been given for the King, I know hath been observed by the Court and the Jury, and I know will be taken in-

to Consideration, how far it does come up to the Proof of the Delivery of this Petition by my Lords the Bishops; for all that was said till my Lord President was pleased to come, was no Evidence of any Delivery at all; and my Lord President's Evidence is, that they were going to deliver a Petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the Evidence that has been given for the King.

But supposing now, my Lord, that there were Room to presume that they had delivered this Petition set forth in the Information, let us consider what the Question is between the King and my Lords the Bishops: The Question is, whether they are guilty of contriving to diminish the King's Regal Authority and Royal Prerogative, in his Power and Government, in setting forth this Declaration? Whether they are guilty of the making and presenting a malicious, seditious and scandalous Libel; and whether they have published it, as it is said in the Information, in the King's Presence?

So that the Question is not now reduced to this, Whether this Paper, that is set forth in the Information, was delivered to the King by my Lords the Bishops; but whether they have made a malicious and scandalous Libel, with an Intent to diminish the King's Royal Prerogative, and Kingly Authority? And then, if you Gentlemen should think that there is Evidence given sufficient to prove that my Lords the Bishops have delivered to the King that Paper which is set forth in the Information; yet, unless they have delivered a false, malicious, seditious and scandalous Libel; unless they have published it, to stir up Sedition in the Kingdom; and unless they have contrived this by Conspiracy, to diminish the King's Royal Prerogative and Authority, and that Power that is said to be in the King, my Lords the Bishops are not guilty of this Accusation.

There are in this Declaration several Clauses, which, upon reading of the Information, I am sure, cannot but have been observed by you, Gentlemen of the Jury; and one special Clause hath been by the Council already opened to you, and I shall not enlarge upon it.

My Lord, this Petition that is thus delivered to the King, if it be a Libel, a scandalous and seditious Libel (as the Information calls it) it must be so, either for the Matter of the Petition, or for the Persons that delivered the Petition, or for the Manner of their presenting and delivering it: But neither for the Matter, nor for the Persons, nor for the Manner of presenting it, is there any Endeavour to diminish the King's Royal Prerogative, nor to stir up Sedition, nor Reflection upon the King's Royal and Kingly Authority.

The Petition does humbly set forth to his Majesty, that there having been such a Declaration, and such an Order of Council; they did humbly represent to his Majesty, that they were not adverse to any thing commanded them in that Order, in respect to the just and due Obedience that they owed to the King, nor in respect of their Want of a due Tenderness to those Persons to whom the King had been pleased to shew his Tenderness; but the Declaration being founded upon a Power of Dispensing, which had been declared illegal in Parliament several Times, and particularly in the Year 1662, 72, and 85, they did humbly beseech his Majesty (they not being able

to comply with his Command in that Matter) that he would not insist upon it.

Now, my Lord, Where is the Contrivance to diminish the King's Regal Authority, and Royal Prerogative?

This is a Declaration founded upon a Power of dispensing, which undertakes to suspend all Laws Ecclesiastical whatsoever; for not coming to Church, or not receiving the Sacrament, or any other Non-conformity to the Religion established, or for, or by reason of the Exercise of Religion in any Manner whatsoever; ordering that the Execution of all those Laws be immediately suspended, and they are thereby declared to be suspended; as if the King had a Power to suspend all the Laws relating to his established Religion, and all the Laws that were made for the Security of our Reformation. These are all suspended by his Majesty's Declaration (as it is said) in the Information, by Virtue of his Royal Prerogative, and Power so to do.

Now, my Lord, I have always taken it, with Submission, that a Power to abrogate Laws, is as much a Part of the Legislature, as a Power to make Laws: A Power to lay Laws asleep, and to suspend Laws, is equal to a Power of abrogating them; for they are no longer in being, as Laws, while they are so laid asleep, or suspended: And to abrogate all at once, or to do it Time after Time, is the same Thing; and both are equally Parts of the Legislature.

My Lord, In all the Education that I have had, in all the small Knowledge of the Laws that I could attain to, I could never yet hear of, or learn, that the Constitution of the Government in *England* was otherwise than thus, That the whole Legislative Power is in the King, Lords and Commons; the King and his two Houses of Parliament. But then, if this Declaration be founded upon a Part of the Legislature, which must be by all Men acknowledged, not to reside in the King alone, but in the King, Lords and Commons, it cannot be a legal and true Power, or Prerogative.

This, my Lord, has been attempted, but in the last King's Time; it never was pretended till then; and in that first Attempt, it was so far from being acknowledged, that it was taken Notice of in Parliament, and declared against: So it was in the Years 1662, and 1672.

In the Year—62, where there was but the least Umbrage given of such a dispensing Power; although the King had declared, in his Speech to the Parliament, that he wished he had such a Power, which his Declaration before seemed to assume; the Parliament was so jealous of this, that they immediately made their Application to his Majesty, by an Address against the Declaration; and they give Reasons against it, in their Address: One in particular was, *That the King could not dispense with those Laws, without an Act of Parliament.*

There was another Attempt in 1672, and then, after his Majesty had, in his Speech mentioned his Declaration to them, the Parliament there again, particularly the House of Commons, did humbly address to his Majesty; setting forth, that this could not be done by Law, without an Act of Parliament: And your Lordship, by and by, upon reading the Record, will be satisfied what was the Event of all this. His Majesty himself was so far pleased to concur with them in that Opinion, that he cancelled his Declaration, tore off the Seal, and

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caused it to be made known to the House of Lords, by the Lord Chancellor, who, by his Majesty's Command, satisfied the House of it, that his Majesty had broken the Seal, and cancell'd the Declaration; with this further Declaration, which is enter'd in the Records of the House, *That it should never be drawn into Example, or Consequence.*

My Lord, The Matter standing thus, in respect to the King's Prerogative, and the Declarations that had been made in Parliament; consider next, I beseech you, how far my Lords the Bishops were concerned in this Question, humbly to make their Application to the King.

My Lords the Bishops lying under a Command to publish this Declaration, it was their Duty, as Peers of the Realm, and Bishops of the Church of *England*, humbly to apply themselves to his Majesty, to make known their Reasons why they could not obey that Command; and they do it with all Submission, and all Humility, representing to his Majesty what had been declared in Parliament; and it having been so declared, they could not comply with his Order, as apprehending that this Declaration was founded upon that which the Parliament declared to be illegal; and so his Majesty's Command to publish this Declaration, would not warrant them so to do. This they did as Peers; and this they had a Right to do as Bishops, humbly to advise the King.

For, suppose, my Lord (which is not to be supposed in every Case, nor do I suppose it in this: But suppose that there might be a King of *England* that should be misled. I do not suppose that to be the Case now, I say, but I know it hath been the Case formerly) that the King should be environed with Counsellors that had given him evil Advice; it hath been objected as a Crime against such evil Counsellors, that they would not permit and suffer the Great Men of the Kingdom to offer the King their Advice. How often do we say in *Westminster-hall*, that the King is deceived in his Grant? There is scarce a Day in the Term, but it is said in one Court or other; but it was never yet thought an Offence to say so: And what more is there in this Case?

My Lord, if the King was mis-informed, or under a Misapprehension of the Law, my Lords, as they are Peers, and as they are Bishops, are concerned in it; and if they humbly apply themselves to the King, and offer him their Advice, where is the Crime?

My Lord, these noble Lords, the Defendants, had more than an ordinary Call to this; for besides the Duty of their Office, and the Care of the Church, that was incumbent on them as Bishops, they were here to become Actors; for they were, by that Order of Council, commanded themselves to publish it, and to distribute it to the several Ministers in their several Diocesses, with their Commands to read it: Therefore they had more than ordinary Reason to concern themselves in the Matter.

Next, we are to consider, my Lord, in what Manner this was done: They make their Application to the King, by an humble Petition, with all the Decency and Respect that could be shewn; asking Leave, first, to approach his Person; and having Leave, they offered my Lord President the Matter of their Petition, that nothing might seem hard, or disrespectful, or as if they intended any thing that was unfit to be avowed. When

they had taken all this Care in their Approach, and begging Leave for it, they come secretly to the King in private, when he was all alone, and there they humbly present this Petition to his Majesty. Now, how this can be called the Publication of a malicious and seditious Libel, when it was but the presenting of a Petition to the King alone; and how it can be said to be with an Intent to stir up Sedition in the People against his Majesty, and to alienate the Hearts of his People from him, when it was in this private Manner delivered to him himself only, truly I cannot apprehend.

My Lord, I hope nothing of this can be thought an Offence: If the Jury should think that there has been Evidence sufficient given to prove that my Lords the Bishops did deliver this Paper to the King, yet that is not enough to make them guilty of this Information, unless this Paper be likewise found to be in Diminution of the King's Royal Prerogative and Regal Authority in dispensing with, and suspending of all Laws, without Act of Parliament: Unless it be found to be a Libel against the King, to tell him, that in Parliament it was so and so declared: And unless the presenting this by Way of Petition (which is the Right of all People that apprehended themselves aggrieved, to approach his Majesty by Petition) be a libelling of the King: And unless this humble Petition, in this Manner presented to the King in private, may be said to be a malicious and seditious Libel, with an Intent to stir up the People to Sedition: Unless all this can be found, there is no Man living can ever find my Lords the Bishops guilty upon this Information. Therefore, my Lord, we will go on, and make out this Matter that we have opened to your Lordship, if Mr. Attorney, and Mr. Solicitor think fit to argue the Points that we have opened.

Mr. Pollexfen. Pray, my Lord, spare me a Word on the same Side. For the first Point, it is a Point of Law, whether the Matter contained in this Petition be a Libel. The King's Council pretend it is so, because it says, the Declaration is founded upon a Power the Parliament has declared to be illegal. But we say, that whatsoever the King is pleased to say in any Declaration of his, it is not the King's saying of it that makes it to be Law. Now, we say, this Declaration under the Great Seal, is not agreeable to the Laws of the Land; and that for this Reason, because it does, at one Blow, set aside all the Law we have in *England*.

My Lord, if this be denied, we must a little debate this Matter; for they are almost all penal Laws; not only those before the Reformation, but since; upon which the whole Government, both in Church and State, does in a great Measure depend.

Especially, my Lord, in Matters of Religion, they are all penal Laws: For, by the Act of Uniformity, which my Lords the Bishops are sworn to observe, and adjured by an express Clause in the Act, no Man is to preach unless he be Episcopally ordained; no Man is to preach without a Licence. If all this be set aside, I confess then, it will go very far into the whole Ecclesiastical Government. If this be denied, we are ready to argue that too.

L. C. J. They are to do so still.

Mr. Pollexfen. My Lord, I am sure the Consequence is otherwise, if this Declaration signify any

any thing. And if it be the Will of the King, my Lord, the Will of the King is what the Law is. If so be the King's Will be not consonant to the Law, it is not obliging.

My Lord, The Cases that we have had of Dispensations, are all so many strong Authorities against a general, or particular Abrogation. My Lord, that is a Matter of Law, which if it fall out to be any way doubtful, it will be fit to have it debated and settled.

If they will say, that the Penal Laws in Matters Ecclesiastical can be abrogated, or nulled, or made void *pro tempore*, or for Life, without the meeting of the King and People in Parliament, I must confess, they say a great thing, as it is a Point of great Concern; but I think that will not be said: And all that has been ever said in any Case, touching Dispensations, proves quite the contrary, and asserts what I affirm. For why should any Man go about to argue, that the King may dispense with this or that particular Law, if at once he can dispense with all the Law, by an undoubted Prerogative? This is a Point of Law which we insist upon, and are ready to argue with them; but we will go on with the rest of those Things that we have offered: And first, we will read the Act of Uniformity, made 1 *Eliz.* that Clause of it, where they are so strictly charged to see the Execution of that Law.

This Act, my Lord, by the Act of Uniformity, made in the Beginning of the late King's Reign, is revived, with all the Clauses in it relating to this Matter. If then this be a Duty incumbent upon them, and their Oaths require it of them; and if they find that the Pleasure of the King, in his Declaration, is that which is not consonant to this Law, what can they do?

Can any thing be more humble, or done with a more Christian Mind, than by Way of Petition, to inform the King in the Matter? For I never thought it, nor hath it ever, sure, been thought by any body else, to be a Crime to petition the King: For the King may be mistaken in the Law, so our Books say; and we, every Day, in *Westminster-hall*, argue against the King's Grants, and say, he is deceived in his Grants. It is the great Benefit and Liberty which the King gives to his Subjects, to argue the Legality or Illegality of his Grants.

My Lord, when all this is done, to make this to be a Libel, by putting in the Words Malicious, Seditious, Scandalous, and with an Intent to raise Sedition, would be pretty hard.—My Lord, we pray that Clause of the Statute may be read.

Mr. Soll. Gen. What for?

Mr. Pollexfen. It is a general Law, and therefore the Court will take Notice of it; and we pray the Jury may hear it read.

Mr. Soll. Gen. I agree it to be as *Mr. Pollexfen* has opened; and I agree it to be as *Sir Robert Sawyer* has opened it.

Mr. S. Pemberton. My Lord, we shall put it upon a short Point. My Lords the Bishops are here accused of a Crime of a very heinous Nature as can be; they are here branded and stigmatized by this Information, as if they were seditious Libellers; when, my Lord, it will in Truth fall out, that they have done no more than their Duty; their Duty to God, their Duty to their King, and their Duty to the Church.

For, in this Case, that which we humbly offer to your Lordship (and insist upon it, as very

plain) is this; That the Kings of *England* have no Power to suspend, or dispense with the Laws and Statutes of the Kingdom, that establish Religion: That is it which we stand upon for our Defence. And we say, That such a dispensing Power with Laws and Statutes, is a Thing that strikes at the very Foundation of all the Rights, Liberties and Properties of the King's Subjects whatsoever. If the King may suspend the Laws of the Land which concern our Religion, I am sure there is no other Law but he may suspend: And if the King may suspend all the Laws of the Kingdom, what a Condition are all the Subjects in, for their Lives, Liberties and Properties? All at Mercy.

My Lord, the King's legal Prerogatives are as much for the Advantage of his Subjects as of himself; and no Man goes about to speak against them: But, under Pretence of legal Prerogatives, to extend the Power of the King to support a Prerogative that tends to the Destruction of all his Subjects, their Religion, and Liberties; in that, I think, they do the King no Service, who go about to do it.

But now we say, with your Lordship's Favour, that these Laws are the great Bulwark of the Reformed Religion; they are, in Truth, that which fence the Religion and Church of *England*, and we have no other human Fence besides. They were made upon a Foresight of the Mischief that had, and might come, by false Religions in this Kingdom; and they were intended to defend the Nation against them, and to keep them out; particularly, to keep out the *Romish* Religion, which is the very worst of all Religions, from prevailing among us; and that is the very Design of the Act for the Tests, which is entituled, *An Act to prevent Dangers that may happen from Popish Recusants.*

My Lord, if this Declaration should take Effect, what would be the End of it? All Religions are let in, let them be what they will; *Ranters*, *Quakers*, and the like; nay, even the *Roman Catholic* Religion, as they call it, which was intended, by these Acts of Parliament, and by the Act of Uniformity, and several other Acts, to be kept out of this Nation, as a Religion no Way tolerable, nor to be endured here.

If this Declaration take Effect, that Religion will stand upon the same Terms with the Protestant Religion. Suspend those Laws, and that *Romish* Religion, that was intended to be prohibited, and so much Care was taken, and so many Statutes made to prohibit it, will come in; and all this Care, and all those Statutes go for nothing. This one Declaration sets them all out of Doors; and then that Religion stands upon equal Terms with the established Religion.

My Lord, we say this farther, that my Lords the Bishops have the Care of the Church, by their very Function and Offices; and are bound to take Care to keep out all those false Religions that are prohibited, and designed to be kept out by the Law. My Lords the Bishops finding this Declaration founded upon a meer pretended Power, that had been continually opposed and rejected in Parliament, could not comply with the King's Command to read it.

My Lord, Such a Power to dispense with, or suspend the Laws of a Nation, cannot with any Shadow of Reason be. It is not long since, that such a Power was ever pretended to by any,

but such as have the Legislative too; for it is plain, that such a Power must at least be equal to the Power that made the Laws. To dispense with a Law must argue a Power greater, or at least as great as that which made the Law.

My Lord, it has been often said in our Books, That where the King's Subjects are concerned in Interest, the King cannot suspend, or dispense with a particular Law. But, my Lord, how can the King's Subjects be more concerned in Interest, than when their Religion lies at Stake? It has been resolved, upon the Statute of *Symony*, that where the Statute has disabled the Party to take, there the King could not enable him against that Act of Parliament: And shall it be said, that by his Dispensation he shall enable one to hold an Office who is disabled by the Test-act?

My Lord, we say, The Course of our Law allows no such Dispensation as the Declaration pretends to: And he that is but meanly read in our Law, must needs understand this, That the Kings of *England* cannot suspend our Laws; for that would be to set aside the Law of the Kingdom: And then we might be clearly without any Laws, if the King should please to suspend them.

'Tis true, we say, the last King *Charles* was prevailed upon, by Mis-information, to make a Dispensation somewhat of the Nature of this, though not so full an one; for that dispensed only with some few Ceremonies, and Things of that Nature: But the House of Commons (this taking Air) in 1662, represent this to the King by a Petition. And what is it that they do represent? That he, by his Dispensation, has undertaken to do that which nothing but an Act of Parliament can do; that is, the dispensing with Penal Laws, which is only to be done by Act of Parliament. And thereupon it was thought fit, upon the King's Account, to bring in an Act for it in some Cases.

My Lord, the King did then, in his Speech to the Parliament (which we use as a great Argument against this dispensing Power) say this, "That considering the Circumstances of the Nation, he could wish with all his Heart, that he had such a Power to dispense with some Laws, in some Particulars". And thereupon there was a Bill, in order to an Act of Parliament, brought in, giving the King a Power to dispense; but, my Lord, with a great many Qualifications: Which shews plainly, that it was taken by the Parliament, that he had no Power to dispense with the Laws of himself.

My Lord, Afterwards, in 1672, the King was prevailed upon again to grant another Dispensation somewhat larger.—

L. C. J. Brother *Pemberton*, I would not interrupt you, but we have heard of this over and over again already.

Mr. S. Pemberton. Then, since your Lordship is satisfied of these Things, as I presume you are, else I should have gone on. I have done, my Lord.

Mr. Serj. Levinz. But, my Lord, we shall go a little higher than that, and shew that it has been taken all along as the ancient Law of *England*, that such Dispensations ought to be by the King and the Parliament, and not by the King alone.

Mr. Soll. Gen. My Lord, if you will admit every one of the Council to speech it before they give their Evidence, when shall we come

to an End of this Cause? We shall be here till Midnight.

L. C. J. They have no Mind to have an End of the Cause, for they have kept it three Hours longer than they need to have done.

Mr. S. Pemberton. My Lord, this Case does require a great deal of Patience.

L. C. J. It does so, Brother; and the Court has had a great deal of Patience: But we must not sit here only to hear Speeches.

Mr. Att. Gen. Now, after all their Speeches of two Hours long, let them read any thing if they have it.

Sir Rob. Sawyer. We will begin with the Record of *Richard* the Second—Call *William Fisher*.

[*William Fisher, Clerk to Mr. Ince, sworn.*]

L. C. J. What do you ask him?

Sir Rob. Sawyer. Shew him that Copy of the Record.

[*The Record was then shewn him.*]

L. C. J. Where had you those, Sir?

Mr. Fisher. Among the Records in the *Tower*.

L. C. J. Are they true Copies?

Mr. Fisher. Yes, my Lord.

L. C. J. Did you examine them by the Record?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. Then hand them in; put them in.

Clerk reads. *Ex Rotulo Parlamenti de Anno Regni Regis Richardi Secundi 15. N. 1.* ——— My Lord, it is written in *French*, and I shall make but a bad Reading of it.

Sir Sam. Astry. Where is the Man that examined it? — Do you understand *French*?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. The Record is in another Hand than this; they may easily read it.

Mr. Soll. Gen. Who copied this Paper?

Mr. Fisher. I did examine it.

Mr. Soll. Gen. What did you examine it with?

Mr. Fisher. I looked upon that Copy, and *Mr. Halsead* read the Record.

L. C. J. Young Man, read out.

Fisher reads. *Vendredi Lende maine del Almes qu'estoit le premier jour —*

Mr. Soll. Gen. Pray tell us what it is you would have read?

Mr. Serj. Levinz. I'll tell you what it is, *Mr. Solicitor*: 'Tis the Dispensation with the Statute of *Provisors*: And the Act of Parliament does give the King a Power to dispense till such a Time.

Mr. Soll. Gen. Don't you think the King's Prerogative is affirmed by many Acts of Parliament?

Mr. Serj. Levinz. If the King could dispense without an Act of Parliament, what need was there for the making of it?

Mr. Soll. Gen. *Mr. Serjeant*, We are not to argue with you about that yet.

L. C. J. Read it in *English*, for the Jury to understand it.

Mr. Fisher. My Lord, I cannot undertake to read it so readily in *English*.

Mr. J. Powell. Why don't you produce the Records that are mentioned in the Petition, those in King *Charles* the Second's Time?

Mr. Serj. Levinz. We will produce our Records in Order of Time, as they are.

Sir Samuel Astry. There is the Clerk of the Records of the Tower, Mr. Halstead, will read it very well in French or English.

[Then Mr. Halstead was sworn to interpret the Records into English, according to the best of his Skill and Knowledge; but not reading very readily—— a true Copy of the Record in English follows, out of the Rolls of Parliament, in the 15th Year of King Richard the Second, Numero Primo.]

Friday, the Morrow of *All-Souls*, which was the first Day of this Parliament, holden at Westminster, in the fifteenth Year of the Reign of our Lord King Richard the Second, after the Conquest, the Reverend Father in God the Archbishop of York, Primate and Chancellor of England, by the King's Commandment, being present in Parliament, pronounced and declared very nobly and wisely, the Cause of the Summons of this Parliament, and said, First, That the King would, that holy Church principally, and afterwards the Lords Spiritual and Temporal, and also the Cities and Boroughs should have and enjoy their Liberties and Franchises as well as they had them, and enjoyed them, in the Time of his noble Progenitors, Kings of England; and also in his own Time. And afterwards said, The Summons of this Parliament was principally for three Occasions. The first Occasion was, To ordain how the Peace and Quiet of the Land, which have heretofore been greatly blemished and disturbed, as well by Detraction and Maintenance, as otherwise, might be better holden and kept, and the Laws better executed, and the King's Commands better obeyed. The second Occasion was, To ordain and see how the Price of Wools, which is beyond measure lessened and impaired, might be better amended and enhanced. And also, That in case the War should begin again, at the End of the present Truce, to wit, at the Assumption of our Lady next coming, to ordain and see, how and whereby the said War may be maintained at the least Charge of the People. And the third Occasion was, touching the Statutes of Provisors, To ordain and see how our holy Father might have that which to him belongs, and the King that which belongs to him, and to his Crown, according unto that, *Render unto Cæsar the Things that are Cæsar's, and unto God the Things which are God's.*

Then the other Record of Richard the Second was read as follows, out of the Rolls of Parliament, the fifteenth Year of King Richard the Second, N. 8.

“ Be it remembered, touching the Statute of Provisors, That the Commons, for the great Confidence which they have in the Person of our Lord the King, and in his most excellent Knowledge, and in the great Tenderness which he hath for his Crown, and the Rights thereof; and also, in the noble and high Discretions of the Lords, have assented, in full Parliament, that our said Lord the King, by Advice and Assent of the said Lords, may make such Sufferance, touching the said Statute, as shall seem to him reasonable and profitable, until the next Parliament, so as the said Statute be not repealed in no Article thereof: And that all those who have any Benefices by Force of the said Statute, before this present Parliament; and also, That all

those to whom any Aid, Tranquillity, or Advantage is accrued, by Virtue of the said Statute of the Benefices of holy Church (of which they were heretofore in Possession) as well by Presentation, or Collation of our Lord the King, as of the Ordinaries, or Religious Persons whatsoever, or by any other Manner or Way whatsoever, may freely have and enjoy them, and peaceably continue their Possession thereof, without being ousted thereof, or any ways challenged, hindered, molested, disquieted, or grieved hereafter, by any Provisors, or others, against the Form and Effect of the Statute aforesaid, by reason of the said Sufferance in any Time to come. And moreover, That the said Commons may disagree at the next Parliament to this Sufferance, and fully resort to the said Statute, if it shall seem good to them to do it: With Protestation, That this Assent, which is a Novelty, and has not been done before this Time, be not drawn into Example or Consequence for Time to come. And they prayed our Lord the King, that the Protestation might be entred of Record, in the Roll of the Parliament: And the King granted, and commanded to do it.

Mr. Serj. Levinz. Now, my Lord, we will go on—— This was in Richard the Second's Time: And a Power is given by the Commons to the King, with the Assent of the Lords, to dispense, but only to the next Parliament, with a Power reserved to the Commons; and to disagree to it, and retract that Consent of theirs the next Parliament.

Sir George Treby. The Statute of Provisors was, and is a Penal Law, and concerning Ecclesiastical Matters too; viz. The Collating and Presenting to Archbishopsricks, Bishopsricks, Benefices, and Dignities of the Church: And in this Record now read, the Parliament give the King a limited Power, and for a short Time, to dispense with that Statute. But, to obviate all Pretence of such a Power's being inherent in the Crown as a Prerogative, they declare, (1.) That it was a Novelty; that is as much as to say, that the King had no such Power before. (2.) That it should not be drawn into Example; that is to say, that he should have no such Power for the future.

Mr. Serj. Levinz. Now we will go on to the Records mentioned in the Petition; those in the last King's Time, in 1662, and 1672; and that in this King's Time, in 1688.—— Where is the Journal of the House of Lords?

[Mr. Walker sworn.]

L. C. J. Is that the Book of the House of Lords?

Mr. Walker. It is the Journal of the House of Lords.

L. C. J. Is it kept by you?

Mr. Walker. Yes, my Lord.

L. C. J. Where is it kept?

Mr. Walker. In the usual Place, here in Westminster.

Mr. Soll. Gen. What is that?

Mr. Serj. Levinz. It is the Journal of the House of Lords—— But, my Lord, there is one Thing that is mentioned in the last Record that was read, which is worth your Lordship's and the Jury's Observation; That it is declared a Novelty, and a Protestation, that it should not be drawn into Precedent for the future.

L. C. J. That has been observed, Brother: Let us hear your Record read.

Clerk reads.— *Die Mercurii 18. die Februarii, 1662.*

“ His Majesty was present this Day, sitting in the Regal Crown and Robes, the Peers being likewise in their Robes: The King gave Order to the Gentleman Usher of the Black-Rod, to signify to the House of Commons his Pleasure, that they presently come up, and attend his Majesty, with their Speaker; who being present, his Majesty made this Speech following.

My Lords and Gentlemen,

“ I AM very glad to meet you here again, having thought the Time long since we parted, and often wished you had been together, to help me in some Occasions which have fallen out: I need not repeat them unto you, you have all had the Noise of them in your several Countries; and, God be thanked, they were but Noise, without any worse Effects.

“ To cure the Distempers, and compose the differing Minds that are yet amongst us, I set forth my Declaration of the 26th of December. In which you may see, I am willing to set Bounds to the Hopes of some, and to the Fears of others; of which when you shall have examined well the Grounds, I doubt not but I shall have your Concurrence therein. The Truth is, I am in my Nature an Enemy to all Severity for Religion and Conscience, how mistaken soever it be, when it extends to capital and sanguinary Punishments; which I am told, were began in Popish Times. Therefore, when I say this, I hope I shall not need to warn any here, not to infer from thence, that I mean to favour Popery. I must confess to you, there are many of that Profession, who, having served my Father, and myself very well, may fairly hope for some Part in that Indulgence I would willingly afford to others who dissent from us. But let me explain myself, lest some mistake me herein, as I heard they did in my Declaration. I am far from meaning by this a Toleration, or qualifying them thereby to hold any Offices or Places of Trust in the Government. Nay, further, I desire some Laws may be made, to hinder the Growth and Progress of their Doctrine.

“ I hope you have all so good an Opinion of my Zeal for the Protestant Religion, as I need not tell you, I will not yield to any therein, not to the Bishops themselves, nor in my liking the Uniformity of it, as it is now established; which being the Standard of our Religion, must be kept pure and uncorrupted, free from all other Mixtures. *And yet, if the Dissenters will demean themselves peaceably and modestly under the Government, I could heartily wish I had such a Power of Indulgence to use upon Occasion*—

Sir George Treby. Pray, Sir, read that out distinctly.

Clerk reads.—“ I could heartily wish I had such a Power of Indulgence to use upon Occasion, as might not needlessly force them out of the Kingdom; or, staying here, give them Cause to conspire against the Peace of it.

My Lords and Gentlemen,

“ It would look like Flattering in me, to tell you in what Degree I am confident of your Wisdom and Affection in all Things that relate

“ to the Greatness and Prosperity of the Kingdom. If you consider well what is best for us all, I dare say we shall not disagree. I have no more to say to you at present, but, once again, to bid you heartily welcome.”

Mr. Finch. The next Thing we shall shew you is, that after the King had made this Speech, and wished he had such a Power of Indulgence to use upon Occasion, there was a Bill in the House of Lords brought in, to enable the King to dispense with several Laws: We shall shew you the Journal, where it was read and committed; but further than that it went not.

L. C. J. What Use do you make of this, *Mr. Finch?*

Sir Rob. Sawyer. You may easily apprehend the Use we shall make of it. (The King, in his Speech, says, *He wished he had such a Power*) the House of Lords thought he had not; and therefore they order'd a Bill to be brought in, to enable him.— Read the Journal of the Lords of the 13th of March, 1662.

Clerk reads. *Die Veneris 13. die Martii, 1662.*

“ After some Debate, whether the House should be put into a Grand Committee, for the further Debate of the Bill concerning his Majesty's Power in Ecclesiastical Affairs, it was put to the Question; *viz.*

“ As many of your Lordships as would have this House adjourned, and put into a Committee to consider of the said Bill, say, *Content*; others, *Not Content.*

“ Passed in the Affirmative.

“ And then the Lord Chamberlain of the Household was directed to take the Chair, as formerly; which he did accordingly.

“ And after Debate, the House was refused, after the Grand Committee had appointed a Sub-Committee, touching the said Bill.

Sir Rob. Sawyer. This is all in the Journal of the House of Lords about this Matter.— We will now shew you the Bill itself.

Clerk reads. “ *An Act concerning his Majesty's Power in Ecclesiastical Affairs.*”

“ **W**HEREAS divers of his Majesty's Subjects, through Error of Judgment, and misguided Consciences (whereunto the Licentiousness of these late unhappy Times have much contributed) do not conform themselves to the Order of divine Worship and Service established by Law; and although his Majesty and both Houses of Parliament are fully satisfied, that those Scruples of Conscience, from whence this Nonconformity ariseth, are ill grounded; and that the Government of the Church, with the Service thereof (as now established) is the best that is any where extant, and most effectual to the Preservation of the Protestant Religion: Yet hoping that Clemency and Indulgence may, in Time, wear out those Prejudices, and reduce the Dissenters to the Unity of the Church; and considering that this Indulgence, how necessary soever, cannot be dispensed by any certain Rule, but must vary, according to the Circumstances of Time, and the Temper and Principles of those to whom it is to be granted; and his Majesty being the best Judge when, and to whom this Indulgence is to be dispensed, or as may be most consistent with the publick Peace, and without just Cause

“ Offence

“ Offence to others; and to the End his Majesty may be enabled to exercise it with universal Satisfaction, Be it Enacted by the King's most excellent Majesty, by Advice, and with the Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority thereof, That the King's Majesty may, by Letters Patents under the Great Seal, or by such other Ways as to his Majesty shall seem meet, *dispense with one Act, or Law, made the last Session of this present Parliament* (entituled, *An Act for the Uniformity of publick Prayers, and Administration of the Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, and ordaining, and consecrating Bishops, Priests and Deacons in the Church of England*) and with any other Laws or Statutes concerning the same; or requiring Oaths, or Subscriptions; or which do enjoin Conformity to the Order, Discipline and Worship established in this Church, and the Penalties in the said Laws imposed, or any of them: And may grant Licences to such of his Majesty's Subjects of the Protestant Religion, of whose inoffensive and peaceable Disposition his Majesty shall be persuaded, to enjoy and use the Exercise of their Religion and Worship, though differing from the publick Rule (the said Laws and Statutes, or any Disabilities, Incapacities, or Penalties, in them, or any of them contained, or any Matter or Thing to the contrary thereof notwithstanding.)

“ *Provided always, and be it Enacted, That no such Indulgence, Licence, or Dispensation hereby to be granted, shall extend, or be construed to extend to the Tolerating, or Permitting the Use or Exercise of the Popish, or Roman Catholick Religion in this Kingdom; nor to enable any Person or Persons, to hold or exercise any Place or Office of publick Trust within this Kingdom; who, at the Beginning of this present Parliament were, by the Laws and Statutes of this Realm disabled thereunto; nor to exempt any Person or Persons from such Penalties as are by Law to be inflicted upon such as shall publish or preach any thing to the Depravation, or Derogation of the Book of Common-Prayer, or the Government, Order and Ceremonies of the Church established by Law.*

“ *Provided also, and be it Enacted, That no such Licence or Dispensation shall extend to make any Priest or Minister capable of any Ecclesiastical Living or Benefice, with Cure, who shall not, before the Archbishop of the Province, or Bishop of the Diocels where he lives, make such Subscription to the Articles of Religion, as is enjoined by the Statute of the 13th of Elizabeth, made for Reformation of Disorders in the Church; Nor shall extend, or be construed to extend to dispense with the Book of Common-Prayer: But that the said Book shall be constantly read in all the Cathedral and Collegiate Churches, and in all the Parish-Churches, and publick Chapels.*

Sir Rob. Sawyer. Here your Lordship sees what the Lords did in this Matter.— We shall now shew you, out of the Commons Journal, what they did concerning this Speech of the King— Shew the Journal of the 25th of February, 1662.

[*Mr. Jodrell sworn.*]

L. C. J. Did you examine that, *Mr. Jodrell?*

Mr. Jodrell. It is the Original Book.

[*The Book delivered into the Court.*]

Clerk reads. Die Mercurii 25. die Februarii, 15 Car. II. Resolved, That it be preferred.—

Sir Rob. Sawyer. You must begin above— The House then took into Debate—

Clerk reads. “ The House then took into Debate the Matter touching Indulgence to Dissenters, from the Act of Uniformity.

“ The Question being put, that the present Debate be adjourned till to Morrow Morning.

“ The House was divided.

“ The Yeas went out.

Sir John Goodrick, } Tellers for the Noes;
and } with the Noes 161.

Sir William Lowther, }
Sir Richard Temple, } Tellers for the Yeas;
and } with the Yeas 119.

“ And so it passed in the Negative.

“ *Resolved, &c.*

“ That it be preferred to the King's Majesty, as the humble Advice of this House, That no Indulgence be granted to the Dissenters, from the Act of Uniformity—

Mr. Soll. Gen. Does your Lordship think it to be Evidence?

L. C. J. Let them read it, *Mr. Solicitor,* that we may hear what it is.

Clerk reads on.

“ *Ordered,* That a Committee be appointed to collect and bring in the Reasons of this House for this Vote, upon the present Debate; to be presented to his Majesty, and that the nominating of the Committee be adjourned till to Morrow Morning.

Sir Rob. Sawyer. That's all?

Mr. Soll. Gen. Pray, if there be any thing more, read on; you shall not parcel out a Record, and take and leave what you will.

Mr. Finch. Did not you parcel out our Petition?

Mr. Soll. Gen. Read on, if there be any thing about this Matter.

Clerk. That is all.

Sir Rob. Sawyer. Turn to the 27th of Febr. 1662.

Clerk reads: Veneris 27. Februarii 15. Car. II.

“ *Sir Heneage Finch* reports from the Committee appointed to collect and bring in the Reasons of the House for their Vote of Advice to the King's Majesty; and in the Close of those Reasons to add, That the House will assist his Majesty with their Lives and Fortunes: And to pen an Address to his Majesty for that Purpose, the several Reasons and Address agreed to by the Committee in Writing, he read in his Place, and did bring up, and deliver the same in at the Clerk's Table.

“ The first Paragraph was read, and upon the Question agreed to.

“ The second Paragraph was read, and upon the Question agreed to.

“ The third was read, and upon the Question agreed to.

Sir Rob. Sawyer. Go over that, and go to the Address itself.

Clerk reads. “ *May it please your most Excellent Majesty,*

“ WE your Majesty's most dutiful and loyal Subjects, the Knights, Citizens and Burgeses of the House of Commons in Parliament assembled, having with all Fidelity and Obedience considered of the several Matters comprised in your Majesty's late gracious Declaration

“ration of the 26th of *December* last, and your
 “most gracious Speech at the Beginning of this
 “present Session, do in the first Place for our-
 “selves, and in the Names of all the Commons
 “of *England*, render unto your Sacred Majesty
 “the Tribute of our most hearty Thanks for that
 “infinite Grace and Goodness wherewith your
 “Majesty hath been pleased to publish your Royal
 “Intention of adhering to your Act of Indem-
 “nity and Oblivion, by a constant and religious
 “Observance of it; and our Hearts are further
 “enlarged in these Returns of Thanksgiving,
 “when we consider your Majesty’s most Princely
 “and Heroick Profession of relying upon the Af-
 “fections of your People, and the abhorring all
 “forts of Military and Arbitrary Rule; but a-
 “bove all, we can never enough remember to the
 “Honour of your Majesty’s Piety, and our own
 “unspeakable Comfort, those solemn and most
 “endearing Invitations of your Majesty’s Sub-
 “jects, to prepare Laws to be presented to your
 “Majesty against the Growth and Encrease of
 “Popery; and withal, to provide more Laws
 “against Licentiousness and Impiety, at the same
 “Time declaring your own Resolutions for main-
 “taining the Act of Uniformity: And it becomes
 “us always to acknowledge and admire your Ma-
 “jesty’s Wisdom in this your Declaration, where-
 “by your Majesty is pleased to resolve not only
 “by sumptuary Laws, but by your own Royal
 “Example of Frugality, to restrain that Excess
 “in Mens Expences, which is grown so general,
 “and so exorbitant, and to direct our Endeavours
 “to find out fit and proper Laws for Advance-
 “ment of Trade and Commerce.
 “After all this, we most humbly beseech your
 “Majesty to believe, *That it is with extream Un-*
 “*willingness and Reluctancy of Heart that we are*
 “*brought to differ from any thing which your Majesty*
 “*hath thought fit to purpose;* and though we do no
 “ways doubt but that the unreasonable Distem-
 “pers of Mens Spirits, and the many Mutinies
 “and Conspiracies which were carried on during
 “the late Intervals of Parliament, did reasonably
 “incline your Majesty to endeavour by your De-
 “claration to give some Allay to those ill Humours,
 “till the Parliament assembled, and the Hopes of
 “an Indulgence, if the Parliament should con-
 “sent to it; especially seeing the Pretenders to
 “this Indulgence did seem to make some Title
 “to it by virtue of your Majesty’s Declaration
 “from *Bredab*: *Nevertheless, we your Majesty’s*
 “*most dutiful and loyal Subjects*, who are now re-
 “turned to serve in Parliament, from those several
 “Parts and Places of your Kingdom for which
 “we are chosen, *Do humbly offer it to your Maje-*
 “*sty’s great Wisdom, that it is in no sort advisable*
 “*that there be any Indulgence to such Persons who*
 “*presume to dissent from the Act of Uniformity and*
 “*Religion established,* for these Reasons.
 “We have considered the Nature of your Ma-
 “jesty’s Declaration from *Bredab*, and are humbly
 “of Opinion, That your Majesty ought not to be
 “pressed any further.
 “Because it is not a Promise in itself, but only a
 “gracious Declaration of your Majesty’s Intenti-
 “ons to do what in you lay, and what a Parliament
 “should advise your Majesty to do, and no such
 “Advice was ever given, or thought fit to be
 “offered; nor could it be otherwise understood,
 “because there were Laws of Uniformity then in
 “Being, which could not be dispensed with but
 “by Act of Parliament.

Sir Rob. Sawyer. This is all that we read this
 for; your Lordship and the Jury see what is here
 declared by the Parliament, That the Act of Uni-
 formity could not be dispensed with, without an
 Act of Parliament.

Next, my Lord, we shall shew you what was
 done in the Year 1672.— Read the King’s
 Speech the 5th of *February*, 1672.

[*The Journals of the Lords House were deli-*
vered in.]

Clerk reads. Die Mercurij, 5. Februarij, 1672.

My Lords and Gentlemen,

“I AM glad to see you here this Day. I would
 “have called you sooner together, but that I
 “was willing to ease you and the Country, till
 “there were an absolute Necessity.

“Since you were last here, I have been forced
 “to a most important, necessary and expensive
 “War; and I make no doubt but you will give
 “me suitable and effectual Assistance to go through
 “with it. I refer you to my Declaration for the
 “Causes, and indeed the Necessity of this War,
 “and shall now only tell you, That I might have
 “digested the Indignities to my own Person, ra-
 “ther than have brought it to this Extremity, if
 “the Interest, as well as the Honour of the whole
 “Kingdom had not been at Stake; and if I had
 “omitted this Conjunction, perhaps I had not again
 “ever met with the like Advantage.

“You will find that the last Supply that you
 “gave me, did not answer Expectation for the
 “Ends you gave it, the Payments of my Debts;
 “therefore I must in the next Place recommend
 “them again to your special Care.

“Some few Days before I declared the War, I
 “put forth my Declaration for Indulgence to
 “Dissenters, and have hitherto found a good
 “Effect of it, by securing my Peace at Home,
 “when I had War Abroad: There is one Part
 “in it that has been subject to Misconstructions,
 “which is that concerning the Papists, as if more
 “Liberty was granted to them than to other Re-
 “cusants, when ’tis plain there is less; for the
 “others have publick Places allowed them, and I
 “never intended that they should have any, but
 “only have the Freedom of their Religion in their
 “own Houses, without any Concourse of others;
 “and I could not grant them less than this, when
 “I had extended so much more Grace to others,
 “most of them having been Loyal, and in the
 “Service of me, and the King my Father: And
 “in the whole Course of this Indulgence I do not
 “intend that it shall any way prejudice the
 “Church, but I will support its Rights, and it in
 “its full Power.

“Having said this, I shall take it very ill to re-
 “ceive Contradiction in what I have done; and I
 “will deal plainly with you, I am resolved to stick
 “to my Declaration.

“There is one Jealousy more which is malici-
 “ously spread Abroad, and yet so weak and frivo-
 “lous, that I once thought it not of Moment
 “enough to mention; but it may have gotten
 “some Ground with some well-minded People,
 “and that is, that the Forces which I have raised
 “in this War were designed to controul Law and
 “Property. I wish I had had more Forces the last
 “Summer; the Want of them then, convinces me,
 “I must raise more against this next Spring; and
 “I do not doubt but you will consider the Charge
 “of them in your Supplies.

“I will

“ I will conclude with this Assurance to you,
 “ That I will preserve the true Reformed Prote-
 “ stant Religion, and the Church, as it is now
 “ established in this Kingdom, and that no Man’s
 “ Property or Liberty shall ever be invaded. I
 “ leave the rest to the Chancellor.

Mr. S. Pemberton. Now go to the Journal of the
 Commons of the 14th of *February*, 1672.

[*The Journal put in.*]

Clerk reads. Veneris 13, die Februarij, 1672.

“ *Mr. Powle* reports from the Committee ap-
 “ pointed to prepare and draw up a Petition and
 “ Address to his Majesty, the said Petition and
 “ Address, which he read in his Place, and after-
 “ wards delivered the same in at the Clerk’s Table,
 “ and the same being again twice read, is as fol-
 “ loweth; *viz.*

Most Gracious Sovereign,

“ **W**E your Majesty’s most Loyal and Faithful
 “ Subjects, the Commons assembled in Parli-
 “ ament, do in the first Place, as in all Duty
 “ bound, return your Majesty our most humble and
 “ hearty Thanks for the many Gracious Promises
 “ and Assurances which your Majesty has several
 “ Times, during this present Parliament, given to
 “ us, that your Majesty would secure and maintain
 “ unto us the true Reformed Protestant Religion,
 “ our Liberties and Properties; which most gra-
 “ cious Assurances your Majesty, out of your
 “ great Goodness, has been pleased to renew unto
 “ us, more particularly at the Opening of this pre-
 “ sent Session of Parliament.

“ And further, we crave Leave humbly to re-
 “ present, that we have with all Duty and Expedi-
 “ tion, taken into Consideration the several Parts
 “ of your Majesty’s last Speech to us; and withal,
 “ the Declaration therein mentioned for Indul-
 “ gence to Dissenters, dated the 15th of *March* last:

“ **And we find our selves bound in Duty to
 “ inform your Majesty, That Penal Sta-
 “ tutes, in Matters Ecclesiastical, cannot be
 “ suspended but by Act of Parliament.**

“ *We therefore*, the Knights, Citizens and Bur-
 “ gesses of your Majesty’s House of Commons, do
 “ most humbly beseech your Majesty, That the said
 “ *Laws may have their free Course, until it shall be
 “ otherwise provided for by Act of Parliament:* And
 “ that your Majesty would graciously be pleased
 “ to give such Directions herein, that no Appre-
 “ hensions or Jealousies may remain in the Hearts
 “ of your Majesty’s good and faithful Subjects.

“ *Resolved, &c.*

“ That this House doth agree with the Com-
 “ mittee in the Petition and Address by them drawn
 “ up to be presented to his Majesty.

Sir Rob. Sawyer. Now turn to the 24th of *Fe-*
bruary, 1672, in the same Book.

Clerk reads. Lune 24. Februarij, 1672.

“ *Mr. Secretary Coventry* reports and presents
 “ in Writing from his Majesty, his Answer to the
 “ humble Petition and Address of this House,
 “ which was thrice read, and the Matter debated,
 “ and is as followeth; *viz.*

CHARLES R.

“ **H**IS Majesty hath received an Address from
 “ you, and he hath seriously considered of
 “ it, and returns you this Answer, That he is ve-
 “ ry much troubled, that that Declaration which

“ he put out for Ends so necessary for the Quiet
 “ of his Kingdom, and especially in that Con-
 “ juncture, should have proved the Cause of Dis-
 “ quiet in his House of Commons, and give Occa-
 “ sion to the questioning of his Power in Eccle-
 “ siasticks, which he finds not done in the Reigns
 “ of any of his Ancestors. He is sure he never
 “ had Thoughts of using it otherwise than as it
 “ hath been entrusted in him, to the Peace and
 “ Establishment of the Church of *England*, and
 “ the Ease of all his Subjects in general: *Neither
 “ does he pretend to the Right of Suspending any
 “ Laws, wherein the Properties, Rights, or Li-
 “ berties of any of his Subjects are concerned, nor
 “ to alter any thing in the Established Doctrine or
 “ Discipline of the Church of England.* But his
 “ only Design in this, was to take off the Penal-
 “ ties the Statutes inflicted upon Dissenters, which
 “ he believes, when well considered of, you your
 “ selves would not wish executed according to
 “ the Rigour and Letter of the Law; neither
 “ hath he done this with any Thought of avoid-
 “ ing or precluding the Advice of his Parliament;
 “ and if any Bill shall be offered, which shall
 “ appear more proper to attain the aforesaid
 “ Ends, and secure the Peace of the Church and
 “ Kingdom, when tendered in due Manner to him,
 “ he will shew how readily he will concur in all
 “ Ways that shall appear good for the Kingdom.
Sir Rob. Sawyer. Turn to the 26th of *February*,
 1672.

Clerk reads. Die Mercurij 26. Februarij, 1672.

“ *Mr. Powle* reports from the Committee ap-
 “ pointed to consider of an Answer to return to
 “ his Majesty’s last Message upon the Debate of
 “ the House, an Answer agreed by the Com-
 “ mittee, and drawn up, and put into Writing,
 “ which he read in his Place, and then delivered
 “ the same in at the Clerk’s Table, where it was
 “ twice read, and is as followeth; *viz.*

Most Gracious Sovereign,

“ **W**E your Majesty’s most humble and loyal
 “ Subjects, the Knights, Citizens and Bur-
 “ gesses in this present Parliament assembled, do
 “ render to your most sacred Majesty our most
 “ dutiful Thanks, for that to our unspeakable
 “ Comfort, your Majesty has been pleased so
 “ often to reiterate unto us those gracious Pro-
 “ mises and Assurances of maintaining the Religi-
 “ on now established, and the Liberties and Pro-
 “ perties of your People; and we do not in the
 “ least Measure doubt but that your Majesty had
 “ the same gracious Intention in giving Satisfaction
 “ to your Subjects, by your Answer to our last
 “ Petition and Address: Yet, upon a serious Consi-
 “ deration thereof, *We find that the said Answer is
 “ not sufficient to clear the Apprehensions that may
 “ justly remain in the Minds of your People, by your
 “ Majesty’s having claimed a Power to suspend Pen-
 “ al Statutes in Matters Ecclesiastical, and which
 “ your Majesty does still seem to assert, in the said
 “ Answer, to be entrusted in the Crown, and never
 “ questioned in the Reigns of any of your Ancestors:*
 “ Wherein we humbly conceive your Majesty has
 “ been very much misinformed; *since no such
 “ Power ever was claimed or exercised by any of your
 “ Majesty’s Predecessors; and if it should be ad-
 “ mitted, might tend to the interrupting the free
 “ Course of the Laws, and altering the Legislative
 “ Power, which hath always been acknowledged to
 “ reside in your two Houses of Parliament.*

“ *We*

“ We therefore with an unanimous Consent
 “ become again most humble Suitors unto your
 “ Sacred Majesty, *That you would be pleased to give*
 “ *us a full and satisfactory Answer to our said Petiti-*
 “ *on and Address, and that your Majesty would take*
 “ *such effectual Order, that the Proceedings in this*
 “ *Matter may not for the future be drawn into Con-*
 “ *sequence or Example.*

“ The Answer to his Majesty's Message was
 “ again read by Paragraphs, and the several Para-
 “ graphs to the last were, upon the Question,
 “ severally agreed.

“ The last Paragraph being read, and the Que-
 “ stion being put, that the Word *unanimous* should
 “ stand in the Paragraph,

The House divided.— The *Noes* go out.
 Tellers.

Lord St. John,	}	for the <i>Yeas</i> , 180.
Mr. Vaughan,		
Sir Richard Temple,	}	for the <i>Noes</i> , 77.
Sir Philip Howard,		

“ And so it was resolved in the Affirmative.

“ The Question being put to agree to the Para-
 “ graph, it was resolved in the Affirmative.

“ Resolved, &c.

“ That the whole Address be agreed to, as it
 “ was brought in by the Committee.

Sir Rob. Sawyer. Now turn to the Lords Jour-
 “ nal, and there your Lordship will see, that the
 “ King does communicate this Address to the Lords,
 “ and desires their Advice.

Read the 1st of *March*, 1672.

Clerk reads. *Die Sabbati primo die Martii*, 1672.

“ His Majesty this Day made a short Speech,
 “ as follows.

My Lords,

“ You know, that at the Opening of this Ses-
 “ sion, I spoke here to your Satisfaction; it has
 “ notwithstanding begotten a greater Disquiet in
 “ the House of Commons than I could have imag-
 “ ined.

“ I received an Address from them, which I
 “ looked not for, and I made them an Answer
 “ that ought to have contented them; but on
 “ the contrary, they have made me a Reply of
 “ such a Nature, that I cannot think fit to proceed
 “ any further in this Matter without your Ad-
 “ vice.

“ I have commanded the Chancellor to ac-
 “ quaint you with all the Transactions, wherein
 “ you will find both me and your selves highly
 “ concerned. I am sensible for what relates to
 “ me, and I assure you, my Lords, I am not less
 “ so for the Privilege, and the Honour of this
 “ House.

“ Afterwards the Lord Chancellor read the
 “ several Papers and Addresses of the House of
 “ Commons, and his Majesty's Answer there-
 “ unto, and opened his Majesty's Proceedings up-
 “ on them.

The Address of the House of Commons was
 read.

Sir Rob. Sawyer. Pass over that, you have read
 it already.

Clerk reads. The next, his Majesty's Answer to
 the Address of the House of Commons was read as
 follows,—

Sir Rob. Sawyer. That hath been read too.

Clerk reads. Then was read the Reply of the
 House of Commons to his Majesty's Answer, as
 followeth,—

Mr. Finch. You have read that likewise.

Clerk reads. “ Upon this it is ordered, that the
 “ Lord Treasurer, Duke of *Buckingham*, Earl of
 “ *Bridgewater*, Earl of *Northampton*, Earl of *Bristol*,
 “ Earl of *Berks*, Earl of *Bolingbroke*, and the Earl of
 “ *Anglesey*, do forthwith withdraw and consider
 “ what humble Thanks is fit to be given to his
 “ Majesty for his great Favour in communicating
 “ this Business to this House, and report the same.

“ And accordingly, the said Lords Committees
 “ did withdraw themselves for that Purpose.

“ The Lords being returned, the Duke of *Buck-*
 “ *ingham* reported what the Committee had pre-
 “ pared to present to his Majesty by way of Thanks,
 “ which was read as followeth.

“ We the Lords Spiritual and Temporal in Par-
 “ liament assembled, do unanimously present to
 “ your Sacred Majesty our most humble Thanks,
 “ for having been pleased to communicate to us
 “ what has passed between your Majesty and the
 “ House of Commons, whereby you have gra-
 “ ciously offered us the Means of shewing our
 “ Duty to your Majesty, and of asserting the
 “ antient just Rights and Privileges of the House
 “ of Peers.

“ The Question being put, whether to agree
 “ with the Committee,

“ It was resolved in the Affirmative.

“ Ordered, that his Majesty be desired, that his
 “ Speech, and the Papers read this Day, may be
 “ entered into the Journal-Book of this House.

“ The Lord Treasurer, the Duke of *Bucking-*
 “ *ham*, and the Lord *Chamberlain*, are appointed
 “ to attend his Majesty presently, to know his
 “ Pleasure, what Time and Place this whole House
 “ shall wait upon him, to present the humble
 “ Thanks of this House, for his great Favour
 “ shewed this Day.

“ Ordered, that upon *Monday* Morning next,
 “ this House will debate the whole Matter of his
 “ Majesty's Speech, and these Papers; and to
 “ consider the Points of Privilege, and what else
 “ may arise thereupon.

“ The Lords that were appointed to attend his
 “ Majesty, return with this Answer,

“ That his Majesty has appointed this After-
 “ noon at five of the Clock, for this House to
 “ wait upon him in the Banqueting-House at
 “ *Whitehall*.

“ Ordered, that all the Judges now in Town,
 “ shall attend this House on *Monday* Morning
 “ next.

Sir Rob. Sawyer. The third of *March*, 1672, is
 the next.

Clerk reads. *Die Lunæ 3. die Martii*, 1672.

“ The Lord Chancellor reported, that the
 “ whole House on *Saturday* last waited upon his
 “ Majesty at *Whitehall*, and presented the humble
 “ Address of this House, and his Majesty was
 “ pleased to return this Answer.

My Lords,

“ I take this Address of yours very kindly; I
 “ will always be very affectionate to you, and ex-
 “ pect you should stand by me, as I will always by
 “ you.

“ Then the House took into Consideration
 “ the whole Matter of his Majesty's Speech
 “ on *Saturday*, and the three Papers which his
 “ Majesty acquainted this House withal, and
 “ all the said Papers in their Order were read,
 “ and after a long Debate, the Question be-
 “ ing put,

“ Whe

“ Whether this House shall in the first Place enter into Consideration of giving Advice to his Majesty?

“ It was resolv'd in the Affirmative.

“ It is order'd, that this Business shall be taken into Consideration to Morrow Morning, at nine of the Clock, the first Business.

“ *Ordered*, That the Judges now in Town, shall attend to Morrow Morning.

Sir Rob. Sawyer. The 4th of *March*, 1672.

Clerk reads. “ Next, The House took into Consideration the Advice to be given to his Majesty concerning the Addresse made to him from the House of Commons.

“ The Addresse of the House of Commons, and his Majesty's Answer were read, and after a long Debate, the Question being put, Whether the King's Answer to the House of Commons, in referring the Points now controverted to a Parliamentary Way by Bill, is good and gracious, that being a proper and natural Course for Satisfaction therein?

It was resolv'd in the Affirmative.

Sir Rob. Sawyer. The 8th of *March*, 1672.

Clerk reads. *Die Sabbati* 8. *die Martij*, 1672.

“ His Majesty in his Royal Throne, adorned with his Crown and Regal Ornaments, commanded the Gentleman Usher of the Black-Rod, to give Notice to the House of Commons, that they attend his Majesty presently.

“ The Commons being come with their Speaker, his Majesty made this short Speech following.

My Lords and Gentlemen,

“ Yesterday you presented me an Address, as the best Means for the Satisfying and Composing the Minds of my Subjects, to which I freely and readily agreed, and I shall take Care to see it performed accordingly.

“ I hope, on the other Side, you Gentlemen of the House of Commons will do your Part; for I must put you in mind, it is near five Weeks since I demanded a Supply, and what you voted unanimously upon it, did both give Life to my Affairs at Home, and dishearten mine Enemies Abroad; but the seeming Delay it hath met withal since, hath made them to take new Courage; and they are now preparing for this next Summer a greater Fleet, as they say, than ever they have had yet; so that if the Supply be not very speedily dispatch'd, it will be altogether ineffectual, and the Safety, Honour and Interest of *England* must of Necessity be expos'd. Pray lay this to Heart, and let not the Fears and Jealousies of some draw an inevitable Ruin upon us all.

“ *My Lords and Gentlemen,*

“ *If there be any Scruple remaining with you concerning the Suspension of Penal Laws, I here faithfully promise you, That what has been done in that Particular, shall not for the future be drawn either into Consequence or Example.* And as I daily expect from you a Bill for my Supply, so I assure you, I shall as willingly pass any other you shall offer me that may tend to the giving you Satisfaction in all your just Grievances.

“ Next my Lord Chancellor reported, That both Houses waited upon the King Yesterday, and presented him with the Addresse against the Growth of Popery, and his Majesty hath been pleas'd to return this Answer.

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“ *My Lords and Gentlemen,*

“ I do heartily agree with you in your Address, and shall give speedy Order to have it put in Execution. There is one Part to which I believe it is not your Intention that it should extend; for I can scarce say, those are in my Pay that are presently to be employ'd abroad; but as for all other Parts, I shall take Care it shall be done as you desire.

After which the Lord Chancellor said, he had somewhat more to impart to the House by the King's Command, which was,

That his Majesty last Night, having spoken with several Members of both Houses, found some Dissatisfaction remaining concerning his Answer to their Address in the Particular of the Officers to be employ'd abroad, of which Number he had five or six that were of the best Officers of *France* and *Flanders*, and being his own Subjects, he had been very solicitous to get; but if that bred any Umbrage, the King commanded him to let them know, that he resolves to give both his Houses full Satisfaction to their Desires.

There was another Particular that the Lord Chancellor said he thought fit to acquaint them with, which, though it was by his Majesty's Leave, yet it was not by his Command: However, he thought it his Duty to acquaint the House with it (Mr. Secretary *Coventry* intending to acquaint the House of Commons with the same) *That his Majesty* had the last Night, in Pursuance of what he then intended, and declared this Morning, concerning the Suspension of Penal Laws not being for the future drawn either into Consequence or Example, caused the original Declaration under the Great-Seal, to be cancelled in his Presence, whereof himself and several other Lords of the Council were Witnesses.

Sir Rob. Sawyer. Turn to the 10th of *March*, 1672.

Clerk reads. “ *Die Lunæ decimo die Martij*, 1672.

“ *Ordered*, That what my Lord Chancellor said on Saturday last concerning his Majesty's causing the vacating his Indulgence under the Great Seal of *England*, shall be entred into the Journal-Book of this House as on Saturday last.

Sir Rob. Sawyer. We shall now come to that which pass'd in the Parliament in 1685. Read the 9th of *November*, 1685.

[*The Journal of the Lords*, 1685, part ii.]

Clerk reads. “ His Majesty being on his Royal Throne, adorned with his Regal Robes and Crown (the Lords being in their Robes also) commanded the Gentleman-Usher to give Notice to the House of Commons that they immediately attend his Majesty; who being come, his Majesty made the following Speech.

“ *My Lords and Gentlemen,*

“ After the Storm that seem'd to be coming upon us when we parted last, I am glad to meet you all again in so great Peace and Quietness; God Almighty be praised, by whose Blessing that Rebellion was suppress'd; but when I reflect what an inconsiderable Number of Men began it, and how long they carried it on without any Opposition, I hope every body will be convinc'd that the Militia, which hath hitherto been so much depended upon, is not sufficient for such Occasions, and that there is nothing but a good Force of well-disciplin'd Troops in constant Pay that can defend us from such as either at Home or Abroad are dispos'd to disturb us.

C c c

“ And

“ And in Truth, my Concern for the Peace and Quiet of my Subjects, as well as for the Safety of the Government, made me think it necessary to encrease the Number to the Proportion I have done. This I owed as well to the Honour as to the Security of the Nation, whose Reputation was so infinitely exposed unto all our Neighbours, by having lain open to this late wretched Attempt, that it is not to be repaired without keeping such a Body of Men on Foot, that none may ever have the Thoughts again of finding us so miserably unprovided.

“ It is for the Support of this great Charge, which is now more than Double to what it was, that I ask your Assistance in giving me a Supply answerable to the Expence it brings along with it: And I cannot doubt, but what I have begun so much for the Honour and Defence of the Government, will be continued by you with all the Cheerfulness and Readiness that is requisite for a Work of so great Importance.

“ Let no Man take Exceptions that there are some Officers in the Army not qualified according to the late Tests for their Employments: The Gentlemen, I must tell you, are most of them well known to me, and having formerly served with me on several Occasions, and always approved the Loyalty of their Principles by their Practices, I think them fit now to be employed under me; and will deal plainly with you, that after having had the Benefit of their Services in such Time of Need and Danger, I will neither expose them to Disgrace, nor myself to the Want of them, if there should be another Rebellion to make them necessary to me.

“ I am afraid some Men may be so wicked to hope and expect that a Difference may happen between you and me upon this Occasion; but when you consider what Advantages have risen to us in a few Months by the good Understanding we have hitherto had, what wonderful Effects it has already produced in the Change of the whole Scene of Affairs abroad, so much more to the Honour of the Nation, and the Figure it ought to make in the World, and that nothing can hinder a further Progress in this Way, to all our Satisfaction, but Fears and Jealousies amongst ourselves; I will not apprehend that such a Misfortune can befall us as a Division, or but a Coldness between me and you; nor that any thing can shake you in your Steadiness and Loyalty to me, who, by God's Blessing, will ever make you all Returns of Kindness and Protection, with a Resolution to venture even my own Life in the Defence of the true Interest of this Kingdom.

Sir Rob. Sawyer. Turn to the Commons Journal the 16th of November, 1685.

[*The Journal of the House of Commons put in.*]
Clerk reads. “ Die Lunæ 16. die Novemb. 1685.

Most gracious Sovereign,

“ WE your Majesty's most loyal and faithful Subjects, the Commons in Parliament assembled, do in the first Place (as in Duty bound) return your Majesty our most humble and hearty Thanks for your great Care and Conduct in the Suppression of the late Rebellion, which threatened the Overthrow of this Government both in Church and State, and the uttermost Extirpation of our Religion by Law established, which is most dear unto us, and which

“ your Majesty has been pleased to give us repeated Assurances you will always defend and support, which with all grateful Hearts we shall ever acknowledge.

“ We further crave leave to acquaint your Majesty, That we have with all Duty and Readiness taken into our Consideration your Majesty's gracious Speech to us; and as to that Part of it relating to the Officers in the Army not qualified for their Employment according to an Act of Parliament made in the 25th Year of the Reign of your Majesty's Royal Brother of blessed Memory, entitled, An Act for preventing Dangers that may happen by Popish Recusants, We do, out of our bounden Duty, humbly represent unto your Majesty, That those Officers cannot by Law be capable of their Employments, and that the Incapacities they bring upon themselves thereby, can no ways be taken off but by Act of Parliament.

“ Therefore out of the great Deference and Duty we owe unto your Majesty (who has been graciously pleased to take Notice of their Services to you) we are preparing a Bill to pass both Houses for your Royal Assent, to indemnify them from the Penalties they have now incurred; and because the Continuance of them in their Employments may be taken to be dispensing with that Law without Act of Parliament, the Consequence of which is of the greatest Concern to the Rights of all your Majesty's dutiful and loyal Subjects, and to all the Laws made for the Security of their Religion;

“ We therefore, the Knights, Citizens and Burgeses of your Majesty's House of Commons, do most humbly beseech your Majesty, that you would be graciously pleased to give such Directions therein that no Apprehensions or Jealousies may remain in the Hearts of your Majesty's good and faithful Subjects.

Mr. Pollexfen. My Lord, we pray that these half Dozen Lines of the Statute 1 Eliz. may be read.

[*A Statute-Book was then produced by Mr. Ince.*]

L. C. J. We will have it read out of our own Book. [*Which was delivered into Court.*]

Clerk reads. “ This is 1 Eliz. Cap. 2. An Act for Uniformity of Religion, &c. Whereabout is it? *Mr. Ince.* 'Tis the 15th Paragraph, at these Words— And for the due Execution, &c.

Clerk reads. “ And for due Execution hereof, the Queen's most Excellent Majesty, the Lords Spiritual and Temporal in this Parliament assembled, do in God's Name earnestly require and charge all the Archbishops and Bishops, and other Ordinaries, that they shall endeavour themselves, to the utmost of their Knowledge, that the due and true Execution hereof may be had throughout their Dioceses and Charges, as they will answer before God for such Evils and Plagues, wherewith Almighty God may justly punish his People for neglecting this good and wholesome Law.

Mr. Serj. Levinz. Now, my Lord, if your Lordship pleases, the Charge is a Charge for a Libel, and there are two Things to be considered.

First, Whether the Bishops did deliver this Paper to the King? But that we leave upon the Evidence that has been given; only we say, there has been no direct Proof of that.

In the next Place, supposing they did deliver this Petition to the King, Whether this be a Libel upon the Matter of it, the Manner of delivering it, or the Persons that did it?

And with Submission, my Lord, this cannot be a Libel, although it be true, that they did so deliver it.

First, my Lord, there is a little Disingenuity offered to my Lords the Bishops, in only setting forth Part, and not the Whole, in only reciting the Body, and not the Prayer.

But, my Lord, with your Lordship's Favour, taking the petitionary Part, and adding it to the other, it quite alters the Nature of the Thing; for it may be, a Complaint without seeking Redress might be an ill Matter; but here taking the Whole together, it appears to be a Complaint of a Grievance, and a Desire to be eased of it.

With your Lordship's Favour, the Subjects have a Right to petition the King in all their Grievances, so say all our Books of Law, and so says the Statute of the Thirteenth of the late King; they may petition, and come and deliver their Petition under the Number of ten, as heretofore they might have done, says the Statute; so that they all Times have had a Right so to do, and indeed if they had not, it were the most lamentable Thing in the World, that Men must have Grievances upon them, and yet they not to be admitted to seek Relief in an humble Way.

Now, my Lord, this is a Petition setting forth a Grievance, and praying his Majesty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Bishops, to distribute the Declaration, and cause it to be read in the Churches: And pray, my Lord, let us consider what the Effects and Consequences of that Distribution and Reading is: It is to tell the People, that they need not submit to the Act of Uniformity, nor to any Act of Parliament made about Ecclesiastical Matters, for they are suspended and dispensed with. This my Lords the Bishops must do, if they obey this Order; but your Lordship sees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curse if they do not look to the Preservation and Observation of that Act: But this Command to distribute and read the Declaration, whereby all these Laws are dispensed with, is to let the People know, they will not do what the Act requires of them.

Now, with your Lordship's Favour, my Lords the Bishops lying under this Pressure, the Weight of which was very grievous upon them, they by Petition apply to the King to be eased of it, which they might do as Subjects: Besides, my Lord, they are Peers of the Realm, and were most of them sitting as such, in the last Parliament, where, as you have heard, it was declared, such a Dispensation could not be; and then in what a Case should they have been, if they should have distributed this Declaration, which was so contrary to their own Actings in Parliament? What could they have answered for themselves, had they thus contributed to this Declaration? when they had themselves before declared, that the King could not dispense.

And that this was no new Thing, for it had been so declared in a Parliament before, in two Sessions of it, in the late King's Reign, within a very little Time one of another; and such a Parliament that were so liberal in their Aids to the Crown, that a Man would not think they should go about to deprive the Crown of any of its Rights. It was a Parliament that did do as great Services for the Crown as ever any did, and therefore there is

no Reason to suspect, that if the King had had such a Power, they would have appeared so earnest against it.

But, my Lord, if your Lordship pleases, these are not the Beginnings of this Matter; for we have shewed you from the Fifteenth of *Richard* the Second, that there was a Power granted by the Parliament to the King to dispense with a particular Act of Parliament, which argues, that it could not be without an Act of Parliament: And in 1662, 'tis said expressly, that they could not be dispensed with but by an Act of Parliament. 'Tis said so again in 1672, the King was then pleased to assume to himself such a Power as is pretended to in this Declaration; yet, upon Information from his Houses of Parliament, the King declared himself satisfied that he had no such Power, cancelled his Declaration, and promised that it should not be drawn into Consequence or Example. And so the Commons, by their Protestation, said in *Richard* the Second's Time, that it was a Novelty, and should not be drawn into Consequence or Example.

Now, my Lord, if your Lordship pleases, if this Matter that was commanded the Bishops to do, were something which the Law did not allow of, surely then my Lords the Bishops had all the Reason in the World to apply themselves to the King, in an humble Manner to acquaint him why they could not obey his Commands; and to seek Relief against that which lay so heavy upon them.

Truly, my Lord, Mr. Attorney was very right in the opening of the Cause at first, that is, That the Government ought not to receive Affronts, no, nor the inferior Officers are not to be affronted; a Justice of the Peace, so low a Man in Office, is not. For a Man to say to a Justice of Peace, when he is executing his Office, that he does not do right, is a great Crime, and Mr. Attorney said right in it: But suppose a Justice of Peace were making of a Warrant to a Constable, to do something that was not legal for him to do, if the Constable should petition this Justice of the Peace, and therein set forth, Sir, you are about to command me to do a Thing which, I conceive, is not legal, surely that would not be a Crime that he was to be punished for; for he does but seek Relief, and shew his Grievance in a proper Way, and the Distress he is under.

My Lord, this is the Bishops Case, with Submission; they are under a Distress, being commanded to do a Thing which they take not to be legal, and they with all Humility, by Way of Petition, acquaint the King with this Distress of theirs, and pray him, that he will please to give Relief.

My Lord, there is no Law but is either an Act of Parliament, or the Common Law; for an Act of Parliament there is none for such a Power; all that we have of it in Parliamentary Proceedings, is against it; and for the Common Law, so far as I have read it, I never did meet with any thing of such a Nature, as a Grant or Dispensation that pretended to dispense with any one whole Act of Parliament; I have not so much as heard of any such Thing mentioned by any of the King's Council; but here, my Lord, is a Dispensation that dispenses with a great many Laws at once, truly, I cannot take upon me to tell how many, there may be forty or above, for ought I know.

Therefore, my Lord, the Bishops lying under such a Grievance as this, and under such a Pressure, being ordered to distribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Case, which surely was a very great Pressure, both in Point of Law and Conscience too, they lying under such Obligations to the contrary, as they did. With Submission to your Lordship, and you Gentlemen of the Jury, if they did deliver this Petition (Publishing of it I will not talk of, for there has been no Proof of a Publication, but a delivering of a Petition to his Majesty in the most secret and decent Manner that could be imagined) my Lords the Bishops are not guilty of the Matter charged upon them in this Information. It has been expressly proved, that they did not go to disperse it abroad, but only delivered it to the King himself: And, in short, my Lord, if this should be a Libel, I know not how sad the Condition of us all would be, if we may not petition when we suffer.

Mr. Finch. My Lord, I challenge them to shew us any one Instance of such a Declaration, such a General Dispensation of Laws, from the Conquest till 1672. The first Umbrage of such a thing is, that of *Car. II.* 1662; but your Lordship hears the Declaration of the Parliament upon it. Before that, as there was no such thing, so your Lordship sees what the Parliament did to enable the King (not to do this Thing, but something like it) in *Richard* the Second's Time, where you see the Parliament did give the King a Power to dispense with the Statute of Provisors for a Time; but at the same Time declared that very Grant of their own to be a Novelty, and that it should not be drawn into Consequence or Example.

My Lord, we shall leave it upon this Point; To suspend Law is all one as to abrogate Laws; for so long as a Law is suspended, whether the Suspension be Temporary, or whether it be for ever; whether it be at once, or at several Times, the Law is abrogated to all Intents and Purposes: But the Abrogation of Laws is Part of the Legislature, that Legislative Power is lodged (as I said before, and I could never find it otherwise, in all our Law) in King, Lords, and Commons.

L. C. J. You did open that before, *Mr. Finch.*

Mr. Finch. With this, my Lord, that my Lords the Bishops finding this Order, made upon them to publish this Declaration, did what in Duty they were bound to do; and unless the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a seditious Libel, with an Intent to stir up Sedition among the People (we rely upon it) my Lords the Bishops can never be found guilty upon this Information.

L. C. J. Have you now done, Gentlemen?

Mr. Finch. Yes, my Lord, till they give us further Occasion: If they have any other Evidence to offer, we must answer it; if not, this is the Answer we give to what they have said.

Mr. Soll. Gen. We make no Bargain with you: If you have done, say so.

L. C. J. You must know, that you are not to have the last Word.

Mr. Soll. Gen. You have been three Hours already, if you have any more to say, pray conclude.

Mr. Finch. If they say they have no more Evidence, then we know what we have to do.

L. C. J. If you do say any thing more, pray let me advise you one Thing; don't say the same Thing over and over again; for after so much Time spent, it is irksome to all Company as well as to me.

Mr. Finch. My Lord, we have no more Evidence to offer to your Lordship at present, unless they, by offering new Evidence, give us Occasion to reply upon them.

L. C. J. Gentlemen, you shall have all the legal Favour and Advantage that can be; but, pray let us keep to an orderly decent Method of Proceeding.

Sir Rob. Sawyer. Pray, my Lord, favour me a Word before we conclude. My Lord, I do find very few Attempts of this Nature in any King's Reign.

In the Reign of *Henry* the Fourth, there was an Act of Parliament that Foreigners should have a free Trade in the City of *London*, notwithstanding the Franchises of *London*: After the Parliament rose, the King issued out his Proclamation, forbidding the Execution of that Law, and commanding that it should be in Suspense, *usque ad proximum Parliamentum*; yet that was held to be against Law.

L. C. J. *Sir Robert Sawyer*, that which you are to look to, is the Publishing of this Paper, and whether it be a Libel or no. And as to the Business of the Parliament you mentioned, that is not to the Purpose.

Sir Rob. Sawyer. My Lord, I say, I would put it where the Question truly lies; if they don't dispute the Point, then we need not labour it; but I don't know whether they will or no, and therefore I beg your Lordship's Favour to mention one Case more, and that is upon the Statute of 31 *Hen. VIII. Cap. 8*, which enables the King by Proclamation, in many Cases, to create the Law; which Statute was repealed by 1 *Edw. VI. Cap. 12*. That very Act does recite, that the Law is not to be altered, or restrained, but by Act of Parliament; and therefore the Parliament enables the King to do so and so: But that was such a Power, that the Parliament thought not fit to continue, and it was afterwards repealed; but it shews, that at that Time the Parliament was of the same Opinion, as to this Matter, that other Parliaments have been since.

Mr. Sommers. My Lord, I would only mention the great Case of *Thomas* and *Sorrel* in the *Exchequer-Chamber* upon the Validity of a Dispensation of the Statute of *Edward* the Sixth, touching Selling of Wine. There it was the Opinion of every one of the Judges, and they did lay it down as a settled Position, that there never could be an Abrogation, or a Suspension (which is a Temporary Abrogation) of an Act of Parliament, but by the Legislative Power. That was a Foundation laid down quite through the Debate of that Case. Indeed it was disputed, how far the King might dispense with the Penalties in such a particular Law, as to particular Persons; but it was agreed by all, that the King had no Power to suspend any Law: And, my Lord, I dare appeal to *Mr. Attorney General* himself, whether in the Case of *Godden* and *Hales*, which was lately in this Court, to make good that Dispensation, he did not use it

as an Argument then, that it could not be expounded into a Suspension: He admitted it not to be in the King's Power to suspend a Law, but that he might give a Dispensation to a particular Person, was all that he took upon him to justify at that Time.

My Lord, by the Law of all civilized Nations, if the Prince does require something to be done, which the Person who is to do it takes to be unlawful, it is not only lawful, but his Duty, *Rescribere Principi*. This is all that is done here, and that in the most humble Manner that could be thought of. Your Lordship will please to observe how far it went, how careful they were that they might not any way justly offend the King: They did not interpose by giving Advice, as Peers; they never stirr'd till it was brought Home to themselves. When they made their Petition, all they beg is, that it may not so far be insisted upon by his Majesty, as to oblige them to read it. Whatever they thought of it, they do not take upon them to desire the Declaration to be revoked.

My Lord, as to Matters of Fact alledged in the said Petition, that they are perfectly true, we have shewn by the Journals of both Houses. In every one of those Years which are mentioned in the Petition, this Power of Dispensation was considered in Parliament, and, upon Debate, declared to be contrary to Law: There could be no Design to diminish the Prerogative, because the King hath no such Prerogative. Seditious, my Lord, it could not be, nor could possibly stir up Sedition in the Minds of the People, because it was presented to the King in private and alone: False it could not be, because the Matter of it is true: There could be nothing of Malice, for the Occasion was not sought; the Thing was pressed upon them; and a Libel it could not be, because the Intent was innocent, and they kept within the Bounds set by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition when he is aggrieved.

Mr. Att. Gen. Have you done, Gentlemen?

Mr. Finch. We have done, Sir.

Mr. Att. Gen. My Lord, I shall be a great deal more merciful to your Lordship and the Jury than they have been, who have spent these four Hours in that which I think is not pertinent to the Case in question: They have let themselves into large Discourses, making great Complaints of the Hardships put upon my Lords the Bishops, by the Order of Council to read his Majesty's Declaration; and putting these Words into the Information of Seditious, Malicious, and Scandalous: But, my Lord, I admire that Sir *Robert Sawyer* should make such Reflections and Observations upon these Words, when I am sure he will scarce find any one of his own exhibiting, that has so few of those aggravating Words as this has; and therefore that might have been very well spared, especially by him.

In the next Place, my Lord, we are told what great Danger our Religion is in by this Declaration: I hope we have an equal Concern for that with them, or any Person else whatsoever. But, however, I am sure our Religion teaches us, not to preserve our Religion, or our Lives, by any illegal Courses; and the Question is, whether the Course that my Lords the Bishops have taken to

preserve, as they say, our Religion, be legal or not: If it be not legal, then I am sure our Religion will not justify the using such a Course for never so good an End.

My Lord, for the Thing itself, I do admire that they, in so long a Time and Search that they have made, should not, which I expected, produce more Precedents of such a Paper as this is. They challenge us to shew, that ever there was any such Declaration as this: I'll turn the same Challenge upon them. Shew me any one Instance, that ever so many Bishops did come under pretence of a Petition, to reflect upon the King out of Parliament.

Sir Rob. Sawyer. Is that your Way of answering, Mr. Attorney?

Mr. Att. Gen. Pray, Sir *Robert Sawyer*, you have had your Time, don't interrupt us; sure we have as much Right to be heard as you.

L. C. J. You have been heard over and over again, Sir *Robert Sawyer*, already.

Sir Rob. Sawyer. My Lord, I don't intend to interrupt him.

Mr. Soll. Gen. We cannot make them be quiet, they will still be chopping in upon us.

Mr. Att. Gen. That is an Art that some People have always practised, not to permit any body to speak but themselves.

But, my Lord, I say, that those few Instances that they have produced, are nothing at all to this Matter that is now upon Trial before your Lordship and this Jury: Nay, they are Evidences against them; for they are only Matters transacted in Parliament, which are no more to be applied to this Thing that is in Controversy now, than any the most remote Matter that could be thought of, and though they have gone so high in Point of Time, as to the Reign of *Richard* the Second, yet they have nothing between that and the late King's Reign, to which they at last have descended down.

But, my Lord, I say, that all the Talk of *Richard* the Second's Time is wholly out of the Case: Truly, I do not doubt but that in *Richard* the Second's Time they might find a great many Instances of some such sort of Petitioning as this; for our Histories tell us, that at that Time they had 40,000 Men in Arms against the King; and we know the Troubles that were in that King's Reign, and how at length he was deposed: But certainly there may be found Instances more applicable to the Case, than those they produce. As for those in King *Charles* the Second's Time, do they any ways justify this Petition? For now they are upon justifying the Words of their Petition, that this Power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662, do they shew any thing more than some Debates in the House of Commons, and at last an Address, an Answer by the King, a Reply of the Commons, and then the Thing dies. Pray, my Lord, is a Transaction in the House of Commons, a Declaration of Parliament? Sure, I think, no one will affirm that any thing can be a Declaration of Parliament, unless he that is the Principal Part concurs, who is the King: For if you speak of the Court of Parliament in a legal Sense, you must speak of the whole Body, King, Lords and Commons, and a Declaration in Parliament must be by all the whole Body; and that is properly an Act of Parliament.

Why

Why then they come to the Year 1672, where your Lordship observes, that the late King did insist upon his Right; for after the Dispute which was in 1662, his Majesty did issue out another Declaration, and when it comes to be debated in Parliament, he insists upon his Right in Ecclesiastical Matters; and though his Declaration was cancelled, yet there is no formal Disclaimer of the Right.

My Lord, after all, how far these Things that they have offered may work, as to the Point that they have debated, I shall not now meddle with it, nor give your Lordship any Trouble about it, because it is not at all pertinent to the Case in Question; for I do (after all this Time and Pains that they have spent) take Leave to say, that these Gentlemen have spent all this Time to no Purpose.

L. C. J. Yes, Mr. Attorney, I'll tell you what they offer, which it will lie upon you to give an Answer to; They would have you shew how this has disturbed the Government, or diminished the King's Authority.

Mr. Att. Gen. Whether a Libel be true or not, as to the Matter of Fact, was it ever yet in any Court of Justice permitted to be made a Question, whether it be a Libel or not? or whether the Party be punishable for it; and therefore I wonder to hear these Gentlemen to say, that because it is not a false one, therefore 'tis not a Libel. Suppose a Man should speak scandalous Matter of any Noble Lord here, or of any of my Lords the Bishops, and a *Scandalum Magnatum* be brought for it, though that which is spoken has been true, yet it has been the Opinion of the Courts of Law, that the Party cannot justify it, by reason it tends to the disturbing of the Peace, to publish any thing that is Matter of Scandal: The only Thing that is to be looked into, is, whether there be any thing in this Paper that is reflecting and scandalous, and not whether it be true or no; for if any Man shall *Extra-judicially*, and out of a legal Course and Way, reflect upon any of the great Officers of the Kingdom, nay, if it be but upon any inferior Magistrate, he is to be punished, and is not to make his Complaint against them, unless he do it in a proper Way. A Man may petition a Judge, but if any Man in that Petition shall come and tell the Judge, Sir, you have given an illegal Judgment against me, and I cannot in Honour, Prudence, or Conscience obey it; I do not doubt, nor will any Man, but that he that should so say, would be laid by the Heels, though the Judgment perhaps might be illegal.

If a Man shall come to petition the King, as, we all know, the Council Doors are thronged with Petitioners every Day, and Access to the King by Petition is open to every body, the most inferior Person is allowed to petition the King; but because he may do so, may he therefore suggest what he pleases in his Petition? Shall he come and tell the King to his Face, what he does is illegal? I only speak this, because they say, in this Case his Majesty gave them Leave to come to him to deliver their Petition; but the King did not understand the Nature of their Petition, I suppose, when he said, he gave them Leave to come to him.

My Lord, for this Matter we have Authority enough in our Books, particularly there is the Case of *Wrenbam* in my Lord *Hobart*. The Lord Chancellor had made a Decree against him, and

he petitioned the King, that the Cause might be re-heard; and in that Petition he complains of Injustice done him by my Lord Chancellor, and he put into his Petition many reflecting Things. This, my Lord, was punished as a Libel in the *Star-Chamber*; and in that Book it was said, that though it be lawful for the Subject to petition the King against any Proceedings by the Judges, yet it must not be done with Reflections, nor with Words that turn to the Accusation or Scandal of any of the King's Magistrates or Officers, and the Justice of the Decree is not to be questioned in the Case; for there *Wrenbam* in his Defence would have opened the Particulars wherein he thought the Decree was unjust, but that the Court would not meddle with, nor would allow him to justify for such Illegality in the Decree: So in this Case, you are not to draw in Question the Truth or Falshood of the Matter complained against; for you must take the Way the Law has prescribed, and prosecute your Right in a legal Course, and not by Scandal and Libelling.

My Lord, there is a great deal of Difference between not doing a Thing that is commanded, if one be of Opinion that it is unlawful, and coming to the King with a Petition highly reflecting upon the Government, and with scandalous Expressions telling him, Sir, you act illegally, you require of us that which is against Prudence, Honour or Conscience, as my Lords the Bishops are pleased to do in this Petition of theirs. I appeal to any Lord here, that if any Man should give him such Language, either by Word of Mouth or Petition, whether he would bear it, without seeking Satisfaction and Reparation by the Law.

My Lord, there is no greater Proof of the Influence of this Matter than the Crowd of this Day, and the Harangue that hath been made: Is it not apparent that the taking this Liberty to canvas and dispute the King's Power and Authority, and to censure his Actions, possess the People with strange Opinions, and raises Discontents and Jealousies, as if the free Course of Law were restrained, and arbitrary Will and Pleasure set up instead of it?

My Lord, there is one Thing that appears upon the Face of the Information, which shews this not to be the right Course; and if my Lords the Bishops had given themselves the Opportunity of reading the Declaration seriously, they would have found in the End of the Declaration, that the King was resolved to call a Parliament in *November*. Might not my Lords the Bishops have acquiesced under their passive Obedience till the Parliament met? But nothing would serve them but this, and this must be done out of Parliament, for which there is no President can be shewn, and this must be done in such a Manner, as your Lordship sees the Consequence of, by your Trouble of this Day.

There is one Thing I forgot to speak to: They tell us, that it is laid malicious and seditious, and there is no Malice or Sedition found; we know very well that that follows the Fact, those Things arise by Construction of Law out of the Fact. If the Thing be illegal, the Law says it is seditious; a Man shall not come and say, he meant no Harm in it: That was the Case of *Williams*; in his treasonable Book, says he, I only intended to warn the King of the

Danger approaching, and concludes his Book with *God save the King*; but no Man will say, that a good Preface at the Beginning, or a good Prayer at the End, should excuse Treason or Sedition in the Body of a Book. If I meet another Man in the Street and kill him, though I never saw him in my Life, the Indictment is, that it was *ex Malitia Præcogitata*, as it often happens, that a Person kills one he never had Acquaintance with before; and *in favorem vite*, if the Nature of the Fact be so, the Jury are permitted to find according to the Nature of the Case; but in Strictness of Law there is Malice imply'd: But, my Lord, I think these Matters are so common, and that is a Point that has been so often settled, that the Form of the Indictment and Information must follow the Nature of the Fact, that I need not insist upon it, if the Act be unlawful, the Law supplies the Malice and evil Intentions.

Mr. Soll. Gen. My Lord, and Gentlemen of the Jury, I am of Council in this Case for the King, and I shall take Leave to proceed in this Method: First, I shall put the Case of my Lords the Bishops, and then consider the Arguments that have been used in their Defence, and answer them as much as is material to be answered; and then leave it to your Lordship, and the Jury's Consideration, whether what has been said by these Gentlemen, weigh any thing in this Case?

First, my Lord, I take it for granted, and I think the Matter is pretty plain by this Time, by my Lord President's Evidence, and their own Confession, that it is not to be disputed, but that this Paper was presented by these Lords to the King, I think there is no great Difficulty in that Matter at all, but I just touch upon it, because I would follow them in their own Method.

Then, my Lord, let us take this Case as it is, upon the Nature of the Petition, and the Evidence that they have given, and then let us see whether that will justify the Thing that is done: For the Business of Petitioning, I would distinguish and enquire, whether my Lords the Bishops out of Parliament can present any Petition to the King. I do agree, that in Parliament the Lords and Commons may make Addressee to the King, and signify their Desires, and make known their Grievances there; and there is no Doubt but that is a natural and proper Way of Application: For in the Beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed to draw up Petitions and Addressee; but to come and deduce an Argument, that because the Lords in Parliament have done thus (there being such Methods of Proceedings usual in Parliaments) therefore my Lords the Bishops may do it out of Parliament, that is certainly a *Non sequitur*, no such Conclusion can be drawn from those Premises.

My Lord, I shall endeavour to lay the Fact before you as it really is, and then consider what is proper for the Court to take Notice of, as legal Proof or Evidence: And I take it, all those Presidents that they have produced of what the Lords did, and what the Commons did in Parliament, is no Warrant for them to shelter themselves under, against the Information here in Question.

[Here *Mr. Justice Powell* spake aside to the *Lord Chief Justice* thus,]

Mr. Just. Powell. My Lord, this is strange Doctrine; shall not the Subject have Liberty to

petition the King, but in Parliament? If that be Law, the Subject is in a miserable Case.

L. C. J. Brother, let him go on, we will hear him out, tho' I approve not of his Position.

Mr. Soll. Gen. The Lords may Address to the King in Parliament, and the Commons may do it, but therefore that the Bishops may do it out of Parliament, does not follow. I heard nothing said that could have given Colour to such a Thing, but the Curse that has been read in *1 Eliz.*

But pray, my Lord, let us consider that Evidence they have given: They have begun with that Record in *Richard* the Second's Time, and what is that? That the King may dispense with the Statute of Provisors, till the Meeting of the next Parliament, and a Protestation of the Commons at the End of it, whether that be an Act of Parliament that is Declaratory of the Common Law, or Introductory of a new Law, *non constat*, and for ought appears, it might be a Declaratory Act: And if so, it is a Proof of the King's Prerogative of Dispensing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many such, we very well know; and generally most of the Laws in that kind, are in Affirmance of the King's Power; so that the Law turns as an Argument for the King's Prerogative, and they have given him that which will turn upon themselves: So it stood in *Richard* the Second's Time; but whether that be an Argument one way or other conclusive, is left to your Lordship and the Jury.

Ay, but say they, there is no Execution of such a Power till very lately, and the first Instance that they produce, is that in the Year 1662. But your Lordship knows, that before the Reign of *Henry* the Fourth, there was great Jurisdiction assumed by the Lords in Original Causes: Then comes the Statute of Appeals, *1 Hen. 4.* which takes Notice, that before that Time the Lords had assumed an original Jurisdiction in all Causes, and would proceed and determine them in Parliament, and out of Parliament; and it fell out to be so great a Grievance, that it was thought necessary to make a Law against it, that Appeals in Parliament should be abolished and destroyed; and then comes that Law in Favour of the Subject of *England*, and that settles the Bounds between the King and the Lords in a great Measure. Before that Time the Lords were grown very powerful, and where there is a Power, there always will be Applications; and what is the Effect of that Statute, *1 Hen. 4?* For all that we endeavour is, to make Things as plain as can be, that no further Applications, no Accusations, no Proceedings in any Case whatsoever be before the Lords in Parliament, unless it be by Impeachment of the Commons: So that there is the *Salvo*; and the Use that I make of it is this; The Commons, by that very Statute, did abolish the Power that the Lords had arrogated to themselves, and ordered, that they should not meddle with any Cause, but upon the Impeachment of the House of Commons, and establish the Impeachment of the Commons, which is as antient as the Parliament, for that was never yet spoken against, the Power of the Commons impeaching any Person under the Degree of the Prince; and that is the regular legal Way, and so the Commons asserted their antient Right, and whatsoever the Lords took Notice of, must come by Application of the Commons; then Conferences were to pass

pass between the Houses, and both Houses by Addresses apply to the King. This is the proper Way and Course of Parliament, of which my Lord Cook says, It is known to few, and practised by fewer: But it is a venerable, honourable Way; and this is the Course that should have been taken by my Lords here, and they should have stayed till the Complaint had come from the Commons in Parliament, and then it had been regular for them to Address to the King; but they were too quick, too nimble.

And whereas the Statute of *Hen. IV.* says, That no Lord whatsoever shall intermeddle with any Cause, but by the Impeachment of the Commons, they interpose and give their Advice before their Time: If there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it, and a Man must not be his own Judge, nor his own Carver, nor must every Man create Difficulties of his own, nor set upon petitioning in this sort: But there I lay my Foundation, that in such a Matter as this, there ought to have been the Impeachment of the Commons in Parliament before these Lords could do any thing; and I know nothing can be said for the Bishops more than this, that they were under an Anathema, under the Curse that Sir *Robert Sawyer* speaks of; and for Fear of that, they took this irregular Course. But some would say, Better fall into the Hands of God than of Men: Some would say so (I say) I know not what they would say; but these being the Methods that these Lords should have taken, they should have pursued that Method; the Law should have carved out their Relief and Remedy for them, but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practised so till 3 *Hen. VII.* where the Grievance was found, that Offences in the Intervals of Parliament could not be well punished, and then comes the Statute that sets up the Court of *Star-Chamber*, and there Men were often brought to Judgment and Punishment for their Sins; and though very great Power was given them, yet they arrogated to themselves a greater; and therefore that Court is abolished by the Statute of 15 *Car. I.* and what is the Reason of abolishing that Statute? Because the *Star-Chamber* did not keep within their Bounds that the Law set them, but assumed to themselves a larger Power than the Law would allow, and grew very exorbitant and very grievous to the Subject: And another Reason was, which the Statute of 15 *Car. I.* founded itself upon, because there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary Methods of Justice in the Courts of *Westminster-Hall*: So that upon those two Considerations, because that Course was exorbitant, and because all the Sins and Misdemeanors that were punished there, might be punished in an ordinary Way of Law in another Court, and therefore there was no need of that Court, and so it was abolished, and the Subject was pretty safe. If there was a Crime committed here, a Man might come properly before your Lordship into this Court, and have it punished.

My Lord, they find fault with the Words in the Information, and they say, Why are these

Words put in, Seditious, Malicious? If the Matter be libellous and seditious, we may lawfully say, and it is no more than the Law speaks, it results out of the Matter itself; and, if it be a libellous Paper, the Law says, it is maliciously and seditiously done, and these Gentlemen need not quarrel with us, for so are all the Informations in all Times past, and 'tis no more than the *Vi & Armis*, which is common Form. It may be said, How can the publishing of a Libel be said to be done *Vi & Armis*? That is only a Supposition of Law, and they may as well object to the Conclusion of the Information, that it was *contra Coronam & Dignitatem Domini Regis*. If it be an illegal Thing, or a Libel, these are necessary Consequences; it is no more than the speaking of the Law upon the Fact.

But, my Lord, let us a little consider, whether this Matter were warrantable, and whether they had any Warrant to do what was done: They pretend it was done upon this Account, That the King had set forth a Declaration, and had ordered them to read it; which to excuse themselves from, they make this Petition, or this Libel (call it what you will) and they use this as the main Argument, That they say the King has done illegally, and they tell the King plainly so, that it is illegal; for they take Notice of this Declaration, and say, it is illegal, because it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us consider a little whether there be any Declaration in Parliament that they have given Evidence of. Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is passed by the King, Lords and Commons? That we know to be the Meaning, and no other. If it pass the Commons, it is no Declaration in Parliament; nay, if it pass the Lords and Commons, it is not a Declaration in Parliament, except it also pass the King. All these Things are Nullities, and the Law takes no notice of them: We have it in our Books over and over, and no Court ought to suffer such Evidence to be given. I know these Gentlemen are very well acquainted with the Authority in *Fitz-Herbert, Title, Parliament*. There was such an Act that was said to be by the King and the Lords; but because the Commons did not agree to it, it is declared and adjudged to be a Nullity, and the Court would take no Notice of it; and how can any Man call that a Declaration in Parliament, which is only a Vote of the House of Commons, or of the Lords? No, sure, that is one of the Heads I go upon; it's not a Declaration in Parliament, unless it be by an Act of Parliament.

Indeed, my Lord, there is another sort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, that is a Declaration in Parliament, and may be fairly so called. So likewise there is another judicial Declaration, which is, when any thing comes before the Lords judicially, upon an Impeachment of the Commons, and they give Judgment upon that Impeachment,

ment, that is a Declaration in Parliament: But to say that there is any other Declaration in Parliament, is to say more than these Gentlemen can make out. If they will shew me any such, I will submit to them, and not speak a Word against my Lords the Bishops; but if these learned Gentlemen cannot shew me any such, then they have not said what was true in this Petition, that it was so and so declared in Parliament.

For let us consider what there is in this Case upon this Evidence; for that in 1662, is only a Vote and Opinion of the House of Commons; and I always understood, and have been told so by some of the Gentlemen of the other Side, that such a Vote signifies nothing: But besides, it seems to be a mistaken Address; for they say in it, that the Declaration in 1662, which they address against, was the first Declaration of that Sort to suspend Laws without Act of Parliament; and yet in the same Breath, they do take Notice of the King's Declaration from *Bredab*. But here is a mighty Argument used from the King's Speech, that because he wished he had such a Power, this must be declared in Parliament that he had no such Power. Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the Opening of the Parliament, will you say they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seal's, must be a Declaration in Parliament. Whoever speaks the Sense of the King, if he does not speak that which is Law and Right, is questionable for it, and several have been impeached for so doing; for they look not upon it as the King's Speech, except it be according to Law. Nothing can turn upon the Prince but what is legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then, my Lord, we come to the Business in 1672, which with that in 1662, and that in *Bredab*, shews, that this of the King's is not such a Novelty, but has been done often before. In 1672, the King was in Distress for Money, being entangled in a *Dutch* War, and wanted Supply: He capitulates with his Commons (you have heard it read) and, upon the Commons Address, he asserts it to be his Right, and makes his Complaint to the Lords how the Commons had used him; for when he gives them a fair Answer, they replied, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his present Necessities, and so he was minded to remit a little at the Instigation of the Commons, and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Bishops fancy or imagine that this is to be imposed upon the King, or upon the Court, for a Declaration in Parliament?

Then last of all, for that in 1685, in this King's Time, what is it? The Commons make an Address to the King, and complain to his Majesty of some of his Officers in his

Army, * that might pretend to have a Dispensation, something of that Nature, contrary to the Test-Act; and what is done upon it? They make their Application to the King, and the King answers them, and that is all: But since it is spoken of in the Court, I would take Notice, that it is very well known by the Case of *Goddin* and *Hales*, the Judgment of this Court was against the Opinion of that Address.

But what sort of Evidence is all this? Would you allow all the Addresses of the House of Commons to be Evidence? Give me Leave to say it, my Lord, If you suffer these Votes, these Copies of imperfect Bills, these Addresses, and Applications of one or both Houses to the King, to be Evidence and Declarations in Parliament, then what will become of the *Bill of Exclusion? Shall any body mention that Bill of Exclusion to be a Declaration in Parliament?

If so, then there is Declaration against Declaration; the Declaration of the Commons against the Declaration of the Lords. I know not what Judgment my Lords the Bishops may be of now, concerning those Things of Votes and Addresses being Declarations in Parliament, but I am sure they have spoken against it heretofore: Nay, I am sure some of them have preached against it.

And if my Lords the Bishops have said, these are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuse the King of having done an illegal Thing, because he has done that which has been declared in Parliament to be illegal, when it was never so declared, then the Consequence is very plain, that they are mistaken sometimes; and I suppose by this Time they believe it.

I dare say it will not be denied me, that the King may, by his Prerogative Royal, issue forth his Proclamation; it is as essential a Prerogative as it is to give his Assent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, that the King may make Constitutions and Orders in Matters Ecclesiastical; and that these he may make out of Parliament, and without the Parliament. If the King may do so, and these are his Prerogatives, then suppose the King does issue forth his Royal Proclamation (and such in Effect is this Declaration under the Great Seal) in a Matter Ecclesiastical, by Virtue of his Prerogative Royal; and this Declaration is read in the Council, and published to the World, and then the Bishops come and tell the King, Sir, You have issued out an illegal Declaration, being contrary to what has been declared in Parliament, when there is no Declaration in Parliament; is not this a diminishing the King's Power and Prerogative in issuing forth his Declaration, and making Constitutions in Matters Ecclesiastical? Is not this a questioning of his Prerogative? Do not my Lords

* Here Mr. Justice Powell speaking to the Lord Chief Justice.

Mr. Just. Powell. My Lord, this is wide, Mr. Solicitor would impose upon us; let him make it out if he can, that the King has such a Power, and answer the Objections made by the Defendants Council.

L. C. J. Brother, impose upon us! He shall not impose upon me; I know not what he may upon you: for my Part, I do not believe one Word he says.

* Here there was a great Hissing.

the Bishops in this Case raise a Question between the King and the People? Do not they, as much as in them lies, stir up the People to Sedition? For who shall be Judge between the King and the Bishops? Says the King, I have such a Power and Prerogative to issue forth my Royal Proclamation, and to make Orders and Constitutions in Matters Ecclesiastical, and that without the Parliament, and out of Parliament. Say my Lords the Bishops, You have done so, but you have no Warrant for it. Says the King, Every Prince has done it, and I have done no more than what is my Prerogative to do: But this, say the Bishops, is against Law: How shall this be tried? Should not the Bishops have had the Patience to have waited till a Parliament came, when the King himself tells them, he would have a Parliament in *November* at furthest?

L. C. J. Pray, Mr. Solicitor, come close to the Business, for it is very late.

Mr. Soll. Gen. My Lord, I beg your Patience; you have had a great deal of Patience with them, pray spare me a little. I am saying, when the King himself tells them, that he would have a Parliament in *November* at furthest, yet they have no Patience to stay till *November*, but made this Application to him. Is not this raising a Question upon the King's Prerogative in issuing forth Declarations? and upon the King's Power and Right in Matters Ecclesiastical? And when I have said this, that my Lords the Bishops have so done, if they have raised a Question upon the Right of the King, and the Power of the King in Matters Ecclesiastical, then they have stirred up Sedition. That they have so done is pretty plain; and for the Consequence of it, I shall appeal to the Case in the 2 *Cro. 2 Jac. I.* That is a plain direct Authority for me.

Mr. Just. Powell. Nay, Mr. Solicitor, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High Treason.

Mr. Soll. Gen. I carry it not so far, Sir. We have a gracious Prince, and my Lords the Bishops find it so by this Prosecution: But what says that Case? It is printed in three Books, in *Noy* 100, in *Moor* 375, and in *Mr. Just. Cro.* 371. Says that Case, The King may make Orders and Constitutions in Matters Ecclesiastical.

Mr. Just. Powell. But how will you apply that Case to this in Hand, Mr. Solicitor?

Mr. Soll. Gen. I will apply it by and by, Sir. I would first shew what it is: There is a Convention of the greatest Men in the Kingdom.

Mr. Just. Powell. Indeed, Mr. Solicitor, you shoot at Rovers.

Mr. Soll. Gen. There is the Lord Privy Seal, the Archbishop of *Canterbury*, and a great many others: It is the greatest Assembly we meet with in our Books, and all of them are of this Opinion, that the King may make Orders and Constitutions in Matters Ecclesiastical.

My Lord, there is another Authority, and that is, from the Statute 1 *Eliz.* which erected the High Commission Court, and that Statute was not Introductory of a new Law, but Declaration of the old Law. The King by his Proclamation declares his Sense to do such and such a Thing; the Court, and all Persons there, give their Judgment and Opinion upon that Statute, that they looked upon it as the grossest Thing,

and the foulest Affront to the Prince, for any Man to bring into Question that Power of the King in Matters Ecclesiastical: 'Tis said to be a very high Crime. Why then, my Lord, what is done in this Case?

Mr. Just. Powell. Mr. Solicitor, pray when you are applying, apply that other Part of the Case too, which says, that it was a heinous Offence to raise a Rumour that the King did intend to grant a general Toleration; and is there any Law since that has changed it, Mr. Solicitor?

Mr. Soll. Gen. In the main, Judgment goes another Way. As for that Part, it was Personal to the Prince that then was, of whom they had scandalously reported, that he intended to do such a Thing. They look'd upon it as a Scandal to King *James*, that it was a sowing Sedition, and stirring up People against the Government, and that will come up to our Case: For as some Men do it on the right Side, others do it on the left; and whoever he be that endeavours to bring a Dislike of the King in the People, that is moving Sedition against the Prince; but that is Personal to the Prince himself, and does not go to his Successors.

Now, my Lord, I come to that which is very plain from the Case of *De Libellis Famosis*: If any Person, in any Paper, have slandered the Government, you are not to examine who is in the Right, and who is in the Wrong, whether what they said to be done by the Government be legal or no; but whether the Party have done such an Act. If the King have a Power (for still I keep to that) to issue forth Proclamations to his Subjects, and to make Orders and Constitutions in Matters Ecclesiastical, if he do issue forth his Proclamation, and make an Order upon the Matters within his Power and Prerogative; and if any one would come and bring that Power in Question, I say, that is Sedition, and you are not to examine the Legality or Illegality of the Order or Proclamation; and that, I think, is very plain upon that Case, in the fifth *Report*; for it says, If a Person does a Thing that is libellous, you shall not examine the Fact, but the Consequence; whether it tended to stir up Sedition against the Publick, or to stir up Strife between Man and Man, in the Case of private Persons: As if a Man should say of a Judge, he has taken a Bribe, and I will prove it; this is not to be sent in a Letter, but they must take a regular Way to prosecute it according to Law.

If it be so in the Case of an inferior Magistrate, what must it be in the Case of a King? To come to the King's Face, and tell him, as they do here, that he has acted illegally, doth certainly sufficiently prove the Matter to be libellous. What do they say to the King? They say, and admit, that they have an Averfeness for the Declaration, and they tell him from whence that Averfeness doth proceed; and yet they insinuate, that they had an Inclination to gratify the King, and embrace the Dissenters, that were as averse to them as could be with due Tenderness, when it should be settled by Parliament and Convocation. Pray what hath their Convocation to do in this Matter?

L. C. J. Mr. Solicitor General, I will not interrupt you; but, pray come to the Business before us. Shew us that this is in Diminution

of the King's Prerogative, or that the King ever had such a Prerogative.

Mr. Soll. Gen. I will, my Lord. I am observing what it is they say in this Petition— They tell the King it is inconsistent with their Honour, Prudence and Conscience, to do what he would have them to do: And if these Things be not reflective upon the King and Government, I know not what is. This is not in a way of Judicature: Possibly it might have been allowable to petition the King to put it into a Course of Justice, whereby it may be tried; but alas! there is no such thing in this Matter.

It is not their Desire to put it into any Method for Trial, and so it comes in the Case *De Libellis Famosis*; for by this Way, they make themselves Judges, which no Man by Law is permitted to do. My Lords the Bishops have gone out of the Way, and all that they have offered does not come home to justify them; and therefore I take it, under Favour, that we have made it a good Case for the King: We have proved what they have done, and whether this be warrantable or not, is the Question, Gentlemen, that you are to try. The whole Case appears upon Record; the Declaration and Petition are set forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing what they please in Arrest of Judgment. They have had a great deal of Latitude, and taken a great deal of Liberty; but truly, I apprehend, not so very pertinently. But I hope we have made a very good Case of it for the King, and that you, Gentlemen, will give us a Verdict.

Mr. Just. Holloway. Mr. Solicitor, there is one thing I would fain be satisfied in: You say the Bishops have no Power to petition the King.

Mr. Soll. Gen. Not out of Parliament, Sir.

Mr. Just. Holloway. Pray give me Leave, Sir. Then the King having made such a Declaration of a general Toleration and Liberty of Conscience, and afterwards he comes and requires the Bishops to disperse this Declaration; this they say, out of a Tenderness of Conscience, they cannot do, because they apprehend it contrary to Law, and contrary to their Function: What can they do, if they may not petition?

Mr. Soll. Gen. I'll tell you what they should have done, Sir. If they were commanded to do any thing against their Consciences, they should have acquiesced till the Meeting of the Parliament.

[*At which some People in the Court hissed.*]

Mr. Att. Gen. This is very fine indeed! I hope the Court and the Jury will take Notice of this Carriage.

Mr. Soll. Gen. My Lord, it is one thing for a Man to submit to his Prince, if the King lay a Command upon him that he cannot obey, and another thing to affront him. If the King will impose upon a Man what he cannot do, he must acquiesce; but shall he come and fly in the Face of his Prince? Shall he say it is illegal? and that the Prince acts against Prudence, Honour or Conscience? and throw Dirt in the King's Face? Sure that is not permitted; that is Libelling with a Witness.

L. C. J. Truly, Mr. Solicitor, I am of Opinion that the Bishops might petition the King, but this is not the right Way of bringing it in. I am not of that Mind that they cannot petition the King out of Parliament; but if they may petition, yet

they ought to have done it after another Manner: For if they may in this reflective Way petition the King, I am sure it will make the Government very precarious.

Mr. Just. Powell. Mr. Solicitor, it would have been too late to stay for a Parliament; for it was to have been distributed by such a Time.

Mr. Soll. Gen. They might have lain under it, and submitted.

Mr. Just. Powell. No, they would have run into Contempt of the King's Command, without petitioning the King not to insist upon it; and if they had petitioned, and not have shewn the Reason why they could not obey, it would have been looked upon as a Piece of Sullenness, and that they would have been blamed for as much on the other Side.

Mr. Serj. Baldock. After so long a Debate, I shall not trouble you long; most Things that are to be said have been said; but I shall only say this in short: I cannot deny, nor shall not, but that the Subject has a Right to petition; but I shall affirm it also, he has a Duty to obey; and that in this Case, the Power of the King to dispense with Penal Laws in Matters Ecclesiastical, is not a Thing that is now in question, nor need we here have had these long Debates on both Sides. It may be perceived plainly, by the Proofs that have been read, that the Kings and Princes have thought themselves that they had such a Power, though it may be the Parliament thought they had not; and therefore the Declarations of the one or the other, I shall not meddle with in this Case. That Power it self which the King has, as King of this Realm, in Matters rather Ecclesiastical and Criminal, than Matters of Property, may somewhat appear by what has been read before your Lordship: But all this will be nothing in our Case, neither has his Majesty now depended so much upon this Thing: The Declaration has been read to you, and what's there said? The King there says, That for those Reasons he was ready to suspend those Laws; and be they suspended? Yet, my Lord, with this too, that he refers it to, and hopes to make it secure by a Parliament: So that there being this, it has not gone, I think, very far; and it not having been touch'd here, it is not a Point of Duty in my Lords the Bishops, as Bishops, that's here enquired into: Whether they should have meddled with this or no, in this Manner, is the Question. That the King is Supream over all of us, and has a particular Supremacy over them, as Supream Ordinary and Governor, and Moderator of the Church, is very plain; and, my Lord, it is as plain, that in such Things as concern the Church, he has a particular Power to command them. This is not unknown, but very frequent and common in Matters Ecclesiastical, and Matters of State. It is not here a Question now, whether these Declarations which they were commanded to take care of getting read, were legal or not legal; what Prudence there was, what Honour there was, what Conscience there was, for their not reading it, is not the Question neither: But the Point was, the King as Supream Ordinary of his Kingdom, to whom the Bishops are subject, does in Council order; and what is it he orders? Their sending out and distributing his Declaration. They were concerned in no more than that, and it had been a very pretty thing,

Thing, a small Thing, to send out the King's Declaration to be read by the Clergy. All the Clergy were ordered to read it, but my Lords the Bishops were only commanded to distribute it. This he might do by Virtue of his Power Ecclesiastical. And if this be not an Evil in it self, and if it be not against the Word of God, certainly Obedience was due from my Lords the Bishops: Active Obedience was due from them to do so much as this. It was no Consent of theirs, it was no Approbation of theirs of what they read, that was required. So that if they had read it, or another had read it by the King's Order, especially if that Order be legal, they are bound to do it by Virtue of their Obedience, and not to examine more.

And, my Lord, in this Petition, here they come to relieve, not only themselves that were present (for I speak to the Preamble, as others before me have spoke to the Conclusion) but they do involve the rest of the Bishops that were absent; for it is in Behalf of themselves, and their Brethren, and all the Clergy of that Province. Now that all these should join in the Petition, is a Thing very uncertain. How does it construe here, whether they were all together, and consented to it, or how all their Minds could be so fully known, that they would be all involved in the Disobedience to this Order of the King? Then, my Lord, What is the Thing they are greatly averte to? There are two Things required in the Order: The Bishops required to distribute the Declaration to the inferior Clergy, and the inferior Clergy are required to read it. Then their Averfens must be to distribute it, and the others to read it, and so they will be involved; none of whom did ever appear to have joined in it. And then they give Reasons for their Averfens; and it is true, Reasons might have been given, and good Reasons should be given, why they should not do this in Duty to his Majesty; more gentle Reasons, and other kind of Reasons than those that they have given.

L. C. J. Pray, Brother, will you come to the Matter before us.

Mr. Serj. Baldock. I have almost done, my Lord.

Mr. Just. Powell. The Information is not for Disobedience, Brother, but for a Libel.

Mr. Serj. Baldock. No, Sir, it is not for Disobedience, but it is for giving Reasons for the Disobedience in a libellous Petition; and I am going on to that. The Declaration is said in the Petition to be illegal; which is a Charge upon the King, that he has done an illegal Act. They say, they cannot in Honour, Conscience, or Prudence, do it; which is a Reflection upon the Prudence, Justice, and Honour of the King in commanding them to do such a Thing: And this appearing to have been delivered to the King by my Lords the Bishops, Persons to whom certainly we all owe a Deference, as our Spiritual Masters, to believe what Things they say, as most likely to be true; and therefore it having an universal Influence upon all the People, I shall leave it here to your Lordship and the Jury, whether they ought not to answer for it.

Mr. Recorder. Will your Lordship please to spare me one Word?

L. C. J. I hope we shall have done by and by.

Mr. Recorder. If your Lordship don't think fit, I can sit down.

L. C. J. No, no, go on, Sir *Bartholomew Shower*, you'll say I have spoiled a good Speech.

Mr. Recorder. I have no good one to make, my Lord, I have but a very few Words to say.

L. C. J. Well, go on, Sir.

Mr. Recorder. That which I would urge, my Lord, is only this; I think, my Lord, we have proved our Information, and that they have made no Answer to it; for the Answer they have made, is but Argumentative, and taken either from the Persons of the Defendants, as Peers, or from the Form of its being a Petition. As Peers, it is said they have a Right to petition to, and advise the King; but that is no Excuse at all; for if it contains Matter reproachful or scandalous, it is a Libel in them as well as in any other Subject; and they have no other Right to libel the King than his Majesty's other Subjects have; nor will the Privilege of their Peerage exempt them from being punished. And for the Form of this Paper, as being a Petition, there is no more Excuse in that neither: For every Man has as much Right to publish a Book, or Pamphlet, as they had to present their Petition. And as it would be punishable in that Man to write a scandalous Book, so it would be punishable in them to make a scandalous, and a libellous Petition. And the Author of *Julian the Apostate*, because he was a Clergy Man, and a learned Man too, had as much Right to publish his Book, as my Lords the Bishops had to deliver this Libel to the King. And if the City of *London* were so severely punished, as to lose their Charter, for petitioning for the Sitting of a Parliament, in which there were reflecting Words, but more soft ———

Mr. Just. Holloway. Pray, good Mr. Recorder, don't compare the Writing of a Book to the Making of a Petition; for it's the Birth-right of the Subject to petition.

Mr. Recorder. My Lord, it was as lawful for the City of *London* to petition for the sitting of a Parliament, as it was for my Lords the Bishops to give Reasons for their Disobedience to the King's Command: And if the Matter of the City of *London's* Petition was reckoned to be libellous, in saying that what the King had done in dissolving the Parliament, was an Obstruction of Justice, what other Construction can be made of my Lords the Bishops saying that the King's Declaration is illegal? And if the Matter of this Petition be of the same Nature with that of the City of *London*, your Lordship can make no other Judgment of it, but that it ought to have the same Condemnation.

Mr. Just. Powell. Mr. Recorder, you will as soon bring the two Poles together, as make this Petition to agree with *Johnson's* Book. They are no more alike than the most different Things you can name.

Mr. Serj. Trinder. My Lord, I have but one Word.

L. C. J. How unreasonable is this now, that we must have so many Speeches at this Time of Day? But we must hear it; go on, Brother.

Mr. Serj. Trinder. My Lord, if your Lordship please, that which they seem most to insist upon on the other Side, and which has not been much spoken to on our Side, is, that this Power which his Majesty has exerted, in setting forth his Declaration, was illegal, and their Arguments were hypothetical. If it were illegal,

illegal, they had not offended; and they offered at some Arguments to prove it illegal: But as to that, my Lord, we need not go much further than a Case which is very well known here, which I crave leave to mention, only because the Jury, perhaps, have not heard of it, and that was the Case of Sir *Edward Hales*; where, after a long Debate, it was resolved, That the King had a Power to dispense with Penal Laws.

But, my Lord, if I should go higher into our Books of Law, that which they seem to make so strange of, might easily be made appear to have been a frequent and constant Practice.—

L. C. J. That is quite out of the Case, Brother.

Mr. Serj. Trinder. I beg your Lordship's Favour for a Word or two. If your Lordship please to consider the Power the King has, as Supream Ordinary, we say, he has a Power to dispense with these Statutes, as he is King, and to give Ease to his Subjects, as Supream Ordinary of the whole Kingdom, and as having Supream Ecclesiastical Authority throughout the Kingdom. There might be abundance of Cases cited for this, if there were Need: The Statute of *primo Eliz.* doubtless is in Force at this Time, and a great many of the Statutes that have been made since that Time, have express Savings of the King's Supremacy: So that the King's Power is unquestionable. And if they have come and questioned this Power in this Manner, by referring themselves to the Declarations in Parliament, they have done that which of late Days has been always look'd upon as an ill Thing; as if the King's Authority was under the Suffrages of a Parliament. But when they come to make out their Parliament Declarations, there was never a one, unless it be first in *Richard the Second's* Time, that can properly be called a Parliament Declaration: So that of the several Parliaments is a Matter perfectly mistaken; and if they have mistaken it, it is in the Nature of false News, which is a Crime for which the Law will punish them. More Things might be added, but I consider your Lordship has had a great deal of Patience already, and much Time has been spent, and therefore I shall conclude, begging your Lordship's Pardon for what I have said.

L. C. J. I do assure you, if it had not been a Case of great Concern, I would not have heard you so long. It is a Case of very great Concern to the King and the Government on the one Side, and to my Lords the Bishops on the other; and I have taken all the Care I can to observe what has been said on both Sides. 'Tis not to be expected that I should repeat all the Speeches, or the particular Facts, but I will put the Jury in Mind of the most material Things, as well as my Memory will give me Leave; but I have been interrupted by so many long and learned Speeches, and by the Length of the Evidence which has been brought in, in a very broken, unmethodical Way, that I shall not be able to do so well as I would.

Gentlemen, thus stands the Case: It is an Information against my Lords the Bishops, his Grace my Lord of *Canterbury*, and the other six Noble Lords; and it is for Preferring, Composing, Making, and Publishing, and Causing to be Published, a seditious Libel: The Way that the Information goes is special, and it sets forth,

That the King was graciously pleased, by his Royal Power and Prerogative, to set forth a Declaration of Indulgence for Liberty of Conscience, in the Third Year of his Reign; and afterwards, upon the 27th of *April*, in the fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council that this Declaration should be published by my Lords the Bishops in their several Diocesses; and after this was done, my Lords the Bishops come and present a Petition to the King, in which were contained the Words which you have seen.

Now, Gentlemen, the Proofs that have been upon this, you'll see what they are. The two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal. A Question did arise, whether the Prints were the same with the original Declarations, and that is proved by *Hills*, or his Man, that they were examined, and are the same. Then the Order of the Council was produced by Sir *John Nicholas*, and has likewise been read to you. Then they come to prove the Fact against the Bishops, and first they fall to proving their Hands. They began indeed a great Way off, and did not come so close to it as they afterwards did; for some of their Hands they could hardly prove, but my Lord Archbishop's Hand was only proved, and some others; but there might have been some Question about that Proof. But afterwards it came to be proved, that my Lords the Bishops owned their Hands; which, if they had produced at first, would have made the Cause something shorter than it was.

The next Question that did arise, was about the Publishing of it, whether my Lords the Bishops had published it; and it was insisted upon, that no body could prove the Delivery of it to the King. It was proved, the King gave it to the Council, and my Lords the Bishops were called in, and there they acknowledged their Hands; but no body could prove how it came to the King's Hands. Upon which we were all of Opinion, that it was not such a Publishing as was within the Information; and I was going to have directed you to find my Lords the Bishops Not Guilty: But it happened, that being interrupted in my Directions by an honest, worthy, learned Gentleman, the King's Council took the Advantage, and informing the Court that they had further Evidence for the King, we staid till my Lord President came, who told us how the Bishops came to him to his Office at *White-hall*, and after they had told him their Design, that they had a Mind to petition the King, they asked him the Method they were to take for it, and desired him to help them to the Speech of the King: And he tells them he will acquaint the King with their Desire, which he does; and the King giving Leave, he comes down and tells the Bishops, that they might go and speak with the King when they would; and, says he, I have given Direction that the Door shall be opened for you as soon as you come. With that the two Bishops went away, and said, they would go and fetch their other Brethren, and they did bring the other Four, but my Lord Archbishop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was delivered to the King. He cannot speak to that particular Petition, because he did not read it, and that is all that he knew of the Matter;

Matter; only it was all done the same Day, and that was before my Lords the Bishops appeared at the Council.

Gentlemen, after this was proved, then the Defendants came to their Part; and these Gentlemen that were of Council for my Lords, let themselves into their Defence, by notable learned Speeches, by telling you that my Lords the Bishops are Guardians to the Church, and great Peers of the Realm, and were bound in Conscience to take Care of the Church. They have read you a Clause of a Statute made in Queen *Elizabeth's* Time, by which they say, my Lords the Bishops were under a Curse, if they did not take Care of that Law: Then they shew you some Records; one in *Richard the Second's* Time, which they could make little of, by reason their Witnesses could not read it; but it was in short, a Liberty given to the King, to dispense with the Statute of Provisors. Then they shew you some Journals of Parliament; First in the Year 1662, where the King had granted an Indulgence, and the House of Commons declared it was not fit to be done, unless it were by Act of Parliament: And they read the King's Speech, wherein he says, he wish'd he had such a Power, and so likewise that in 1672, which is all nothing but Addresses and Votes, or Orders of the House, or Discourses; either the King's Speech, or the Subjects Addresses; but these are not Declarations in Parliament. That is insisted upon by the Council for the King, that what is a Declaration in Parliament is a Law, and that must be by the King, Lords, and Commons; the other is but common Discourse, but a Vote of the House, or a Signification of their Opinion, and cannot be said to be a Declaration in Parliament. Then they come to that in 1685, where the Commons take Notice of something about the Soldiers in the Army that had not taken the Test, and make an Address to the King about it: But in all these Things (as far as I can observe) nothing can be gathered out of them one way or other; it is nothing but Discourses. Sometimes this Dispensing Power has been allowed, as in *Richard the Second's* Time; and sometimes it has been denied, and the King did once waive it: Mr. Solicitor tells you the Reason, There was a Lump of Money in the Case; but I wonder indeed to hear it come from him.

Mr. Soll. Gen. My Lord, I never gave my Vote for Money, I assure you.

L. C. J. But those Concessions which the King sometimes makes for the Good of the People, and sometimes for the Profit of the Prince himself (but I would not be thought to distinguish between the Profit of the Prince and the Good of the People, for they are both one; and what is the Profit of the Prince is always for the Good of the People) but I say, those Concessions must not be made Law, for that is reserved in the King's Breast, to do what he pleases in it at any Time.

The Truth of it is, the Dispensing Power is out of the Case, it is only a Word used in the Petition; but truly, I will not take upon me to give my Opinion in the Question, to determine that now, for it is not before me: The only Question before me is, and so it is before you, Gentlemen, it being a Question of Fact, Whether here be a certain Proof of a Publication? And then the next Question is a Question of Law indeed, Whether if there be a Publication proved, it be a Libel?

Gentlemen, upon the Point of the Publication, I have summed up all the Evidence to you; and if you believe that the Petition which these Lords presented to the King was this Petition, truly, I think, that is a Publication sufficient: If you do not believe it was this Petition, then my Lords the Bishops are not guilty of what is laid to their Charge in this Information, and consequently there needs no Enquiry whether they are guilty of a Libel: But if you do believe that this was the Petition they presented to the King, then we must come to enquire whether this be a Libel.

Now, Gentlemen, any thing that shall disturb the Government, or make Mischief and a Stir among the People, is certainly within the Case of *Libellis Famosis*; and I must in short give you my Opinion, I do take it to be a Libel. Now this being a Point of Law, if my Brothers have any thing to say to it, I suppose they will deliver their Opinions.

Mr. Jusf. Holloway. Look you, Gentlemen, it is not usual for any Person to say any thing after the Chief Justice has summed up the Evidence; it is not according to the Course of the Court: But this is a Case of an extraordinary Nature, and there being a Point of Law in it, it is fit every body should deliver their own Opinion. The Question is, whether this Petition of my Lords the Bishops be a Libel, or no. Gentlemen, the End and Intention of every Action is to be considered; and likewise, in this Case, we are to consider the Nature of the Offence that these Noble Persons are charged with: It is for delivering a Petition, which, according as they have made their Defence, was with all the Humility and Decency that could be: So that if there was no ill Intent, and they were not (as it is not, nor can be pretended they were) Men of evil Lives, or the like, to deliver a Petition cannot be a Fault, it being the Right of every Subject to petition. If you are satisfied there was an ill Intention of Sedition, or the like, you ought to find them guilty: But if there be nothing in the Case that you find, but only that they did deliver a Petition to save themselves harmless, and to free themselves from Blame, by shewing the Reason of their Disobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conscience give Obedience to; I cannot think it is a Libel: It is left to you, Gentlemen, but that is my Opinion.

L. C. J. Look you, by the Way, Brother, I did not ask you to sum up the Evidence (for that is not usual) but only to deliver your Opinion, whether it be a Libel or no.

Mr. Jusf. Powell. Truly I cannot see, for my part, any thing of Sedition, or any other Crime, fixed upon these Reverend Fathers, my Lords the Bishops.

For, Gentlemen, to make it a Libel, it must be false; it must be malicious, and it must tend to Sedition. As to the Falseness, I see nothing that is offered by the King's Council, nor any thing as to the Malice: It was presented with all the Humility and Decency that became the King's Subjects to approach their Prince with.

Now, Gentlemen, the Matter of it is before you; you are to consider of it, and it is worth your Consideration. They tell his Majesty, It is not out of Averfeness to pay all due Obedience to the King, nor out of a Want of Tenderness to their dissenting Fellow Subjects, that made them

not perform the Command imposed upon them; but they say, that because they do conceive that the Thing that was commanded them was against the Law of the Land, therefore they do desire his Majesty, that he would be pleased to forbear to insist upon it, that they should perform that Command which they take to be illegal.

Gentlemen, we must consider what they say is illegal in it. They say, they apprehend the Declaration is illegal, because it is founded upon a dispensing Power, which the King claims, to dispense with the Laws concerning Ecclesiastical Affairs.

Gentlemen, I do not remember in any Case in all our Law (and I have taken some Pains upon this Occasion to look into it) that there is any such Power in the King, and the Case must turn upon that. In short, if there be no such Dispensing Power in the King, then that can be no Libel which they presented to the King, which says, that the Declaration, being founded upon such a pretended Power, is illegal.

Now, Gentlemen, this is a Dispensation with a Witness; it amounts to an Abrogation and utter Repeal of all the Laws; for I can see no Difference, nor know of none in Law, between the King's Power to dispense with Laws Ecclesiastical, and his Power to dispense with any other Laws whatsoever. If this be once allowed of, there will need no Parliament; all the Legislature will be in the King, which is a Thing worth considering, and I leave the Issue to God and your Consciences.

Mr. Just. Albyone. The single Question that falls to my Share is, to give my Sense of this Petition, whether it shall be in Construction of Law a Libel in itself, or a Thing of great Innocence. I shall endeavour to express myself in as plain Terms as I can, and as much as I can, by way of Proposition.

And I think, in the first Place, That no Man can take upon him to write against the actual Exercise of the Government, unless he have Leave from the Government, but he makes a Libel, be what he writes true or false; for if once we come to impeach the Government by Way of Argument, 'tis the Argument that makes it the Government, or not the Government: So that I lay down that in the first Place, that the Government ought not to be impeached by Argument, nor the Exercise of the Government shaken by Argument; because I can manage a Proposition in itself doubtful, with a better Pen than another Man: This, say I, is a Libel.

Then I lay down this for my next Position, That no private Man can take upon him to write concerning the Government at all; for what has any private Man to do with the Government, if his Interest be not stirred or shaken? It is the Business of the Government to manage Matters relating to the Government; it is the Business of Subjects to mind only their own Properties and Interests. If my Interest is not shaken, what have I to do with Matters of Government? They are not within my Sphere. If the Government does come to shake my particular Interest, the Law is open for me, and I may redress myself by Law: And when I intrude myself into other Mens Business, that does not concern my particular Interest, I am a Libeller.

These I have laid down for plain Propositions; now then let us consider further, whether if I will take upon me to contradict the Government,

any specious Pretence that I shall put upon it shall dress it up into another Form, and give it a better Denomination; and truly I think 'tis the worse, because it comes in a better Dress; for by that Rule, every Man that can put on a good Vizard, may be as mischievous as he will to the Government at the Bottom: So that whether it be in the Form of a Supplication, or an Address, or a Petition, if it be what it ought not to be, let us call it by its true Name, and give it its right Denomination, it is a Libel.

Then, Gentlemen, consider what this Petition is: This is a Petition relating to something that was done and ordered by the Government. Whether the Reasons of the Petition be true or false, I will not examine that now, nor will I examine the Prerogative of the Crown, but only take Notice that this relates to the Act of the Government. The Government here has published such a Declaration as this that has been read, relating to Matters of Government; and shall, or ought any body to come and impeach that as illegal, which the Government has done? Truly, in my Opinion, I do not think he should, or ought; for by this Rule may every Act of the Government be shaken, when there is not a Parliament *de facto* sitting.

I do agree, that every Man may petition the Government, or the King, in a Matter that relates to his own private Interest; but to meddle with a Matter that relates to the Government, I do not think my Lords the Bishops had any Power to do more than any others. When the House of Lords and Commons are in Being, it is a proper Way of applying to the King: There is all the Openness in the World for those that are Members of Parliament, to make what Addresses they please to the Government, for the rectifying, altering, regulating, and making of what Law they please; but if every private Man shall come and interpose his Advice, I think there can never be an End of advising the Government. I think there was an Instance of this in King James's Time, when by a solemn Resolution it was declared to be High Misdemeanor, and next to Treason, to petition the King to put the Penal Laws in Execution.

Mr. Just. Powell. Brother, I think you do mistake a little.

Mr. Just. Albyone. Brother, I dare rely upon it that I am right: It was so declared, by all the Judges.

Mr. Soll. Gen. The Puritans presented a Petition to that Purpose, and in it they said, if it would not be granted, they would come with a great Number.

Mr. Just. Powell. Ay, there it is.

Mr. Just. Albyone. I tell you, Mr. Solicitor, the Resolution of the Judges is, That such a Petition is next Door to Treason, a very great Misdemeanor.

Mr. Just. Powell. They accompanying it with Threats of the Peoples being discontented.

Mr. Just. Albyone. As I remember, it is in the second Part of the *Folio 35, or 37*, where the Resolution of the Judges is, That to frame a Petition to the King, to put the Penal Laws in Execution, is next to Treason; for, say they, no Man ought to intermeddle with Matters of Government without Leave of the Government.

Mr. S. Pemberton. That was a Petition against the Penal Laws.

Mr. Just. Albyone. Then I am quite mistaken indeed, in case it be so.

Mr. Serj. Trinder. That is not material at all which it was.

Mr. Pollexfen. They there threatned, unless their Request were granted, several Thousands of the King's Subjects would be discontented.

Mr. Just. Powell. That is the Reason of that Judgment, I affirm it.

Mr. Just. Allyn. But then I'll tell you, Brother, again, what is said in that Case that you hinted at, and put Mr. Solicitor in mind of. For any Man to raise a Report that the King will, or will not permit a Toleration, if either of these be disagreeable to the People, whether he may, or may not, it is against Law; for we are not to measure Things from any Truth they have in themselves, but from that Aspect they have upon the Government; for there may be every Tittle of a Libel true, and yet it may be a Libel still: So that I put no great Strefs upon that Objection, that the Matter of it is not false; and, for Sedition, it is that which every Libel carries in itself; and as every Trespass implies *Vi & Armis*, so every Libel against the Government carries in it Sedition, and all the other Epithets that are in the Information. This is my Opinion as to the Law in general.

I will not debate the Prerogatives of the King, nor the Privileges of the Subject; but as this Fact is, I think these venerable Bishops did meddle with that which did not belong to them: They took upon them, in a petitionary Way, to contradict the actual Exercise of the Government, which I think no particular Persons or single Body may do.

L. C. J. Gentlemen of the Jury, Have you a Mind to drink before you go?

Jury. Yes, my Lord, if you please.

[*Wine was sent for for the Jury.*]

Juryman. My Lord, we humbly pray that your Lordship will be pleased to let us have the Papers that have been given in Evidence.

L. C. J. What is that you would have, Sir?

Mr. Soll. Gen. He desires this, my Lord, That you would be pleased to direct that the Jury may have the Use of such Writings and Statute-Books, as may be necessary for them to make use of.

L. C. J. The Statute-Book they shall have.

Mr. Soll. Gen. But they can have no Papers but what are under Seal.

Mr. Serj. Levinz. They may have them by Consent, and they may have a Copy of the Information.

L. C. J. They shall have a Copy of the Information, and the Declarations under Seal.

Mr. Pollexfen. If they have those, and the Libel, as they call it, they will not need a Copy of the Information.

Mr. Att. Gen. My Lord, we pray that your Lordship would be pleased to ascertain what it is they shall have.

L. C. J. They shall have a Copy of the Information, the Libel, and the Declarations under the Great-Seal.

Mr. Soll. Gen. But not the Votes of the House of Commons, nor the Journals, for they are not Evidence.

L. C. J. No, I don't intend they shall.

Sir Rob. Sawyer. My Lord, we pray they may have the whole Petition.

Mr. Just. Holloway. That is, with the Direction and Prayer, you mean.

Mr. Att. Gen. Yes, with all our Hearts.

[*Then the Court arose, and the Jury went together to consider of their Verdict, and stayed together all Night, without Fire or Candle.*]

On Saturday the 30th Day of June, Anno Dom. 1688, about Ten o'Clock in the Morning, the Archbishop, and the rest of the Bishops, came again into the Court, and immediately after, the Jury were brought to the Bar.

Sir Sam. Astry. Crier, Take the Appearance of the Jury. *Sir Roger Langley.*

Sir Roger Langley. Here.

Crier. Vous avez, &c.

[*And so all the rest were called, and answered.*]

[*Then Proclamation for Silence was made.*]

Sir Sam. Astry. Gentlemen, are you agreed on your Verdict?

Jury. Yes.

Sir Sam. Astry. Who shall say for you?

Jury. Foreman.

Sir Sam. Astry. Do you find the Defendants, or any of them, Guilty of the Misdemeanor whereof they are impeached, or Not Guilty?

Foreman. Not Guilty.

Sir Sam. Astry. Then hearken to your Verdict, as the Court hath recorded it—— You say, the Defendants, and every of them, are Not Guilty of the Misdemeanor whereof they are impeached; and so you say all?

Jury. Yes.

[*At which there were several great Shouts in Court, and throughout the Hall.*]

Mr. Solicitor General taking Notice of some Persons in Court that shouted, moved very earnestly that they might be committed: Whereupon a Gentleman of Grays-Inn was laid bold on, but was soon after discharged. And after the Shouting was over, the Lord Chief Justice reproving the Gentleman, said,

L. C. J. Sir, I am as glad as you can be, that my Lords the Bishops are acquitted; but your Manner of rejoicing here in Court is indecent, you might rejoice in your Chamber, or elsewhere, and not here.

[*Then speaking to Mr. Attorney, he said.*]

Have you any thing more to say to my Lords the Bishops, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

[*Then the Court arose, and the Bishops went away.*]

CXLIII. Proceedings in the House of Commons against ROGER PALMER, Earl of Castlemaine, for High Treason, in going Ambassador to Rome, October 26, 1689. 1 W. & M.

THE Attorney General [Sir George Treby] being, on Saturday the 26th of October, 1689, inform'd, that the Earl of Castlemaine, Sir Edward Hales, and other Prisoners of the Tower, were brought by their Habeas Corpus to the Hall to be bail'd, desir'd to know the Pleasure of the House in that Affair; who order'd that they should presently be sent for to their Bar, which was done accordingly; only the said Earl was not there; for he remain'd still in the Tower, having, it seems, made use of no such Writ: However, the House directed the Governor to bring him up (as he did) the Monday following; and then the Speaker [Henry Powle] said to this Effect.

MY Lord, the House having understood that you went Ambassador to Rome, and also took your Place at the Board as a Privy-Councillor, without taking the Oaths (which are great Crimes, and against Law) they have sent for you to know what you have to say for yourself.

HIS LORDSHIP'S ANSWER.

IT cannot, Mr. Speaker, but put me into more than an ordinary Confusion, when I find myself in this Place as a Criminal; especially, seeing, through the whole Course of my Life, the Glory and Welfare of England has been my chief Aim and Endeavour. You are pleas'd, Sir, to lay so great a Charge upon me, that, without Shuffling or Impertinence, I might ask Time to consider it; yet since I well know how much you value your Time, and since Time also may make what I say suspected more of Artifice than Candor, I shall now, without further Delay, let you and this great Assembly see (where so many of Birth and Quality are met) how far I am from deserving either Censure or Reproach. But, Mr. Speaker, before I go further, I must humbly beg these few Favours of you. *First*, That you would pardon all Tautologies, or Want of Method, as beginning perchance in the Middle, and ending again where I should have begun. *Secondly*, That you would not take any Advantage at my Answers, for I shall be ingenuous to the Utmost, and hesitate at nothing you shall ask. And *Lastly*, if, through Inadvertency or Haste, I should say what might shock you, that you would not stand upon the Rigour of the Words, but upon the Sincerity and Clearness of my Explanation.

Be pleas'd then to know, Sir, I was so far from seeking this Employment, that I did not so much as dream it was design'd me; and when I knew it, I us'd my utmost Endeavour to avoid it. My Ignorance of the King's Intentions appears by this, that, in the Year I went to Rome, returning

out of the Country, according to my usual Custom, after Michaelmas, I found a Protestant, a Person of Note at my House, who told me, that before I spoke with any Man, he was to bring me to my Lord Sunderland, and from thence I was to go to his Majesty; nor would he scarce afford me Time to put myself in a tolerable Order to attend them. My Lord Sunderland soon hinted to me what the King's Intentions were; and when I recurr'd to his Friendship, I had this Answer, or Words to this Purpose: That if Subjects should refuse their King's Service in every thing that was troublesome or *Contre-Cœur*, all Kings would be in an ill Condition; that my Request was beyond his Power, and that he believed I should find his Majesty very positive; and so I did, Mr. Speaker, I'll assure you. Nay, to satisfy you yet more fully of my Backwardness to this Journey; can you think, Sir, that I, that had been at Rome more than once; that had seen the Grandeur of so many Roman Embassies, and knew they exceeded in Splendor and Expence three Times those to any crown'd Head whatsoever, should not be extraordinarily concern'd at an Employment which had for its Subsistence, as the Lords of the Treasury well know, no other Establishment than to Spain or France, which (being 100*l.* a Week) amounts only to 5200*l.* per Annum?

Having thus, Sir, shew'd you how little fond I was of the Thing, let me now, with Submission, ask you, what could I otherwise do in my Circumstances? For first, I call all that's Good to witness, I never heard of Law against it, nor know of any to this very Day: And yet, on the other Side, I was not only commanded by the King, but knew his Royal and Legal Power of commanding the Service of his Subjects, and most particularly in Embassies, as appears by many old Examples; nay, by a fatal one in this very Century; I mean the Case of *Overbury*, to which no body here, I'm sure, is a Stranger. In the next Place, Sir, what did I go to Rome for? Why only with a Letter; with a Complement from a profess'd and open Catholick King to his Holiness, as all Princes of that Communion do in the Beginning of their respective Reigns. Besides, Mr. Speaker, as I know no Law that forbid my Obedience, so I must needs say (and this without cramping, or putting any Bounds to the Legislative Power) that no such Law can be made: For, Sir, the Pope is a very considerable Temporal Prince, whose Territories border on two great Seas, the *Mediterranean* and *Adriatic*: If then our Merchants should be by Storm, or other Necessities, driven into his Ports; if *Englismen* should be surpriz'd by any Roman Party as they travel in a neighbouring Country, shall our Government (not to mention a Hundred other

greater Accidents) want Power to send a Messenger to ransom and compound for them? What Law therefore was there ever yet fram'd, or can be enacted (let the Commerce or Intercourse between Nations be never so much broken and prohibited) but that a Commander in Chief, a General, and much more a King, may beat a Parley, dispatch a Trumpet; nay, send and receive Letters as often as Occasion does require?

Now, Mr. Speaker, for Religion, I neither had any Commission concerning it, nor transacted with his Holiness about it; and as no body ever did, or could lay any thing of that Nature to my Charge, so for some Confirmation of it, I will appeal even to the *Aqua-fresca* Houses of *Rome*, and to all the Protestant Gentlemen of our Nation there during my Embassy; for though what I tell you, Sir, be a Wonder, yet the honourable Persons who have resided in those Parts, know it to be true, that for a Dish of Chocolate, or a Dish of Limonade, one may know the Measures and Particulars of an Embassy in that City, as well as we do what passes within these Walls at our Coffee-Houses. I am sure my under Servants have often smil'd at the Grimaces and Mysteries which my Secretaries us'd in the Beginning to make before my Audiences; for they have told them, within few Hours after my Return, almost Word by Word what had pass'd. Give me also Leave, Sir, to add one Truth more, which will assure you that I had no dangerous Intrigue in Hand; and this is, that notwithstanding his Holiness never had the least Imagination or Thought, but that I was as real and sincere a Catholick as any Man living; and the same Thing also I can say of all the Cardinals; and in fine, of the whole Court in general; yet none of them (and every *Englishman* in Town knew it) but look'd upon me as one that if any Immunity of the Crown were in Question, or any Temporal Concern of the Kingdom touch'd, would stand as much in the Gap, and be in as Diametrical an Opposition as any Person of the Reform'd Religion whatsoever.

You see then, Sir, both how and why I went; nor have I done any thing certainly to merit any Man's Unkindness or Ill-will; nay, to lay yet further before you the Hardship I am under, I shall state you a Case not fetch'd out of old forgotten Records, or transacted in an Age desperate from ours, but of a Man attainted in this very House, in the Memory of several now sitting, and even whilst I myself had the Honour to be a Member of it. The Case, Mr. Speaker, is *Astel's* the Regicide; one whose Crime, I dare say, my greatest Enemies think I abhor in the highest Manner; nor do I mention the Thing in Favour of the Criminal, but in Honour of his grave and worthy Judges. *Astel*, you know, Mr. Speaker, was indicted for the Murder of *Charles* the First; and to shew that he maliciously contrived and abetted it, the King's Council urged his commanding in the Hall at the Trial; his placing the Centinels all about; and in short, his performing there the whole Office of Captain of the Guard. The Prisoner answer'd, but pray, Mr. Speaker, let me beg Pardon, if the Interval of almost thirty Years has made me forget his Words, I am sure the Sense of them I have not. I say, Sir, the Prisoner answer'd; *My Lords, I am under great Oppression, I am hardly dealt with. Has Charles the Second been so gracious as to pass over the ordinary Transgressions of his sway'd Subjects, and to look upon the Obedience*

*of Soldiers to their then Superiors, as if the Authority had been more legal? And shall I now die (who was under Military Discipline) for that which I must have presently died for, had I not done it; to wit, had I not drawn up my Regiment, kept the Post order'd me, and perform'd the other Duties, the Course being great and troublesome? Upon this the Judge reply'd; I confess (considering the King's merciful Resolutions) that your Argument is strong; it has great Weight in it; but Mr *Astel*, did you no more? Did you only perform the Duty of a commanded Soldier? Who was it, I pray, that animated the Rabble? Who beat the Soldiers for not crying Justice? Who encourag'd spitting in the King's Face? And who barbarously revild and threaten'd a Noble Lady, that in the Transports of her Zeal (when she saw her Sovereign abus'd, when she heard such Blasphemy against him, and all this father'd upon the Nation) made a Noise or Stir in the Court? These Things therefore, Sir, being prov'd against him, he was convicted, condemn'd, and so paid a Debt to Justice, and to the sacred Ashes of that great and just Man.*

Now, Mr. Speaker, to Application: And first (after a little Glance on the Tenderness of these Judges, when any Necessity could be pretended) let me, with your Pardon, ask you, shall I suffer as a Transgressor of the Law, were there any, when I must have suffer'd by the Law, had I refus'd his Majesty's Orders and Commands? But, Sir, if you demand, did I no more than carry a Letter, or go with a Ceremonious *How d'ye* from the King? I must answer yes, and a great deal more too. For my House was at *Aylum*, a Place of Refuge to all distress'd or oppress'd Fellow Subjects. If Seamen mutiny'd, or had any Contest with their Captains, here a Reconciliation was made, and here they return'd to their Obedience; if the Captains themselves, fraught for the *Camera*, were delay'd their Money, or misus'd by under Officers, they quickly found Redress; and often, by my Interest, receiv'd more than they themselves expected. And if the Question happened about Quantity, or how Goods were condition'd at Delivery, the Verdict I am sure went still on their Side: Nor was my Care confin'd to *Rome* only, but reach'd to all the Factories of *Italy*: For the Consuls themselves, nay every private Person, found both an easy Access to me, and an indefatigable Zeal in their Concerns: So that the Merchants in general that had to do in those Parts, were far from being behind Hand in their thankful Acknowledgments. Nay, one of the greatest Companies of our Nation, I mean that for *Turkey*, not only return'd me their Thanks very heartily by Letter, but did it again by Word of Mouth after my Arrival Home.

I am sure, Mr. Speaker, if the Employment I submitted to were a Fault, I have already not a little suffer'd for it; for I never put Bounds (as our Travellers, as well as my own Officers, fully know) to any Expence that could be imagin'd for the Dignity of the Nation. And give me Leave to tell you also, Sir, that though the Name of *Rome* may be harsh and ungrateful to your Ears, yet what I did was with a good Intention, and like a true and faithful *Englishman*. For had I been sent with a Character to *Constantinople*, where they are *Mahometans*, or to *China*, where *Gentiles*, the *Eclat* or Figure which I should have endeavour'd to make, would never be consider'd by you as an Honour to their Religion, but our Country; therefore

since it is a Disparagement and great Reflection to a Kingdom, to come below, or short of others, in any thing that is Publick and of Note, I cannot but have at least faint Hopes, that you will have some Consideration, some Opinion of an Embassador, though at *Rome*, that kept up, to his Power, the Glory and Grandeur of *England*.

But, Mr. Speaker, not to trouble you longer on the present Head, I'll end when I have told you this: That if I have done amiss in obeying the King's Commands, no Consul that has pursu'd a Pirate or *Banditti* to *Rome*; no private Factor that has follow'd a Debtor thither, nor in short, any Man that has written so much as one Letter to that City, though it were to demand his own, but is a far greater Criminal than myself, and lies at the Mercy of every Enemy, to be indicted as a Contemner and Breaker of the Laws.

Your second Charge, Mr. Speaker, is my being a Privy Counsellor, without taking the appointed Oaths; to which I can truly say, they were never offer'd me; though I must also confess (for I shall be sincere with you in every thing) that I believe, nay, that I am certain, I should not have taken them, had they been offer'd: So that I do acknowledge the Omission a Fault against Law —

[Here the Speaker, thinking that his Lordship had made an End, desir'd him to withdraw; but being inform'd that he had not done, he excus'd the Interruption, and then his Lordship went on.]

I say, Mr. Speaker, I acknowledge this a Fault against Law, were there not several Things of Weight that will, I hope, justify me to you: And here, Sir, I must entreat you not to conceive that I come now to defend, or make good the Dispensing Power, but only to shew you how necessarily I was driven and induc'd to the aforesaid Omission; for, Mr. Speaker, in Controversies and Disputes, what can one do, but recur either to his own Observation, or to the Opinion of learned Men, and Professors in the Science?

In the first Place then, when I began to examine myself as to the Right the King claim'd and asserted, I saw *Non obstantes* deem'd Legal, which signified to me Dispensing: I found the Power of continuing Sheriffs own'd for many Ages to be undoubted Law, and yet I knew there was a positive Statute against it: Nay, I remember'd an Act which I myself had in this House given my Vote and Consent to, *viz.* That about the Regulation of Carriages and Waggon; or if this be not the exact Title, I must beseech you to pardon my treacherous Memory, and 'tis, I'll assure you, the only Traitor I ever yet succoured or supported. I say, Sir, I remember'd this very Act, almost as soon as made, suspended by *Charles* the Second's Proclamation, without the least Question or Murmur; and I took so much Notice of it, as to make even then this Reflection (and I do assure you upon my Honour 'tis true) That though our Monarchs could not impose and abrogate Laws of themselves, yet they had the Power, I perceiv'd, to respite them.

In the second Place, Mr. Speaker, if I went abroad; I mean, if I consulted the Thoughts and Sentiments of others, I found not only great Men of the long Robe, but the Judges also themselves, declaring in Favour of this Prerogative; and the Interpretation or Determination of these Sages was always told me to be Law, till a new Law, or a new Explanation should be enacted.

What would you then, Mr. Speaker, have me to do, who was call'd to the Board by the King; who could not in Conscience take the Oaths, and yet had no Reason to think I committed, in not taking them, a Crime; seeing the Law was thus openly expounded and publish'd?

And now, Sir, since I have been forc'd to mention my Religion, which I know is a legal Fault, and of a high Nature, I must not forget also to celebrate the Goodness of this House, which has pardon'd the Fault, even in the solemnest Way, and by the solemnest Act that ever pass'd since *Magna Charta*; to wit, *The great Act of Oblivion*. Give me Leave, Sir, to say this too, for I can justly do it, that being so faithful and so true an *Englishman*, I neither should, nor could, I am sure, have ever, during my Life, offended my Country, but in my Religion. Pardon also I humbly beseech you this Digression, and together with it the Incoherences and Disjunctions all along; nor shall I any ways doubt of it, since you so well know how uneasy and troublesome a long Discourse (which my Circumstances have now required) must needs be to one that wants both Eloquence and Practice.

But, Mr. Speaker, to return where I left, and so conclude: How, Sir, I pray you (and I demand it again of you with great Respect) could I think the Omission, as I said, of the Oaths a Breach of the Laws, when our Guides, who had the Laws in their keeping, told us explicitly, and without Reserve, the said Oaths were not necessary? Shall I then suffer, that had neither Buoy nor Mark to direct me? Certainly no; for if there were a Fault, 'tis not I must suffer, but the Judges, and those knowing and deputed Pilots, that hung out, it seems, the wrong Flag and Signal. I have, Sir, but one Word more to trouble you with, and this I speak in Behalf of all here; nay, in Behalf of all the People of *England*; that if I now undergo your Severity, and that single Persons (notwithstanding the Determinations and Judgments of our Courts of Justice) must be still responsible, no Man can be safe, no Man can be at rest; for no body that acts can know (as Accidents will often happen) whether he be innocent or guilty.

Mr. Speaker, I am in great Disorder for imposing thus on your Patience; and especially seeing I must yet presume to do it, one thing more occurring to me, as I hope, for your further Service, or at least Satisfaction: And 'tis to let you know how I came to be a Prisoner, and why I continued so thus long. Be pleas'd then, Sir, that I tell you, that as soon as the King first left *Whitehall*, I thought it Decency to go out of Town; and therefore three Days after I took Coach for *Montgomeryshire*, where of late I us'd to reside in the Summer Time. On the Borders of that County, at a small Corporation called *Osivesfree*, I was first stopp'd by the Rabble, and afterwards detain'd, with a strong Guard, at my Inn by the Mayor; though nobody, as he confess'd, made any Oath against me; and though he had no Orders, as he said, from *London* for it; nay, after a Months Restraint, he denied me my Liberty upon Bail, notwithstanding two neighbouring Lawyers, whom I sent for, assur'd him he could not justify the Refusal by Law. I do not, Sir, complain of any Incivility, either from him or the People; for I was us'd with Respect enough; but I judge it extremely fit to let you see how the Liberty of a Subject was wilfully invaded by a Magistrate, and how little conscious I

was of any Guilt, since instead of Flying, I went to a Place where I was known by every body.

In fine, Mr. Speaker, after a Confinement of seven Weeks, I was sent for up, and brought hither by a Party of Horse; nor was I ever question'd or examin'd by any body, but kept (upon the Suspension of the *Habeas Corpus Act*) at a Messenger's House for three Months; and when the said Act was suspended the last Time, I was committed by my Lord *Shrewsbury's* Warrant to the Tower, for *Suspicion of treasonable Practices.*

His Lordship having ended, retir'd with the Serjeant at Arms to his Room, where, after a little Stay, he was sent for in again; and then the Speaker told him, that since he said his Journey to *Rome* was with a Letter of Civility to a Temporal Prince, and not about Religion, the House (to be more fully satisfied of it) desir'd to see his Instructions. To which his Lordship thus answer'd.

I hope, Mr. Speaker, though I shall readily acknowledge my own natural Weakness, you will not yet think me so imprudent, as that, in a Time of such Troubles and Distraction, I would keep Papers by me; and especially about *Rome*, to render myself liable to every malicious Man's Extravagancy and Comment. This therefore caused me, Sir, the Night before I went towards *Wales*, to burn all Papers that came to hand; and truly, some among the rest, that I have since wanted: Nay, this I can also justly aver, that I remember not now one Word of those Instructions, having, I'm confident, never read them twice; only this I remember, they were Things of Course, Words of Form, and needed no further Consideration. Yet, Sir, that you may plainly see my Sincerity, and how far I am from any Design of illuding and deceiving you, I shall shew you how you may retrieve them, when I tell you, that Mr. *Monsteven* brought them me, and that they were drawn, as I take it, by Mr. *Bridgman*; for I'm certain they came from my Lord *Sunderland's* Office.

But, my Lord, reply'd the Speaker, had you no private Instructions? None, answered his Lordship. What none at all? said Mr. Speaker again. None, I'll assure you, Sir, reply'd his Lordship; unless the King's Orders, to demand a Cardinal's Cap for Prince *Reinaldo of Este*, were private Instructions; nor do I certainly know, whether those Commands were in my foremention'd Instructions, or whether I had them by Word of Mouth.

My Lord, said the Speaker, I have another Question to ask you; to wit, who of the long Robe told you of the King's Power of Dispensing, and that there was no Necessity of taking the Oaths?

I am, Sir, answer'd his Lordship, infinitely troubled, if I have, through Want of Care, or by any improper Expression, given you Occasion to misapprehend me; for I never ask'd any particular Man of that Profession about this Affair: But my Meaning was (and I hope my Words are not con-

trary to my Meaning) that the said Power was manifestly and openly declar'd to be Law, by Judges and Lawyers; so that I deem'd it no Solecism in Discourse to mention it as if they themselves had told it me.

Then his Lordship retir'd again, and after a long Debate, the House pass'd this Order; *That the Earl of Castlemaine stand committed to the Tower by a Warrant from this House of High Treason, for endeavouring to reconcile this Kingdom to the See of Rome, and for other High Crimes and Misdemeanors.*

As soon as his Lordship was inform'd of this Vote, he entreated a Member to let the House know, that he had a Word or two more to trouble them with: So that being brought in, the Speaker told him, that the House having Notice, he had something further to acquaint them with, was very willing to hear him.

Mr. Speaker, replied his Lordship, I have nothing more to say about the former Matters; but understanding your Pleasure, I thought it my Duty to let you know, how the Custom of the Tower, as to Prisoners, is changed; for in Course heretofore, unless there were a particular Order of State to the contrary, they had the Liberty of the Tower; that is to say, they could walk about at reasonable Hours with a Warder: But now as soon as one is committed, though it be upon bare Suspicion, as I was, he is confin'd to his Lodging, and hindred from the Consolation of seeing his Friends, till, after much Sollicitation and Trouble, Leave be granted by the Secretaries. Therefore, Sir, being morally certain that I shall be confin'd again as soon as I return, I humbly desire the Favour of this Freedom; it being also what I hitherto enjoy'd after I had been restrain'd for some Days in the aforementioned Manner.

This said, his Lordship went out, and then was carried to the Tower, where he was made a close Prisoner, as he foretold; though what he moved, occasioned the following Vote.

That a Committee be appointed to bring in a Bill for the better regulating the Imprisonment of the Subjects of this Kingdom, and to settle the Fees of Goalers. And it was likewise refer'd to them to examine into the Abuses of Goalers towards their Prisoners which have been heretofore committed.

On *Wednesday* the 5th of the following *February*, his Lordship mov'd for his *Habeas Corpus*, and was brought by the Lord *Lucas*, the present Governor of the Tower, to *Westminster*, on the 10th. So that appearing at the *King's-Bench*, his Commitments were read, and Mr. Attorney having nothing to object against his being bail'd, the Court awarded it upon the Security of Thirty thousand Pounds; that is to say, a Recognizance of Ten thousand for himself, and Five thousand a-piece from his four Sureties, which were, *John Earl of Bath*, *Thomas Earl of Ailesbury*, *Thomas Earl of Suffex*, and *Charles Lord Lansdown.*



CXLIV. *Proceedings against JOHN PRICE, Esq; late Receiver of Ireland, and One hundred other Protestants, at the Assizes at Wicklow in Ireland, for High Treason against King James, March 6. 1688-9. I W. & M.*



John Price, Esq; Receiver General to the late King *Charles* the Second, having his Country House in the County of *Wicklow*, at *Ballinderry*, twenty-four Miles from *Dublin*, did for the Safety and Preservation of himself and Family, obtain the Lord

Deputy *Tyrconnel's* Protection, as many more of the *English* Protestants living in the Country at the same Time did: For the late King *James* going away for *France*, and the Administration of the Government being put into the Hands of his present Majesty, the Lord *Tyrconnel* gave out Commissions, for the raising a mighty Army, to any *Irish* Papist that would take one, and promise to Subsist, Maintain and Cloath their Men for three Months. Most of these new Officers are Men of mean Fortunes, not capable of subsisting themselves; their Men live altogether on the *English*, coming into their Houses in the Day-time, and commanding from them their Meat and Drink; and often robbing them in the Night, stealing away their Cattle. Likewise the Priests of every Parish obliged all their People to furnish themselves with Half-pikes and Skeans, and bring them to Mass, or not presume to appear there, on the Penalty of Excommunication, or a severe Punishment; which caused all the *Irish* to arm themselves with the aforesaid Weapons; upon which, Robberies, Thefts and other Outrages were daily committed upon the *English*; particularly in the County of *Wicklow*, where some Hundreds were got together for that Purpose, who gave themselves the Name of *Merry Boys*, and had very great Success in their thievish Attempts upon their Protestant Neighbours, that lived hitherto secure in their own Houses. It is observable, what great Power the *Romish* Clergy have over the *Irish*; they arm themselves immediately at their Command, and yet to this Day have neither kept them from robbing of the *English*, nor restored them any thing taken away; which if they had been so minded, they might have done by the same Power. Several of Mr. *Price's* Neighbours repaired to *Ballinderry*, to preserve themselves and Goods; but an Order coming out soon after, for the taking away all Horses and Arms from the Protestants, both in City and Country, Colonel *Toole*, with a Party of his Men, came to demand what Arms and Horses they had at *Ballinderry*. Mr. *Price* and the rest having the aforementioned Protection, refused to obey their Orders; and Complaint coming to *Dublin*, Colonel *Sheldon* was immediately sent away with a Body of Horse and Foot against *Ballinderry*. Mr. *Price*, upon his Approach, presently submitted to him, who thereupon was made Prisoner, and all the rest of the Men that were in the House: But the Prison of *Wick-*

low not being able to contain them, several of them were admitted to Bail, until the following Assizes, which began *March* the fifth last past, and ended the eighth.

The Prisoners Names that were Indicted for this Treason, are as followeth; viz.

- 1 *John Price*, Esq;
- 2 *Thomas King*, Gent.
- 3 *Richard Westland*, Gent.
- 4 *William Healty*, Gent.
- 5 *James Lewis*, Gent.
- 6 *Edward Lewis*, Gent.
- 7 *John Burroughs*, Gent.
- 8 *Thomas Burroughs*, Gent.
- 9 *Thomas Fetherston*, Gent.
- 10 *Joseph Chribbley*, Gent.
- 11 *John Chribbley*, Gent.
- 12 *George Chribbley*, Gent.
- 13 *Thomas Williams*.
- 14 *James Williams*.
- 15 *J. Clark*.
- 16 *Caleb Chad*.
- 17 *Tbo. Bathe*.
- 18 *Joseph Thompson*.
- 19 *Thomas Halson*.
- 20 *Henry Gibson*.
- 21 *John Cock*.
- 22 *Thomas Peterson*.
- 23 *John Ward*.
- 24 *William Turner*.
- 25 *Thomas Evans*.
- 26 *George Atkinson*.
- 27 *William Evans*.
- 28 *Robert Milton*.
- 29 *William Neale*.
- 30 *William Hill*.
- 31 *George Dizy*.
- 32 *Stephen Robinson*.
- 33 *Charles Evans*.
- 34 *Stephen Raibborn*, Jun.
- 35 *Edward Philips*.
- 36 *John Colson*.
- 37 *William Wotton*.
- 38 *Henry Delauny*.
- 39 *Thomas Cross*.
- 40 *John Kempson*.
- 41 *Thomas Watts*.
- 42 *Edward Acton*.
- 43 *Robert Anthony*.
- 44 *Alexander Hill*.
- 45 *James Hill*.
- 46 *John Hill*.
- 47 *William Savill*.
- 48 *Edward Jones*.
- 49 *Peter Bland*.

- 50 John Tomlinson.
 51 Daniel Boyce.
 52 John Jones.
 53 Thomas Howard.
 54 Charles Fryers.
 55 Andrew Wills.
 56 Michael Wills.
 57 Samuel Allen.
 58 Tristram Tinesley.
 59 Robert Astton.
 60 Henry Tuton.
 61 Ralph Kidd.
 62 William Fulbam.
 63 William Erwin.
 64 Agabus Kidd.
 65 Thomas Page.
 66 Thomas Allen.
 67 Rice Bibbin.
 68 Nicholas Scot.
 69 Arnold Sutton.
 70 Alexander Rathborne.
 71 William Holfon.
 72 Isaac Collifon.
 73 Jacob Collifon.
 74 William Edwards.
 75 Peter Barton.
 76 John James.
 77 John Jordan.
 78 Randle Burroughs.
 79 Richard Price.
 80 Agabus Bardin.
 81 Henry Moody.
 82 John Burroughs.
 83 Edward Hughs.
 84 Edward Jemfon.
 85 James Uton.
 86 William Ryder.
 87 Luke Young.
 88 William Shorter.
 89 John Goodwin.
 90 James Tench.
 91 Thomas Manning.
 92 Edward Bowers.
 93 Thomas Adams.
 94 Robert Dunbar.
 95 Thomas Colfson.
 96 John Bromwell.
 97 Samuel Price.
 98 James Tipping.
 99 Edward Graham.
 100 Christopher Cooper.
 101 William Phillips.

Grand-Jurors Names. Papists mark'd †.

- † **C**hristopher Wickham.
 William Hoy.
 Cromwell Wingfield.
 † William Wolkverston.
 † Redmond Birne.
 † Thomas Birne.
 † William Birne.
 † Peivce Cromwell.
 † Toby Walsh.
 † Toby Tooll.
 Edward Burly.
 Leonard Frost.
 Peter Ayris.
 William Baker.
 † Lawrence Tooll.
 Richard Lamb.
 † Daniel Birne.

After they were sworn, as usual, they received the following Charge.

Lord Chief Justice Keating's Charge to the Grand-Jury.

GENTLEMEN,

YOU that are here returned to serve on this Grand-Jury, you have this Day before your Eyes the greatest Example, and the firmest Proof that a Gracious Prince can give to the best of Subjects. You see his sacred Majesty King James the Second (whom God long preserve for the Protection of all his good and dutiful Subjects, and for the Subversion and Irradicating of all those who desire the Subversion of his Government, either by Foreign Force or inbred Conspiracy) notwithstanding the great Troubles on his own Person, yet he is not wanting in his Care towards you; and I dare boldly say, it is the last thing he will relinquish in the World, after that of his own Conscience, the Care of his Subjects. He hath sent us with his Commission to enquire into all the Maladies, Diseases, and Sores within your County. He has likewise given us Command to apply the healing Balsam of the Laws, which will preserve the Subject most entirely in his Property. And I am sorry I must tell you, that there was never more need than now at this Time. I am glad at the same Time that I can say, that the Mischiefs fallen on a great part of this Kingdom, and on no part more than on this County, that is under the very Eye of the Government. I say, I am glad it can be said to have arisen, for the most part, from a Rabble of People, who have arm'd themselves without any Direction from the Government, and that with unusual Weapons: I mean Half-pikes and Skeans. Gentlemen, I must tell you plainly, it looks rather like a Design to massacre and murder, than any thing else. They do not belong to the Army, neither are they any part of them; but these are the Vultures, Kites, and Ravens that follow Armies. Soldiers that have travelled Abroad say, Such are not known among them there. I am told, and very well assured, that in Foreign Parts, where these Vultures and Birds of Prey are, it is hard for an Army to lie conceal'd, without being discovered by them; for it is Odds, but that a Horse or a Man drops where such Multitudes of People are. I am very far from laying this to the Charge of any that are under Command; though it is possible that some of them, under the Scarcity they are in, do give their Assistance, or at least Encouragement to these Robbers; otherwise it could not be, that whole Flocks and Drovers of Cattle are daily driven away, and yet no one taken or brought to Justice for it. The King is not wanting in his Care; he has given Directions to have the Laws put in Execution, that Criminals may be brought in and punished; and the Government has issued out many Proclamations, but they are grown too familiar with them. You are to enquire into this Matter, in order to bring to Punishment, not only them that steal, but those that receive. I am told that open Markets are set up in this County of *Wicklou*: A fat Bullock for Five Shillings, and a fat Sheep for One Shilling; but it will fall heavy on them at last. Divines say, that God Almighty oftentimes makes the very Crime to become their own Punishment; and I verily fear, that a few Months will produce

a Famine in this Kingdom; and what succeeds, a Pestilence, and the worst of all Pestilences; for it is observed, that a starved Rot is the worst of all Rots; it falls out unhappily at this Season of the Year, when the Cattle are breeding. Under the old Law the *Jews* were not to seeth the Kid in the Mother's Milk; but these unmerciful Wretches go further than that, sparing none, but destroying old and young, the Encrease and all. Pray, Gentlemen, consider of it, and search the Houses of such as you have Reason to suspect, that had not any thing to eat the last Year; go now into their Houses, and you will find whole Carcasses of Beef powdered up: Nay, it may be for Want of Salt, or Money to buy it, lying rotting and stinking. Let me tell you, it will be your Turn next, when they have robbed and spoiled your Protestant Neighbours, they will come to you, unless you take speedy Care to prevent it. The King has done what he can, and the Government what they can; in vain is the Law made, if Offenders be not brought to condign Punishment. You all know there has been an Invasion in *England* of a foreign Enemy, the Prince of *Orange*; and the same is designed on this Kingdom: The Effects of an Invasion is not known. Defence is natural to all Kingdoms and States, and therefore the Government has given Directions for raising a greater Army than at any Time heretofore this Kingdom ever had. It was so among the *Romans* of old, who in Cases of Necessity did Things clear contrary to the Fundamentals of their Laws. The same Necessity has put the King on arming here (in *France* they have their Ban, and with us our Commission of Array, from sixteen to sixty) but without any Design that the Effects should be to arm the Country with Half-pikes and Skeans. They are fit indeed for the Mountains, or to guard a Man's House, but not to go abroad with at Noon-day. Gentlemen, you that are Justices of the Peace, and Officers of the Army, wherever you meet, you ought to secure them, and bind them over, and know by what Authority they dare go abroad with such Weapons. I need not say any thing to you in Defence of the King, for it is really and truly your own Defence; and therefore I shall proceed into the Heads which are prepared for your Enquiry at this Time. Our Business here is like to be very great, and our Time short, and therefore I shall not trouble you with small Things; we have greater Matters than Assaults and Batteries. We have Desolations and Ruins to shew you, and set before you, and without your Care, we are like to fall into the Gulph of Misery and Destruction. The first Thing we have to speak of, is High Treason; we have no Petty Treason in *Ireland*. If any shall go about to conspire the Death of the King, Queen, or the Heir apparent, the Prince of *Wales*, this is High Treason at all Times; it was so at Common Law: You must look to this betimes, for if a Blow be once struck here, there can be no retrieving of it. If any one should go about to seize the King's Person, or imprison him, this, Gentlemen, is Treason; there is but few Steps between the Prisons and Graves of Kings; and by all the Observation that I can make out of the *Englisb*, or *Scots*, or *Irish* Histories, where we have had Swarms of murdered Kings, that if once they went into Prison, they seldom ever esca-

ped with Life. Our King has more Reason than any to dread this: His Father, who now is a glorious Martyr in Heaven, lost his Life; and the King himself, ever since his Escape with Colonel *Bansfield* from *St. James's*, has had so many miraculous Deliverances both by Sea and Land, that we may conclude he is preserved for some mighty Matter, or else Providence had not done such great Things for him; and 'tis but of late that he himself is escaped out of Prison. I am told by Authority, and am ordered to tell you, that he is expected in this Kingdom very suddenly, as a Place of Refuge. He is the first King, I think, since *Henry* the Second, except *Richard*, that has been in this Kingdom. It is a great Misfortune that he should be forced to it, but we may look upon it as a great Blessing, that he should think himself safe here, when he cannot be so elsewhere.

To seize any of the King's Forts or Ships of War (for these are the Bulwarks to defend him against his Enemies) this, Gentlemen, is Treason.

To hold Correspondence with any of the King's Enemies, or with Rebels in actual Rebellion, or to join with them, this is Treason. You are not to enquire into the Punishment, but to open a Door for the petty Jury to enquire into the Matter of Fact, and what the Law is, shall by the Blessing of God be our Business.

To counterfeit the King's Coin, or clip it (and you have very little of it at this Time, therefore you had need be careful in a more especial Manner) this likewise is Treason.

It is likewise Treason to counterfeit the Great Seal of the King; for 'tis the common Security, by which many hold their Estates, and some their Lives.

The killing of the Chancellor, or any of the Judges or Justices of *Oyer* and *Terminer*, in the doing of their Duty, this likewise is Treason, not so much with Regard to their Persons, as to the Work that they are about, they representing the King's Person. The meanest Constable there, if he has his Staff in his Hand, and doing his Duty, he that kills him shall die the same Death as he that kills the best Man that wears Scarlet on the Bench. Gentlemen, I must tell you another Crime, and it looks like a Mark of Infamy on this Kingdom. Murder in *England* is but Felony, but it has been thought fit to make it Treason here, and they that go out on burning and robbing Houses, they shall be indicted for Treason: And Clerk of the Crown, if any such be here, now take Notice, I will have them indicted for Treason.

The next Thing for your Enquiry is Felony, that concerning the Life of the Subject. For a Man to kill his Fellow Subject, this is Felony, if he does it on a sudden Passiou and Heat: A Man may kill another in his own Defence; for 'tis natural for a Man to kill rather than be killed, and therefore he shall have his Pardon of Course. But, Gentlemen, this is not in Favour of Duels, and only where there is a great Provocation: There is not a Man but has some Passion about him; but for a Man to go to Bed with Malice, and arise the next Morning and go meet his Fellow Subject and kill him, this is Murder and Treason in *Ireland*.

The next Thing that is Felony, is concerning the Goods of the Subject; for an honest labouring Man, that by the Industry of his whole Life has gotten a fair Stock for the Maintenance of him-

self, his Wife and Children, at Night goes to Bed, and next Morning when he arises, he is a Beggar, and wants Bread. Gentlemen, it would make every honest Man's Heart bleed to hear what I have heard since I came into this Country. It is ill in other Parts of the Country, but here they spare not even the wearing Cloaths and Habit of Women and Children, that they are forced to come abroad naked, without any thing to cover their Nakedness: So that besides the Oath you have taken, and the Obligation of Christianity that lies upon you as you are Christians, I conjure you by all that is sacred, and as ever you expect eternal Salvation, that you make diligent Enquiry. Let it never be said by any of you, that it was your Neighbour, or your Neighbour's Servant did it, and you are sorry for it, but will not trouble your selves: I tell you it is every Man's Business, and I beseech you look into it.

To break into any Man's House after Night fall, is Felony. It is a sound Sleep that the labouring Man takes, but the idle Rogue that lies lurking and sleeping all the Day, at Night he arises and seeks whom he may devour. If you were to do the most charitable Work, as building of a Bridge or Chappel, or mending a Highway, how many do you think of these Men with half Pikes and Sicans would come to your Assistance? Not one of them I'll engage. But if a House or Town be to be plundered, they all run thither. All Riots and Routs are to be enquired into. Numbers of People may meet for their own Defence, if they should hear or see the Country robbing and spoiling, by a riotous Multitude coming to burn and rob their Houses. In this Case they may meet and defend their Goods, and apprehend the Robbers, in order to bring them to Justice; but after all this, they are not to contest with the Government, nor do any thing to the Prejudice of that. I told you, I would not trouble you with unnecessary Matters: All are lost in the greatest of Crimes and Outrages that are committed daily in the Country round about.

If I should go through all the Heads of this Charge, it would take up more Time than we have to spend here; and therefore I shall shut up all, and say no more than this, that every Man do apply himself to his Husbandry and Tillage, to prevent that imminent Danger of an approaching Famine that seems to be coming upon us, and that you make it your Business to search after, and bring to Judgment those Robbers that live on the Mountains; and while you continue to do your Duty, you shall have all the Protection the Government can give you. So upon Complaint of any Justice of the Peace that shall be backward or unwilling to appear against them, Care shall be taken to punish such, and make them Examples. Go together, Gentlemen, and consider of these Things.

[*The Prisoners brought into Court.*]

Clerk of the Crown. Set *John Price* to the Bar, *Tho. King* to the Bar, *W. Lewis*, *James Beacon*, *William Heatly*, *Tho. Burroughs* to the Bar, &c.

Hold up your Right Hands.

Clerk. *John Price*, *Tho. King*, &c. You stand here indicted, for that you on the 27th Day of *February*, in the fifth Year of the Reign of our Sovereign Lord King *James* the Second, at *Ballindery* in the County of *Wicklow*, with divers other wicked Traitors and Rebels, in a warlike Man-

ner then and there did assemble your selves, and a cruel and open War and Rebellion against our Sovereign Lord the King, and his faithful Subjects of this his Majesty's Kingdom of *Ireland*, did raise and levy, and did intend our Sovereign Lord the King to Death and Destruction, to bring, and to depose him from his Kingly Authority and Government of this his Kingdom of *Ireland*: And to fulfil and accomplish these your said traitorous Intentions and Designs, you the said Persons, with others the said wicked Traitors and Rebels, the Day, Year, and Place aforesaid, did arm your selves with divers warlike Weapons, as well offensive as defensive; and did move and excite divers others the Subjects of our Sovereign Lord the King, to join themselves wickedly and traitorously, against the Peace of our Sovereign Lord the King, and the Duty of your Allegiance, and the Statute in that Case made and provided, &c.

Clerk. How sayest thou *John Price*, art thou guilty of the Treason that thou standest here indicted, &c. or not guilty?

Mr. Price. Not Guilty.

Clerk. *Culprit*, How wilt thou be tried?

Prisoner. By God and the Country.

Clerk. God send you a good Deliverance.

Note, *The Prisoners were brought into Court in several Parties, to be arraigned, as many as the Dock would hold at one Time.*

[*The second Time the Dock was filled.*]

Clerk Cr. Set *William Fulham* to the Bar, &c.

[*Thady Brine, the High-Sheriff, stood up and said, My Lord, Fulham was cleared.*]

Bar. Lynch. Pray, Sir, who cleared him?

High-Sheriff. The chief commissioned Officer that was here; *Colonel Sheldon* did acquit him.

Bar. Lynch. He acquit him! how could that be? If there be nothing against him, we shall acquit him.

J. Keating. Clerk of the Crown, is he indicted?

Clerk. Yes, my Lord, a Bill of Indictment is found against him.

Pendergrafs, the Sub-Sheriff. My Lord, I will tell you, Mr. Sheriff is mistaken; there was some Boys discharged, and he thinks *Fulham* is one of those Boys.

Bar. Lynch. Sir, you do well to reflect on your Employer.

High-Sheriff to the Sub-Sheriff. You have done this to get Money for your self. My Lord, *Fulham* was not concerned at all, and therefore was discharged.

Prisoner Lewis. My Lord, we are so crowded with a File of Musketeers and a Serjeant, that they take up our Chairs, that we cannot sit down; and they come with their lighted Matches to our very Noses; and last Night a Piece went off in the Room among us: We have not the Conveniency of quiet Repose, nor our Friends the Liberty of seeing us. My Lord, we were not born Lawyers, therefore desire we may have our Friends come to us, and Council to advise with.

[*This Lewis and Lord Galmoy are Brother and Sisters Children, and was offered a Troop if he would turn Papist.*]

J. Keating. Mr. *Lewis*, you have been bred to the Law; but you shall have Council allowed you; and you, Mr. Sheriff, you are not to keep them with Fire-Arms, nor with your Soldiers. I saw a Centry at this Door Yesterday, and forbid it — I remember that when *Warren*, *Jepson*, and
Thompson

Thompson were tried in 1663, for a Design to surprize *Dublin Castle*, because this was a great Matter, forsooth, they must be guarded with Soldiers ——— (They were tried at the King's Bench; and several Persons desirous to see or hear, being gotten up into the Arch in the Wall next the Court of Common Pleas) as they were going up Stairs, a Piece went off, and shot a Man through the Head. I tell you Mr. Sheriff, that brown Bill is your Guard [pointing at one in Court] the Law knows nothing of Fire Arms; [speaking to the Prisoners] Gentlemen, I must tell you plainly, that I received Directions from my Lord Deputy, by the Attorney General, that you should have all the Justice imaginable.

Bar. Lynch. Mr. Sheriff, you must command those Soldiers to be civil, they are your Guards when you employ them.

Seventy Prisoners were arraigned and returned back to Prison; 31 more that were indicted, and upon Bail, did not appear.

Next Day — *Thursday March* the 7th, they were again brought to Court to their Trials, and the Jury was impaneled, whose Names were as followeth, Papists marked thus; † viz.

† *Thomas Cowdell.*

Philip Cradock.

John Pew.

† *Alexander Higden.*

† *Christopher Talbot.*

† *Garret Birne.*

† *Dudley Keogh.*

† *John Keogh.*

† *David Toole.*

† *James White.*

† *Darby Toole.*

† *Garret Harold.*

† *Daniel Birne.*

† *Patrick Mac Donnel.*

† *Patrick O Donnelly.*

† *Christopher Birne.*

Daniel Powel.

† *Richard Jonson.*

† *Theophilus Higgens.*

† *Nicholas Wall.*

† *Charles Tool.*

† *Anthony Archer.*

† *Charles Birne.*

† *Cornelius Kenan.*

Tho. Elliot.

Richard Baker.

† *Thady Birne.*

† *Francis Tute.*

† *James Moore.*

† *Hugh Birne.*

† *Bryan O-Neal.*

† *Dennis Cullen.*

Jailor, set the Prisoner to the Bar.

Clerk Cr. You good Men that are to try the several Issues between the King and *John Price*, &c. and other Prisoners at the Bar, that shall be given you in Charge, &c. Jury, look at the Prisoners; Prisoners, look at the Jury.

Clerk Cr. *Thomas Cowdell*, to the Book.

Prisoner Lewis. I challenge him.

Clerk. What is your Cause of Challenge?

Deputy King's Council, Fitz-Patrick. My Lord, before they begin their Challenges, let us know whether they will all agree in their Challenges,

otherwise we must be forced to try them severally.

It was at length agreed, that if any one made a peremptory Challenge, the other Prisoners were to be satisfied with it.

[*Coll. Toole on the Bench, speaking to the L. Chief Justice Keating.*]

My Lord, Mr. *Lewis* has been Sub-Sheriff of the County, and knows all that have Freehold.

J. Keating. It is the better for himself that he does know them.

Prisoner Lewis continued to challenge, until they had gone through the Pannel, and only two Gentlemen that were Protestants, Mr. Cradock and Mr. Pew, were sworn.

Clerk Cr. Mr. Sheriff, a new Pannel — The Sheriff gave in another of eleven in Number, which were all likewise challenged by Mr. *Lewis*. — Whilst both the High and Sub-Sheriff were looking about the Court, for to make up a third Pannel, says

L. C. J. Keating. Mr. Sheriff, How many Freeholders have you on the Grand-Jury?

Sheriff. Six or Seven, my Lord.

J. Keating. You have been sparing enough of your Freeholders. The Law requires that all the Grand-Jury should be Freeholders, and have you but six?

Sheriff. There is but very few Freeholders in the County, my Lord.

Counc. Fitz-Patrick. In Cases of Necessity, my Lord —

J. Keating. You know the Law is so.

Counc. Fitz-Patrick. Yes, there is a Statute for it.

J. Keating. The Prisoner for his Life may challenge twenty peremptorily, without shewing Cause; and the whole World for Want of Freehold — And shall I put such a one on for his Life? Sir, I will not be hanged for any body.

Fitz-Patrick. Was ever a Judge hanged?

Mr. Handcock, Council for the Prisoners. Yes, above twenty in a few Years.

J. Keating. Mr. *Fitz-Patrick*, I will not be hanged with Justice *Belknap*, nor *Tresilian* neither.

Counc. Handcock. My Lord, they were hanged at *Tyburn*.

J. Keating. I think they were. — The greatest Part of this County is in the Hands of two or three Men, my Lord *Strafford* and *Rofs*.

J. Keating. Who is here that is concerned for my Lord *Strafford* and my Lord *Rofs*?

Court. Here is Dr. *Hall* on the Bench for the Lord *Strafford*, and the Sheriff is concerned for my Lord *Rofs*.

J. Keating. Dr. *Hall*, and you Mr. Sheriff, let me tell you, I do not know but that their Lordship's have forfeited their Estates for this Day's Work. In the Act for Plantation, there was Provision made for Freeholds, and there were enough before the Wars. I fear these great Lords have swallowed up the Freeholds their Ancestors made. I only tell you this.

The Sheriff by this Time had drawn up a third Pannel, being eight in Number.

J. Keating. Mr. Sheriff, have you all your Freeholders here?

Sheriff. My Lord, we summoned all here.

J. Keating. On the first Pannel you might have returned forty, because you do not know how far peremptory Challenges will run; and you are obliged after to return a fewer Number when you

enlarge your Pannel; but you can never enlarge it farther than it was at first.

Clerk Cr. Birne, to the Book.

Prif. Lewis. I challenge him for Want of Freehold.

J. Keating. Mr. *Birne*, have you a Freehold in this County?

Birne. My Lord I have a Lease of Lives.

Prif. Westland. I Challenge him peremptorily.

Bar. Lynch. What Sir, do you begin to challenge? This shall not be allowed you, to challenge one upon another.

Counc. Hancock. My Lord, you are Council for the Prisoners.

Bar. Lynch. Sir, you are not to tell me my Duty; I will have you to know, Sir, I shall give an Account for my self. I am Judge for the King too, as well as Council for the Prisoners; and I am concern'd for the King.

J. Keating. [Turning towards him.] And do you think I am not concerned as well as you?

Bar. Lynch. Yes, my Lord, I speak for you as well as my self.

Counc. Fitz-Patrick. My Lord, they agreed at first, that one Man should challenge for them all — At this Rate we are never like to get a Jury for them. It is but an ill Sign of their Innocency, that they are not willing to come to a Trial.

[*Mr. Hancock Council for the Prisoners.*]

In the peremptory Challenges they agreed (but not in the Challenges for Freehold) and this peremptory Challenge we will stand by.

J. Keating. I will tell you how I understood it: That in their peremptory Challenges, if any one of them challenged, the rest should be concluded by it. Mr. *Westland* has made a peremptory Challenge, and they are willing to stand by that — However, Mr. *Birne*, stand by, do not go away, we may call you again. Clerk of the Crown proceed — &c. — which he did, until he ended the third Pannel.

[*Sub-Sheriff calls William Baker.*]

Ans. My Lord, he has a Freehold.

Baker. My Lord, I have no Freehold.

J. Keating. You see the Sub-Sheriff is a fit Man to be an Officer; he is blind — he is indifferent.

[*High-Sheriff calls Peter Ayris.*]

Ans. He is on the Grand-Jury.

J. Keating. Mr. Sheriff, why do you call such? Sheriff. I saw him in Court, and so I called him, my Lord.

J. Keating. There is already but five peremptory Challenges made, so that they may challenge fifteen more peremptorily; and there is but two tworn, so that there wants ten.

Clerk Cr. Sheriff, see if you can get any more.

Sheriff. I see never a Freeholder in the Court.

Counc. Fitz-Patrick. My Lord, the Sheriff ought to be punished for his Neglect.

Bar. Lynch. Sir, why did you not take care to return a Jury of Freeholders? You shall be fined for it.

High Sheriff. My Lord, I have returned all the Freeholders there is in the County (I sent Yesterday above twenty Miles for one Gentleman here) they are all gone out of the County. — I hope you do not expect I should go to the North, or *Isle of Man*, or *England*, or *Scotland*, among the Rebels, to summon them?

J. Keating. I do really believe you, Mr. Sheriff, you have done like an honest Man — Mr. *Fitz-Patrick*, what do you say in this Case?

Fitz-Patrick. My Lord, I cannot tell what to say.

Deputy King's Counc. Hamond. What if there was not one Freeholder in the County, must not Justice be done?

J. Keating. Can we make a Law for it?

Hamond. My Lord, I know that in Case of an Ejectment, a Trial has been removed from one County to another.

J. Keating. Can you by Law go to another County in Case of Life?

Hamond. It appears there is not sufficient Freeholders in this County, the Lands being in some few Hands.

J. Keating. You know the Law is otherwise, and what would you have us that are Judges do? Pray tell us, Sir, what you would be at.

Hamond. We would have it removed to the next County, or another County.

J. Keating. For God's sake, Mr. *Hamond*, do not put us on making Law.

Lynch. Mr. *Hamond*, when did you hear that ever a Matter capital was tried in a Foreign County? In Matters Civil, by Rule of Court, or Order of Chancery it may be, but of a capital Offence it was never known; and we are by our Commission to try Offences committed against the Law in the Counties where the Fact was committed. — We must try them in this County, and cannot remove them from one County to another.

J. Keating. Mr. *Hamond*, because I would take you off of this new Law that you so much insist on, that in Case of an Ejectment it may be tried in a Foreign County — I tell you it cannot be tried in a Foreign County: We have no Law for it but that of K. *James*, and the Reason was, because of the Story that was here on Foot; for an Heir Male, if collateral, he carried it against the Heir general. K. *James* he gave Direction that in that Case it should be tried in a different County. And that my Brother tells you of trying in a different County, by Order of Chancery is this: A Person comes in Chancery, and he suggests that such an one was too potent in such a County, and therefore he desired it might be tried in an indifferent County, or get such a Rule of Court on such a Suggestion. And this was the Case of the Archbishop of — when he was Bishop of *Limerick*. And if *Walcot* might be believed, he said, was the Occasion of his running into Rebellion.

C. There is a Case in *Hobart*, &c.

J. Keating. I would undeceive you in that Particular: As in the Case of *Austen* and Colonel *Garret Moor*. If in the County of *Galloway* it was *Austen's*; if in the King's County, it was Colonel *Moor's*. So that you see, in disputable Cases, the Law has Regard that it be tried by Juries in proper Counties: And truly I think it one of the most reasonable Laws in the World, that a Man shall be tried by his County, by the Neighbourhood; and it has given Ground to a good English Proverb, *He that has an ill Name, is half banged*. A Man's Repute among his Neighbours goes a great Way in this Matter: When his Neighbours shall say they never knew ill by him. And this Man to be carried out of the County of *Wicklow*, to be tried at *Wexford*, you may by the same Rule bring a Jury from *Tyrone*, or the farthest Part of *Connaught*. There is nothing like what you say in the Law.

Hamond. I do not say that ever I met with such a Thing in the Law.

Bar. Lynch. And do you think that we will make the Precedent?

Hamond. That two or three Persons should have almost the whole County.

J. Keating. Before God, I believe they think they have little enough, whatever you may think of their having too much.

Bar. Lynch. What you say, Mr. *Hamond*, if there be any thing in it, we shall advise with all the Judges. The Judges declaring their Opinion, that the Prisoners after being arraigned, could not be admitted to Bail.

Coun. Suxborough to Bar. Lynch. My Lord, you took Bail for Captain *Rath* at *Kilkenny*, after his Arraignment.

Bar. Lynch. What, Sir, do you reflect on me? There was no Evidence appeared, and my Brother bailed him as well as I.

Coun. Suxborough. I say he was bailed.

Mr. Hancock. My Lord, Mr. *Cooper* at *Galloway* was bailed by your Lordship likewise.

Lord Chief Justice *Keating* sent privately to *Dublin* to the Deputy, acquainting him, that if they were left in Prison until the next Assizes, they would certainly perish, they having lost all they had, and the County was not able to maintain them; upon which he received Orders to bail all but seven of the Principal; viz.

<i>John Price, Esq.</i>	<i>James Bacon,</i>
<i>Thomas King,</i>	<i>Joseph Cricbley,</i>
<i>Richard Westland,</i>	<i>George Cricbley.</i>
<i>William Lewis,</i>	

Who are kept close Prisoners, in order to their Trial the next Assizes, which will be in this Month of *July*. Upon the taking these Gentlemen Prisoners, the Soldiers and Rabble plundered and spoiled all the *English* Families in *Balinderry, Redrum, Balina-Clash,* &c. and the *Irish* Women with their Skeans came afterwards and stripp'd the Women and Children naked, leaving them in a most miserable and deplorable Condition, having not left them either Bread, or any Food in several Towns, but carried all away with them. And as an *Irishman*, a Tanner, declared to several at the Assizes, in the Hearing of this Relator, that one Captain *Tool* had for his Share twenty-six Horse-Loads, or more, of Plunder; and the Lord of *Louth's* Troop of Dragoons that were quartered in *Wicklow* Town, had great Quantities of Woollen and Linnen Cloth, Womens Cloaths, Pewter, and other Goods in Abundance. But the Lord Chief Justice *Keating* coming there to the Assizes, and having an Account of the extream Poverty and Misery the Protestants thereabouts were reduced to, did encourage their Petitioning, and where they could find their Cloaths, &c. he endeavoured to help them in the Recovery of them. And Mr. *Richard Lamb* having ten fat Bullocks taken away by Colonel *Tool's* Men, and brought to *Wicklow*, and there killed and eaten by the Soldiers, he preferred a Petition to the Court, Colonel *Tool* being present on the Bench.

J. Keating. Colonel *Tool*, you heard the Petition read; do you know any thing of these Oxen Mr. *Lamb* had taken from him by your Soldiers?

C. Tool. My Lord, I will tell you how it was: Mr. *Lamb* had sold the Bullocks to Mr. *Price*, and as they were driving them to *Balinderry*, the Soldiers met them and took them away.

J. Keating. But Mr. *Lamb* was at home at his own House, and not at *Balinderry*; the Bullocks were to be paid for upon Mr. *Lamb's* delivering them to Mr. *Price* at *Balinderry*; your Soldiers took them away from his Servant several Miles from *Balinderry*: I see no Reason why Mr. *Lamb* should not be paid for them.

C. Tool. My Lord, Colonel *Seldon* came down soon after with the King's Army, and I advised with him, and he ordered they should be killed for the Army, which was done accordingly.

J. Keating. Pray, Colonel *Tool*, however, Mr. *Lamb* ought to be paid for them; he was not concerned with *Balinderry*, but kept his own House.

Coun. Fitz-patrick. My Lord, his House was a Garrison too.

Mr. Hancock. For Shame, Mr. *Fitz-patrick*, a Thatch'd Cabin a Garrison! I find you are for making all Protestants Rebels that live peaceably at home in their own Houses.

C. Tool. My Lord, I have no more to say to the Matter.

Clerk of the Crown. Calling over the Gentlemen of the County, called one — *Savil*, Gent.

Mr. Savil. Here I am, my Lord, God knows, a poor Gentleman, being robb'd of all, and not a Penny left me to buy a Pint of Drink.

J. Keating. Pray, Sir, when were you robb'd?

Mr. Savil. The last *Wednesday* they came and took away what little they had left untaken before, my Wife and Childrens Cloaths, robbing me of all.

J. Keating. Pray, Sir, what Value may your Loss be?

Mr. Savil. Truly, my Lord, I have not yet computed my Loss, but they have taken away all; I desire your Lordship will discharge me from attending the Court, for I have not wherewithal to subsist while I am here.

J. Keating. Sir, I am sorry for you, I discharge you.

J. Keating. Colonel *Tool*, let the Officers be sent for into Court, to hear this Proclamation read, that is sent down here by the Government.

C. Tool. My Lord, they are here most of them. Here is Captain *Archbold*, Captain *Tool*, &c.

Clerk of the Crown read the Proclamation, the Substance whereof was, That they should restore the Protestants such of their Horses again, as were not fit for the King's Service, &c.

J. Keating calls for it from the Clerk, and giving it into Colonel *Tool's* Hand, who stood next him on the Bench; Sir, Pray take this Proclamation, and I hope you will take Care that Obedience be given to it.

C. Tool. My Lord, we have received other Orders; Colonel *Seldon*, who is our chief Commander, has given Directions to have them kept for Draught for Carriages.

J. Keating. Nay, Sir, if Colonel *Seldon* must be obeyed before the Government, I have no more say, I have done.

C. Tool. My Lord, I shall obey it.

J. Keating. Pray then, Colonel *Tool*, let the Horses be sent for while that I am here, that what Horses are not musterable may be return'd: I cannot in my Conscience go about to fine Men for not appearing at the Assizes, when they have not a Horse left them to ride on.



CXLV. *The Trial of MAURICE CAVENAGH, EDMUND POOR, and WILLIAM BOWLAND, in Ireland, for Felony; in stealing Cows, March 7. 1688-9. 1 W. & M.*



SEVERAL were arraigned for stealing considerable Numbers of Cows, Sheep, &c. but the Evidence against most of them durst not appear to prosecute.

Leaghtin Birne indicted for stealing nine Head of Black Cattle from one *Colwell*; no Person appearing to prosecute, says

Justice Keating [to the Jury]. Gentlemen, you have nothing against this Man; he was born in the State of Innocency; but the Truth is, the Parties dare not appear against him.

[*Witnesses came in against three Fellows; viz. Maurice Cavenagh, Edmund Poor, William Bowland.*]

[*Clerk of the Crown calling them to come and prosecute, and they appearing.*]

J. Keating. You that are Evidences against the Prisoners at the Bar, I charge you, as you will answer it before God, that you neither for Favour or Affection be inclined to spare any of these Villains; and likewise, that you will conceal nothing of the Truth, as you will answer it at the Great Day; for I tell you, the Cries and Groans of the poor Women and Children, and the many Families that are ruined, and in great Distress, will go up to Heaven against you.

Evidence against Edm. Poor. My Lord, when I came to him, and asked him why he stole my Cows, he said, the Devil did make him do it. I spake him fair, and he gave me Money for my Cows.

Poor. Ay, my Lord, and he promised not to trouble me.

J. Keating. It was an unlawful Promise; the Law would not justify him in it; he has done like an honest Man. If you paid the Money out of Conscience, you did well; but I fear it was your Danger of the Halter made you part with your Money; for if twenty-two Shillings and Damnation stood in the Way, I believe you would have kept the Money. I am sure, without Satisfaction, you cannot expect Absolution; the Priest that gave the other Advice for the Maddoge or Skean, will, I suppose, tell you so.

Two Protestant Evidences against Maurice Cavenagh, for stealing several Head of Black Cattle, bearing Judge Keating speak against Skeans, said,

Evidence. My Lord, when we seized him, we took a Skean away from him.

J. Keating. Sir, How durst you carry such an unlawful Weapon?

Cavenagh. My Lord, I am a Butcher, it was a Butcher's Knife.

J. Keating. Ay, I do not question but thou canst butcher upon Occasion.

One Hicky spoke. My Lord, He is no Butcher, but one of the greatest Rogues in the County round us. I have been in Pursuit of him several times.

Cavenagh. He is a Murderer, my Lord, do not believe him.

Evidence. My Lord, it was near ten Inches long, thick at the Back, and sharp Point, every way a Skean.

J. Keating. Is that your Butcher's Knife? you are a great Villain, for carrying such a Weapon.

Cavenagh. I was ordered to have a Skean, my Lord.

J. Keating. Pray, Sir, who ordered you?

Cavenagh. The Priest of the Parish.

J. Keating. A Priest, Sir, [turning to his Brother Judge] do you hear that Brother?

Bar. Lynch. What Priest, Sir? What Priest? What is your Priest's Name?

J. Keating. Hold, Brother. Come, Sir, I shall not ask your Priest's Name: I believe you will have Occasion to see your Priest soon, to do you a better Office, than to advise you to carry Skeans.

[*And looking towards Col. Tool, and two Priests on the Bench, next Sheriff Birne.*]

J. Keating. A Priest, Gentlemen! A Priest is a Minister, and a Minister of the Gospel; his Doctrine ought to be Peace, for the Gospel is a Doctrine of Peace. When our Saviour came into the World Peace was proclaimed; and when he went out of the World he left it for a Legacy to his Disciples: *My Peace be with you*. And pray, Sir, tell your Priest so from me when you see him. It is not for Priests to arm or animate such Villains as you are for Mischief. I shall not ask your Priest's Name.

Clancy, an Irish Gentleman. My Lord, he belies the Priest; he is a Rogue.

Cavenagh. I do not: The Priests of every Parish did give Orders to get Half-pikes and Skeans; and they were getting together in Companies in every Parish.

J. Keating. Who were they that were gotten together; such Fellows as you?

Cavenagh. No, my Lord, better Men than I; a great many that are here in Court.

[*The Jury withdrawing, and returning soon again, brought Poor and Bowland in guilty, Cavenagh not guilty.*]

J. Keating. Gentlemen, you have acquitted the greater Villain; at your Door let it lie.

[*The Ordinary being called to give Bowland and Poor the Book, for their Clergy.*]

J. Keating. Sir, I expect as true a Return from you, as if I were there myself. The Times are so, that Men must forget Bowels of Mercy. Ordinary, do your Duty: What Place do you shew them?

Ordinary. My Lord, I shew them the fiftieth Psalm.

J. Keating. Let them read the fifth Verse.— This is an Act of Mercy, and I know not why it should not be in *Iris* rather, the Country Language.

guage. It was formerly in *Latin*, because the *Romish* Church hath their Worship in *Latin*.

[*The Ordinary return'd them both, Non legit.*]

J. Keating. You *William Bowland*, and you *Edmund Poor*, you have been arraigned for stealing of Cows, two several Thefts: It is a great Misfortune and Sin to be guilty of such Crimes at any Time; but yours is so much the worse, because it falls in a Time when there are such general and vast Depredations in the Country, that many honest Men go to Bed possess'd of considerable Stocks of black and white Cattle, gotten by great Labour and Pains, the Industry of their whole Lives, and in the Morning when they arise, not any thing left them, but turn'd out of all, to go a begging, all being taken away by Rebels, by Thieves and Robbers, the Sons of Violence, that make every thing they lay their Hands on their own. On this side the *Cape of Good Hope*, where are the most brutish and barbarous People we read of, there is none like the People of this Country; nor so great a Desolation as in this Kingdom, at this Day, any where to be found, and particularly in this County. It is come to that pass, that a Man that loses the better Part of his Substance, chooses rather to let that, and what he has besides go, than come to give Evidence: And why? Because he is certain to have his House burnt, and his Throat cut, if he appears against them. Good God! what a Pass are come to! For what has any Man, if the stronger Hand can take it from him? It is better to live under no Law, than in such a Place. We have lived to see twenty-nine Years of Peace pass over our Heads, and I have sat on this Bench before now: I pray God, that my Lenity, and others, has not given Encouragement to these Thieves and Robbers. There may be a Rogue in the Court, or one that is evilly inclined (I know none) but take Notice of this, the Government is at length tir'd with Mercy; they see it does no good, and Examples and Punishments of this Kind are not intended so much in a great Part for the Punishment of the Offender, as for discouraging of others, to make them take Warning by their Example, that, seeing what evil Courses bring Men to, they may reform.

I will not take up Time to tell you how the Benefit of Clergy came; whether in the room of the Cities of Refuge that were in the old Times: I know that Restitution was under the *Jewish* Law sufficient Satisfaction; and if the Thief could not make Restitution, he was to be sold for a Slave, and the Money given to the Party. But as the World grows old it grows worse, and those Lenities signify nothing for preventing Thieving and Robbery; for Thieves and Robbers are like a Gangreen in the Commonwealth; they are worse than Drones in the Hive. I cannot tell my self, that under the Circumstances we are in, I should advise to pardon any that are taken in this general Depredation that we are under; and therefore you *Bowland* and *Poor*, that might have lived as safely under the Laws as the biggest Man in the Kingdom, and none of your Fellow Subjects durst lay his Hand upon you, but he was liable to answer for it: And thus you might have lived to a fair old Age, and ended your Days in Peace; but you have chosen the quite contrary, for the Law provides likewise for the Punishment of wicked and offending Persons, among which Number you are found by a Jury of twelve able Men of your Country; and therefore the Sentence of the Law is

this, *That you be both, and each of you, taken from this Place, to the Place from whence you came, and there your Irons to be struck off, and from thence to the Place of Execution, and there you shall be hanged by the Neck till you are dead, and the Lord have Mercy upon your Souls.*

And now let me give you Advice; your Time is short, spend it well, and flatter not your selves with the Hopes of a Reprieve or Pardon: And for you, *Poor*, you have shortned the Work of your Life; you have gone a great Way towards Heaven, if that Restitution you made was out of Conscience. Mr. Sheriff, let them have a Confessor sent to them, for *Saturday* is the Day of their Execution. [*The Women, their Friends, setting up their Cry in the Court.*]

J. Keating. They did not cry thus when the Cows were brought Home to them, they were bu- fied then in the killing and the powdring them up.

The Copy of a Protection or Pass, given by an *Irish* Officer to some notorious Robbers of the County of *Wicklow*.

I James Byrne, *Ensign to Captain Charles Byrne*, do hereby certify to you, *Terlagh Kelly*, *Patrick Byrne*, and *Patrick Mac-Teige*, and *William Doyle*, to save you harmless from any *Misdemeanors* whatsoever. As witness my Hand this 24th of April, 1689.

JAMES BYRNE.

The following Letter being sent by the Lord-Deputy to the Judges of Assize, was read in Court to the Grand-Jury, &c.

By the Lord-Deputy General, and General Governor of Ireland.

AFTER Our hearty Commendations, We Greet you well. As his Majesty was graciously pleased to entrust us with the Government of this his Kingdom, so upon the invading of England, and upon receiving certain Information, that the Prince of Orange doth intend also to invade this Realm, We have, for the Defence thereof, raised a considerable Army, far above what could be maintained by the King's Revenue at the best of Times, and when the Trade of this Country was in the most flourishing Condition. This we have done by the King's Command, to support his Regal Authority, Crown and Dignity, and to preserve the Lives, Liberties and Properties of all his Liege People within this Kingdom. And since our Dangers are at Hand, and that we may daily expect the Landing of an Enemy, who intends the Subversion of his Majesty's Government, and the total Destruction of all his good Subjects, here we find our selves under an absolute Necessity to keep the King's Army still on foot, in order to our Preservation from the approaching Dangers. And tho' we have hitherto with all the Care and Industry imaginable, and by the generous Concurrence of the Officers, supported the new raised Forces, without being a Burthen to any of his Majesty's People: Yet considering the Decay of Trade, the great Fall of the Revenue in these distracted Times, the great Charges the Officers have been at in subsisting Men, it cannot be expected that the standing Forces can hereafter be maintained without Supplies; and since the same cannot be done by Parliament, We cannot think of a more effectual Expedient, than by voluntary Subscriptions, by way of Loan, from the People; which, if generously done, with what may be made of the Revenue, may support the Army, and will stop all the Disorders that may

be committed by the Soldiers, which we shall always endeavour to prevent with all the Care and Industry possible. By this, Husbandry may go on as formerly, and we shall be in a Capacity to form the Army so as that, with the Assistance of Almighty God, we do not doubt to put this Kingdom in a perfect Posture of Defence. We do therefore pray your Lordships to recommend this weighty Matter effectually at the open Assizes in every County when you sit, to all the Inhabitants of such Counties, and to appoint the respective Sheriffs of such Counties to procure voluntary Subscriptions, by way of Loan, from the Inhabitants of such Counties, of some certain Sum of Money from each, to be subscribed to their Names, to be afterwards satisfied by them respectively, in Money, Wheat, Oats or Oatmeal, towards the Maintenance of the Army, to be paid in, or delivered to the respective Sheriffs, or their Order, and in such Places as the said Sheriffs shall respectively appoint, from whom we expect an Account of their Proceedings herein, and a Copy of such Subscriptions as shall be made. We do not doubt but every true and loyal Subject will, according to his Ability, and the Excellency of the subject Matter, generously and cheerfully contribute towards the carrying on of so great, so necessary, and so glorious a Work.

We expect your diligent Care herein, and so we bid you heartily Farewell.

From his Majesty's Castle of
Dublin, March 2, 1688.

Your very loving Friend,

TYRCONNEL.

An Answer to the foregoing Letter being drawn up by the Grand Jury, and entred into their Book, and presented to Sir Henry Lynch, setting forth the extream Poverty of their County, occasioned by the daily Ruin of the English, &c. That they were not in a Capacity to submit themselves, and therefore not capable to raise any thing considerable for the Army (Chief Justice Keating returning to Dublin, and leaving Baron Lynch to go on to the other Counties, &c.) the said Lynch told the Grand Jury, before he discharged them, that the Writing they had drawn up, was a Reflection and Scandal to their Country, would be taken very ill by the Government, and did not question but it would be brought in hereafter as an Evidence against them, and therefore ordered it should be torn out of the Book, which was done accordingly.



CXLVI. *The Trials of Sir RICHARD GRAHME, Baronet, Viscount Preston in the Kingdom of Scotland, and JOHN ASHTON, at the Old-Bailey, for High Treason, Jan. 17. 1690. 2 W. & M.*

Die Veneris, 16. die Januarij, Anno Dom. 1690.



HE King and Queen's Writ of Habeas Corpora was sent to the Governor of the Tower of London, to bring up the Bodies of Sir Richard Grabme, Baronet, Viscount Preston, in the Kingdom of Scotland, John Ashton and Edmund Elliot, Gent. to the Sessions-House in the Old-Bailey, London; where they were brought between the Hours of Ten and Eleven in the Forenoon; and being placed at the Bar, were arraigned upon an Indictment of High Treason, found the Day before by the Grand Jury for the County of Middlesex, at Hicks's-Hall, in Manner following:

Clerk of Arraignments. " SIR Richard Grabme, hold up your Hand, [which he did, and so the other two.] You stand indicted by the Names of Sir Richard Grabme, late of the Parish of St. Anne within the Liberty of Westminister, in the County of Middlesex, Baronet; John Ashton, late of the Parish of St. Paul Covent Garden, in the County aforesaid, Gentleman, and Edmund Elliot, late of the Parish of St. James within the Liberty aforesaid, in the County aforesaid, Gent. for that you, as false Traitors against the most Illustrious and most

" Excellent Princes William and Mary, King and Queen of England, Defenders of the Faith, &c. " your Sovereign Lord and Lady, not having the " Fear of God in your Hearts, nor weighing the " Duty of your Allegiance, but being moved and " seduced by the Intigation of the Devil, the " cordial Love, and true, due, and natural Obedience which every true and faithful Subject of " our said Sovereign Lord and Lady, the King " and Queen that now are, towards them our " said Sovereign Lord and Lady the King and " Queen should, and of Right ought to bear, " wholly withdrawing, and contriving, practising, and with all your Strength intending the Peace and common Tranquillity of this " Kingdom of England to disquiet, molest, and " disturb, and War and Rebellion against our " said Sovereign Lord and Lady, the King and " Queen that now are, within this Kingdom of " England to stir up, move, and procure; and the " Government of our said Lord and Lady, the King " and Queen of this Kingdom of England, to subvert, change and alter; and our said Lord and " Lady, the King and Queen, from the Title, " Honour, and Royal Name of the Imperial " Crown of this their Kingdom of England to depose and deprive; and our said Lord and Lady, the King and Queen, to Death and final Destruction to bring and put; you the said Sir " Richard Grabme, John Ashton, and Edmund Elliot, " the nine and twentieth Day of December, in " the second Year of the Reign of our said Lord " and Lady, the King and Queen that now are; " and

" and divers other Days and Times, as well before
 " as after, at the Parish of *St. Clement Danes*, in
 " the County aforesaid, falsly, maliciously, de-
 " villishly, and traiterously, with Force and Arms,
 " &c. with divers false Rebels and Traitors, to
 " the Jurors unknown, did conspire, treat of, com-
 " pass, imagine, and intend our said Lord and La-
 " dy the King and Queen that now are (your su-
 " preme and natural Lord and Lady) from the
 " Royal State, Crown, Title, Power, and Go-
 " vernment of their Kingdom of *England*, to de-
 " prive, depose, and cast down; and the same our
 " Lord and Lady the King and Queen that now
 " are, to kill, and bring and put to Death; and
 " the Government of this Kingdom of *England*
 " to change, alter, and wholly to subvert; and a
 " miserable Slaughter among the Subjects of our
 " said Lord and Lady, the King and Queen, with-
 " in their Kingdom of *England*, to cause and pro-
 " cure; and an Insurrection, War, and Rebel-
 " lion, against our said Lord and Lady, the King
 " and Queen that now are, within this Kingdom
 " of *England* to move, procure, and aid; and
 " the same your most evil, wicked, and devilish
 " Treasons, and traiterous Compassings, Imagina-
 " tions, and Purposes aforesaid, to fulfil, per-
 " fect, and bring to Effect, you the said Sir *Richard*
 " *Grabme*, *John Ashton*, and *Edmund Elliot*, as
 " false Traitors, then and there, to wit, the said
 " nine and twentieth Day of *December*, in the said
 " second Year of the Reign of our said Lord and
 " Lady, the King and Queen that now are, and
 " divers other Days and Times, as well before, as
 " after, at the Parish of *St. Clement Danes* afo-
 " said, in the County aforesaid, with Force and
 " Arms, &c. falsly, unlawfully, wickedly, and
 " traiterously, did propose, consult, and agree
 " to procure and prepare great Numbers of arm-
 " ed Men, War and Rebellion against our said
 " Lord and Lady the King and Queen, within
 " this Kingdom of *England* to levy and make;
 " and that you the said Sir *Richard Grabme*, *John*
 " *Ashton*, and *Edmund Elliot*, afterwards, to wit,
 " the same nine and twentieth Day of *December*,
 " in the aforesaid second Year of the Reign of
 " our said Lord and Lady, the King and Queen
 " that now are, at the Parish of *St. Clement Danes*
 " aforesaid, in the County aforesaid, falsly, ma-
 " liciously, and traiterously, did prepare, and
 " compose, and then and there did cause, and
 " procure to be prepared, and composed, several
 " traiterous Letters, Notes, Memorandums, and
 " Instructions in Writing, to shew and inform
 " *Lewis* then, and yet the *French King*, and his
 " Subjects, then and yet Enemies of our said Lord
 " and Lady, the King and Queen that now are,
 " and very many other evil-disposed Persons, and
 " false Traitors, to the Jurors unknown, of and
 " concerning the Number, Force, and Condition
 " of certain Ships, for, and on the Behalf of our
 " said Lord and Lady, the King and Queen of
 " *England*, then, and there designed and prepared
 " for the Defence of their Kingdom of *England*,
 " and their Enemies aforesaid to repel and resist;
 " and how some of the same Ships were Manned,
 " and of the Names of the Captains of several of
 " the said Ships; and how the Castles and Fortresses
 " of our said Lord and Lady, the King and Queen,
 " called *Portsmouth*, *South-Sea*, and *Gosport*, with-
 " in this Kingdom of *England*, were strengthened
 " and fortified, and how the same Castles and
 " Fortresses, into the Hands and Possession of

" Enemies and false Traitors against our said Lord
 " and Lady, the King and Queen, might be ta-
 " ken and seized; as also of the Time, Places,
 " Ways, Manners, and Means, by which, when,
 " and where the same Enemies of our said Lord
 " and Lady, the King and Queen, this Kingdom
 " of *England* might invade and infest; and the
 " same Enemies, and the Ships of the Enemies
 " of this Kingdom of *England*, should fight
 " against our said Lord and Lady, the King and
 " Queen, and their faithful Subjects; as also to
 " procure, provide, prepare, and obtain against
 " our said Lord and Lady, the King and Queen
 " that now are, Assistance and armed Men, our
 " said Lord and Lady, the King and Queen that
 " now are, from their Royal State and Govern-
 " ment of this Kingdom of *England* to cast down
 " and depose, and to stir up, promote, and pro-
 " cure the aforesaid *Lewis the French King* (then,
 " and yet an Enemy of our said Lord and Lady
 " the King and Queen) this Kingdom of *England*
 " to invade; and to send Ships within this King-
 " dom of *England*, the City of *London*, of our
 " said Lord and Lady the King and Queen that
 " now are, to plague; as also to cause very ma-
 " ny Subjects of our said Lord and Lady, the
 " King and Queen that now are, to rise, and
 " War and Rebellion against our said Lord and
 " Lady the King and Queen, within this King-
 " dom of *England*, to move, procure, make, and
 " levy. And you the said Sir *Richard Grabme*,
 " *John Ashton*, and *Edmund Elliot* afterwards, to
 " wit, the same Day and Year, at the aforesaid
 " Parish of *St. Clement Danes* in the County of
 " *Middlesex*, of and for the same your Treasons
 " and traiterous Compassings, Imaginations, and
 " Purposes aforesaid, to execute, fulfil, perfect,
 " and bring to Effect into your Hands, Custody,
 " and Possession, then and there secretly, know-
 " ingly, unlawfully, and traiterously did obtain,
 " procure, detain, had, concealed, and kept two
 " several Bills of Exchange then before made,
 " for the Payment of several Sums of Money to
 " the Enemies of our said Lord and Lady the
 " King and Queen that now are; as also very
 " many traiterous Letters, Notes, Memoranda-
 " ums, and Instructions in Writing, then and
 " there composed and prepared with an Intent
 " to shew and inform *Lewis* then and yet the
 " *French King*, and his Subjects, then and yet
 " Enemies of our said Lord and Lady the King
 " and Queen that now are, and very many other
 " evil-disposed Persons, and false Traitors to
 " the Jurors unknown, of and concerning the
 " Number, Force and Condition of the Ships,
 " for and on the Behalf of them our said Lord
 " and Lady the King and Queen of *England*,
 " then and there designed, and prepared for the
 " Defence of their Kingdom of *England*, and to
 " repel, and resist their Enemies, and how some
 " of the same Ships were Manned, and of the
 " Names of the Captains of divers of the same
 " Ships, and how the Castles and Fortresses of
 " our said Lord and Lady the King and Queen,
 " called *Portsmouth*, *South-Sea* and *Gosport*, with-
 " in this Kingdom of *England*, were strengthened,
 " and fortified, and how the same Castles and
 " Forts into the Hands and Possession of Enemies
 " and false Traitors against our said Lord and
 " Lady the King and Queen, might be taken
 " and seized; as also the Times, Places, Ways,
 " Manners, and Means, by which, when, and
 " where,

“ where the same Enemies of our said Lord and Lady the King and Queen, this Kingdom of England might invade and infect, and the Enemies, and Ships of the Enemies of this Kingdom of England, should fight against the same, our Lord and Lady, the King and Queen of England, and their faithful Subjects; as also to procure, provide, prepare, and obtain against our said Lord and Lady the King and Queen, Assistance and armed Men, to invade this Kingdom of England, and our said Lord and Lady, the King and Queen that now are, from their Royal State and Government of this Kingdom of England, to cast down and depose, and to stir up, promote, and procure the aforesaid Lewis the French King then, and yet an Enemy of our said Lord and Lady the King and Queen, to invade this Kingdom of England, and to send Ships within this Kingdom of England, the City of London, of our said Lord and Lady, the King and Queen, to plague; as also to cause very many Subjects of our said Lord and Lady, the King and Queen, to rise, and War and Rebellion against our said Lord and Lady, the King and Queen, within this Kingdom of England, to move, procure, make, and levy. And you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, afterwards, to wit, the thirtieth Day of December, now last past, at the aforesaid Parish of St. Clement Danes, in the County of Middlesex, concerning, and for the same your Treasons, and traitorous Compassings, Imaginations, and Purposes aforesaid, to execute, fulfil, perfect, and bring to Effect, for one hundred Pounds in Moneys, numbred by you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, then and there paid, and deposited, unlawfully and traitorously did hire and prepare, and then and there did cause and procure to be hired and prepared a certain Ship, and three Men; you, the said Sir Richard Grahme, John Ashton, and Edmund Elliot, with the said Bills of Exchange, and the aforesaid traitorous Letters, Notes, Memorandums, and Instructions in Writing, into the Hands, Custody and Possession of you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, secretly, unlawfully, and traitorously kept, concealed and detained, from this Kingdom of England, unto, and into France, in Parts beyond the Seas, then and yet under the Rule and Government of the said Lewis the French King, then and yet an Enemy of our said Lord and Lady the King and Queen, secretly to carry and transport, with that Intent, the said Bills of Exchange, traitorous Letters, Notes and Memorandums, and Instructions in Writing there in Parts beyond the Seas, to the Enemies of our said Lord and Lady the King and Queen, and other evil-disposed Persons to deliver and disperse. And the said most wicked Treasons, and traitorous Compassings and Imaginations aforesaid, to fulfil, perfect, and bring to Effect; as also to cause, promote and procure the aforesaid Enemies of our said Lord and Lady the King and Queen, to invade this Kingdom of England with Ships and armed Men. And you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, afterwards, to wit, the thirtieth Day of December now last past, at the aforesaid Parish of St. Clement Danes, in the County aforesaid, concerning, and for the same your Treasons,

and traitorous Compassings, Imaginations and Purposes aforesaid, to execute and fulfil, maliciously, traitorously, and advisedly, then and there, and diverse other Days and Times, as well before as after, took upon yourselves to verify many other Traitors to be aiding and assisting in the Execution of the Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid; and then and there, to wit, the same thirtieth Day of December now last past, at the Parish of St. Clement Danes, in the County aforesaid, maliciously, secretly and traitorously did hire, and prepare, and then and there did cause and procure to be hired and prepared a certain Boat, and one Man, to the Jurors aforesaid unknown; you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, from thence to, and into the aforesaid Ship, so as aforesaid, hired and prepared to carry and convey. And you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, maliciously and traitorously into the same Boat, then and there did enter; and yourselves from thence, in and by that same Boat, unto and into the Ship aforesaid, and there unlawfully and traitorously did cause, and procure to be carried with the Intention aforesaid. And you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, with the same Bills of Exchange, and the aforesaid traitorous Letters, Notes, Memorandums and Instructions in Writing, and in your Hands, Custody and Possession then and there, in and with the Ship aforesaid, did sail, and depart towards the aforesaid Kingdom of France, in Parts beyond the Seas; the same your most wicked, evil, and traitorous Intentions, Purposes, Compassings and Imaginations aforesaid to fulfil, perfect and promote, against the Duty of your Allegiance, against the Peace of our said Lord and Lady, the King and Queen that now are, their Crown and Dignity, and against the Form of the Statute in that Case made and provided. And the Indictment further sets forth, that long before the aforesaid nine and twentieth Day of December now last past, open War between our said Lord and Lady, the King and Queen, and the aforesaid Lewis the French King was begun, declared, and waged, and yet is: Which said Lewis the French King, and his Subjects, and the Men of those Parts, then and yet, were, and are, Enemies to our said Lord and Lady, the King and Queen that now are, and to their Kingdom of England: And that in the Time of the aforesaid War between them our said Lord and Lady, the King and Queen, and the aforesaid Lewis the French King, you the said Sir Richard Grahme, John Ashton, and Edmund Elliot, being Subjects of our said Lord and Lady, the King and Queen that now are, as false Traitors against our said Lord and Lady, the King and Queen, during the War aforesaid, to wit, the nine and twentieth Day of December, in the second Year of the Reign of our said Lord and Lady, the King and Queen that now are, and diverse other Days and Times as well before as after, at the Parish of St. Clement Danes aforesaid, in the County aforesaid, with Force, and Arms, &c. to the aforesaid Enemies of our said Lord and Lady, the King and Queen that now are, unlawfully, and traitorously were adhering, and assisting, and in Execution, and Performance

“ of the same adhering, you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, then, and there, to wit, the same nine and twentieth Day of *December*, in the second Year of the Reign of our said Lord and Lady the King and Queen that now are, above said, at the afore said Parish of *St. Clement Danes* in the County afore said, falsely, maliciously, and traitorously did prepare, and compose, and then and there did cause and procure to be prepared and composed, as also into your Custody and Possession, then and there unlawfully, secretly, and traitorously, did obtain, detain, conceal, and keep, divers traitorous Letters, Notes, Memorandums, and Instructions in Writing, to shew and inform the afore said *Lewis*, then, and yet the *French King*, and his Subjects, then and yet Enemies of our said Lord and Lady, the King and Queen that now are, of and concerning the Number, Force, and Condition of certain Ships, for and on the Behalf of our said Lord and Lady, the King and Queen of *England*, then and there designed, and preparing, for their Defence of their Kingdom of *England*, and their Enemies afore said to repel, and resist; and how some of the same Ships were Manned, and of the Names of several of the Captains of the said Ships; and how the Castles and Fortresses of our said Lord and Lady, the King and Queen, called *Portsmouth*, *South-sea*, and *Gosport*, within this Kingdom of *England*, were strengthened, and fortified, and how those same Castles and Fortresses into the Hands and Possession of the same Enemies of our said Lord and Lady, the King and Queen, might be taken, and seized; as also of the Time, Places, Ways, Manners, and Means, by which, when and where the same Enemies of our said Lord and Lady, the King and Queen that now are, this Kingdom of *England* might invade, and infect; and they the said Enemies, and the Ships of the said Enemies of this Kingdom of *England* should fight against our said Lord and Lady, the King and Queen, and their faithful Subjects. And that during the War afore said, to wit, the afore said thirtieth Day of *December* now last past, you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, at the afore said Parish of *St. Clement Danes* in the County afore said, unlawfully, and traitorously did hire, and prepare, and then and there did cause and procure to be hired and prepared a certain Ship, and three Men, you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, with the same traitorous Letters, Notes, Memorandums, and Instructions in Writing, from this Kingdom of *England*, unto, and into *France* in Parts beyond the Seas, then and there under the Rule and Government of the afore said *Lewis the French King*, then and yet an Enemy of our said Lord and Lady, the King and Queen, secretly, during the War afore said, to carry, and transport, to the Intent the same traitorous Letters, Notes, Memorandums, and Instructions in Writing there, in Parts beyond the Seas, to the afore said Enemies of our said Lord and Lady, the King and Queen that now are, to deliver, and disperse during the War afore said, in Aid of the said Enemies of our said Lord and Lady, the King and Queen, in the War afore said: And that you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, during the

“ War afore said, to wit, the afore said thirtieth Day of *December* now last past, at the Parish of *St. Clement Danes*, in the County afore said, concerning, and for the same your Treasons and traitorous Adherings and Purposes afore said to execute and fulfil, maliciously, traitorously, and advisedly, then and there did hire and procure to be hired and prepared a certain Boat, and one Man to the Jurors unknown, you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, from thence to and into the Ship afore said, by you as afore said, hired and prepared to carry and convey: And that you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, maliciously and traitorously into the same Boat, then and there did enter, and yourselves from thence secretly in and by the same Boat, unto and into the same Ship, then and there did cause and procure to be carried in Prosecution of the Adhering afore said. And you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, then and there with the same traitorous Letters, Notes, Memorandums, and Instructions in Writing, in your Custody and Possession being, during the War afore said, to wit, the same Day and Year, in and with the Ship afore said did sail, and depart towards the afore said Kingdom of *France*, to the Intent the same traitorous Letters, Notes, Memorandums, and Instructions in Writing, in Parts beyond the Seas to the said Enemies of our said Lord and Lady, the King and Queen that now are, to deliver, concerning and for Aid, Intelligence, and Council, by you the said Sir *Richard Grabme*, *John Ashton*, and *Edmund Elliot*, to the same Enemies of our said Lord and Lady, the King and Queen that now are, to give and yield, during the War afore said, against the Duty of your Allegiance, against the Peace of our said Sovereign Lord and Lady, the King and Queen that now are, their Crown and Dignity, and against the Form of the Statute in that Case made and provided. How say you Sir *Richard Grabme*, are you Guilty of this Felony and High Treason whereof you stand indicted, or Not Guilty?

L. Preston. My Lord, I have something humbly to offer to your Lordships.

L. C. J. Holt. What is it your Lordship would say?

L. Preston. My Lord, I find I stand indicted by the Name of Sir *Richard Grabme*, Baronet, but I do take myself to be entitled to another way of Trial, as being a Peer of *England*, by Virtue of a Patent before the Vote of Abdication was made; and it was in a Time when all your Processes, and all your Writs went in the late King's Name, and all Officers acted by Virtue of his Commissions. My Lord, this is a Matter that concerns me in Point of Life, Estate, Posterity, and all that's dear to me; and therefore I desire to know whether your Lordships think fit to allow me my Peerage; I offer it, my Lord, with all the Respect and Modesty imaginable.

L. C. J. Holt. My Lord, I apprehend your Lordship to offer against your being tried here, that you are a Peer.

L. Preston. I take myself to be so, my Lord.

L. C. J. Holt. My Lord, you must make that out to the Court.

L. Preston. I told your Lordships the Ground of my Claim and Apprehension: It is from a Patent I received before the Vote of Abdication, when all Commissions, and all Procefs, and all the Courts of Judicature run in that Name.

L. C. J. Holt. Where is that Patent, my Lord?

L. Preston. It is in the Hands of the House of Lords.

L. C. J. Holt. My Lord *Preston*, we cannot take Notice of that Patent: If your Lordship plead that you were made a Peer by a Patent under the Great Seal of *England*, you must produce it under the Great Seal, that the Court may see what it is, and whether it be sufficient to justify your Plea.

L. Preston. I hope your Lordship and this Court will enable me to do that, by sending an Order to the Clerk of the House of Lords, to bring the Patent hither; for it is in his Hands.

L. C. J. Holt. My Lord, that is not in our Power: If your Lordship take yourself to be a Peer, and would thereby stop this Court from proceeding to try you, you must be ready to make it out.

L. Preston. I am ready to make it out: If I had my Patent here, that would make it out. Certainly there is some Authority now in being (I humbly offer it with all Submission and Respect) that may order the Clerk of the House of Lords to attend this Court, and produce this Patent.

L. C. J. Holt. My Lord *Preston*, we are not to enable you to plead to the Jurisdiction of the Court.

L. Preston. My Lord, I offer it with all Respect to the Court: I am concerned in it for my Life, and my Ali, and if that be over-ruled, this I hope you will do before you go on, you will hear me by my Council.

L. C. J. Holt. My Lord, it is nothing that you have said; for if your Lordship plead this Plea to the Jurisdiction of the Court, it ought not to be received without shewing your Patent.

L. Preston. My Lord, I desire my Council to be heard to this Matter.

L. C. J. Holt. I know your Lordship has had the Benefit of Council, and I know your Council must tell you, that what you say goes for nothing, unless you put in your Plea, and produce your Patent, that the Court may judge upon it.

* *Sir John Somers.* * *Mr. Soll. Gen.* My Lord, I have observed what my Lord *Preston* has mentioned—

L. Preston. Pray, Mr. Solicitor, will you speak out, that I may hear what you say?

Mr. Soll. Gen. My Lord, I say, I have taken Notice of what your Lordship has offered: It has been most truly observed by the Court, that it is your Lordship's Part to make good your Plea, and it ought not to be expected that any Court should help a Person to plead to its Jurisdiction: But because it should not be pretended that an Advantage was taken against the Prisoner for a Defect in Point of Form, or that any thing was insisted on which should have the least Appearance of a Hardship, and that we may proceed in the most clear and unexceptionable Manner that can be, I must beg leave to observe to your Lordship and the Court, how far this Matter which my Lord *Preston* has insisted on, has been debated and determined in another Place.

L. C. J. Holt. So; on Mr. Solicitor.

Mr. Soll. Gen. My Lord, upon the eleventh of *November* 1689, my Lord *Preston* did make some Claim in the House of Lords that he was a Peer of the Realm; the House of Lords demanding of him upon what he founded his Pretence: He said he claimed by Letters Patents from the late King *James*, which passed the Great Seal before the Time of the Vote of Abdication. The Lords required that those Letters should be produced, which being done, and my Lord *Preston* insisting upon his Claim to be a Peer of *England*, the Lords thought fit that Day to commit my Lord *Preston* to the Custody of the Black Rod. The next Day being the twelfth of *November*, upon solemn Debate of the Validity of these Letters Patents, and consulting with the Judges then present, the Lords, *nenime contradicente*, did adjudge and declare those Letters Patents to be void and null: And by another Order of the same Date, they did order Mr. Attorney General to prosecute my Lord *Preston* in the *King's-Bench* for a High Misdemeanor, in presuming to claim Peerage by those Letters Patents. And by a Third, it was ordered, that the Letters Patents should remain in Custody of the Clerk of the Parliament. Thus you see, my Lord, this Matter hath had already a solemn Determination in a Court which had the most proper Conulance and Jurisdiction of Claims in this Nature. And they having pronounced their Judgment, I did not think it would have been urged again in this Place. I thought it proper to mention these Things, to shew how it comes to pass that my Lord *Preston* has not his Letters Patents to produce, and to satisfy every Man that there is no Hardship put upon my Lord *Preston*, by trying him here, when he ought to be tried by another Judicature. The Lords have given Judgment against these Letters Patents, and have ordered that they shall remain in Custody of the Clerk of the Parliament, and my Lord *Preston* is not a Stranger to these Transactions; and therefore if my Lord's Council had been of Opinion he could have made any use of them, they would have inform'd him he must have taken another Course to have got them, and could not expect this Court should make an Order for him, contrary to the Order of the House of Lords, to take the Letters Patents out of the Hands of the Clerk of the Parliament, and this, to help him to a Plea against their own Jurisdiction. I omitted one thing, that upon the 27th of the same Month of *November*, upon my Lord *Preston*'s humble Submission and Petition, his Lordship was discharged of his Imprisonment, and the House of Lords were pleased to remit the Order given to Mr. Attorney, for prosecuting him in the *King's-Bench* for the Misdemeanor: So that I cannot but wonder to hear of this Claim of Peerage after that Submission. But there is nothing offered to the Court by my Lord that the Court can take any legal Notice of. If my Lord will plead any thing to the Jurisdiction of the Court, he ought to have his Plea in Form, and be ready with his Proofs to make it good.

Mr. Serj. Thompson. My Lord *Preston*, upon this last Order of the House of Lords, has disclaimed any Right of Peerage when he made his Petition, otherwise he had not been discharged.—

L. Preston. My Lord, I beg leave—

Mr. Serj. Thompson. Besides, my Lord, what my Lord *Preston* offers is a Matter of Record, as all Letters Patents are; and though out of his Hands he might have had Recourſe to the Record of the Enrollment.

L. Preston. For that, my Lord, I muſt humbly beg of your Lordſhips a little Time to put my ſelf in a Capacity to plead it in Form. If you will over-rule it, I can ſay nothing to it; I offer it with all the Modesty and Reſpect imaginable.

L. C. J. Holt. It ſhall do your Lordſhip no Prejudice, my Lord; God forbid but that you ſhould make uſe of all Advantages that you can invent for your Defence. But, my Lord, we muſt tell you, what you have offered is nothing that we can take any Notice of, unleſs you had your Patent to produce, and we cannot give your Lordſhip Time to plead to the Jurisdiction of the Court.

L. Preston. Then if your Lordſhips are pleaſed to over-rule this Matter, I ſubmit, but I hope you will give me leave to make all the juſt Defence I can make for myſelf. Does your Lordſhip over-rule me in it?

L. C. J. Holt. I ſuppoſe we are all of the ſame Opinion; if not, I ſuppoſe they will declare their Minds.

L. C. J. Pollexfen. That which has been ſaid by Mr. Sollicitor, was only that you and all the World may be ſatisfied that there is nothing of Hardſhip put upon you. But the Court, if this had not been ſaid, yet could take no Notice of what you ſay, unleſs it were pleaded, and pleaded in legal Form. But if the Matter be as the King's Council have repreſented it, that this Patent you now pretend to have, hath already had its Determination in a proper Place, this Court, which is an inferior Court to that of the Lords in Parliament, cannot intermeddle with it. We cannot help you, nor can we ſet up what was condemned there. So that you can entertain no Hope or Expectation of our doing any thing for you in this Matter, or any Relief or Help by ſuch a Plea.

* *Sir Robert Atkins.* * *L. C. Baron.* My Lord *Preston*, you may remember (I am ſure ſome of us that were there preſent do) that you did decline further inſiſting upon this Matter in the Houſe of Lords; and thereupon you had that great Favour from the Houſe ſhewn you, as the King's Council have opened.

L. Preston. I did decline it, 'tis true, my Lord: When they had declared it a Miſdemeanor, I made my Application to the Court, and therein declared I was ſorry for having miſdemeaned myſelf.

Mr. Serj. Thompson. If your Lordſhips pleaſe, we will read the very Orders of the Houſe of Lords, to ſatisfy my Lord *Preston*, that we put no Hardſhip upon him.

L. Preston. If there be any thing of Hardſhip upon me in this Caſe, it is becauſe I think I have a Right to inſiſt upon this Matter, and cannot have an Occaſion or Power to have that which I would make my Defence by.

L. C. J. Holt. Your Lordſhip ſhall have a fair Trial, if you will pleaſe to put yourſelf in a Condition to be tried, by pleading to the Indictment.

Mr. Bar. Lechmere. The Lords in Parliament have diſclaimed you for being a Peer, and we cannot make you one.

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L. Preston. My Lord, I hope your Lordſhips will put no hard Thing upon me, but give me Leave and your Lordſhips Help to make my Defence.

L. C. J. Holt. You ſhall, by the Grace of God, have all the Liberty you can deſire to make your Defence; but you muſt firſt plead.

L. Preston. Since your Lordſhips are pleaſed to over-rule me in this Caſe, I ſhall ſay no more of it. I did not intend to offer any thing that might be an Offence to the Court.

L. C. J. Holt. As I told your Lordſhip before, ſo I aſſure you now again, it ſhall do you no Prejudice.

L. Preston. Then, if your Lordſhip pleaſe, ſince the Language is different in which the Indictment is written from that in which it was read, and ſome Things may be of different Signification in both Languages, I deſire the Indictment may be read in *Latin*.

L. C. J. Holt. Read it in *Latin*.

L. Preston. I have one Thing to beg of your Lordſhip before it be read.

L. C. J. Holt. What is it you deſire, my Lord?

L. Preston. My Lord, I humbly deſire, becauſe I cannot retain all the Contents in my Memory, that my Sollicitor may have Leave to ſtand by me.

L. C. J. Pollexfen. Do you all join in this Deſire? For if you ſhould each of you ſeverally, have it read a great many Times over, they that take Notes in Short-hand may take a Copy of it as it is read, and a Copy is not to be allowed.

L. C. J. Holt. If we find they deſire to be troubleſome, we can over-rule them.

L. Preston. I would be guilty of nothing that may give the Court Offence, nor offer any thing that ſhould take up the Time of the Court unneceſſarily.

L. C. J. Holt. If they would have it read in *Latin*, let it be read.

L. Preston. If it be troubleſome to the Court, I waive it my Lord.

L. C. J. Holt. No, we do not think it troubleſome.

L. C. J. Pollexfen. Mr. *Ashton*, and Mr. *Elliot*, do you deſire to have it read again?

Ashton, Elliot. We all join with my Lord, and deſire it may be read in *Latin*.

L. C. J. Holt. Read it. [*Which was done.*]

Cl. of Arr. *Juratores pro Domino Rege & Domina Regina, ſuper Sacramentum ſuum præſentant quod—& contra formam Statuti in eo caſu editi & proviſi.*

L. Preston. My Lord, I am ſorry I have taken up ſo much of your Time, I thought the Difference of Language might have made ſome Miſtake, which I thought would be of Advantage to me in my Trial: And for the ſame Reaſon, I humbly requeſt you will pleaſe to order me a Copy of the Indictment.

L. C. J. Holt. My Lord, that we cannot do; it hath been frequently demanded upon theſe Occaſions, but always denied. I have always known it denied.

L. Preston. Your Lordſhip will give me leave to ſay what your Lordſhip muſt needs know much better than I. There is a Statute in the 46th of *Ed. III.* that doth order a Copy of any Record to any Priſoner, or other Perſon, if he demand it: And it has been granted, as I am informed in other Caſes, particularly in the Caſe of Colonel *Sidney*.

L. C. J. Holt. No, my Lord, it was denied in Colonel *Sidney's* Case.

L. Preston. If I mistake, I beg your Lordships Pardon. It is a Reason in a late Law made for the Reverfal of Mr. *Cornifh's* Attainder. The Parliament do there fay that it was not a legal Trial, becaufe he had not a Copy of the Indictment, and Time given him to prepare for his Defence.

L. C. J. Holt. Truly, my Lord, I do not know how that Matter stands: That Reverfal of Mr. *Cornifh's* Attainder is but a private Act of Parliament. I never faw it, nor heard it read, nor can we take Notice of it. But your Lordship is to be tried by the fame Methods of Law that all Perfons that have gone before you have always been. It has always been the Courfe, that the Prifoner fhould not have a Copy of his Indictment; Colonel *Sidney* had it not; and I remember, in the Cafe of Sir *Henry Vane*, in the Year 1662, he demanded a Copy of the Indictment, and it was denied him; and it has been constantly denied ever fince in fuch Cafes.

L. Preston. I humbly defire to know whether it was not granted in the Cafe of my Lord *Ruffel*.

L. C. J. Holt. No indeed, my Lord, my Lord *Ruffel* had it not; I can take it upon me to fay that, for I know all the Proceedings in that Caufe.

L. C. J. Pollexfen. No, my Lord, never any Man had it in all my Experience.

L. C. J. Holt. Some of us that are here were of Council for my Lord *Ruffel* at that Time, and we did not advife him to demand a Copy of the Indictment, for we knew he could not have it by Law.

L. Preston. I am very tender of taking up your Lordships Time unneceffarily, but it ftands me upon to do all I can to defend myfelf; may not I have my Council heard to that Point? Becaufe if it be a Point of Law, though your Lordships are of Council for the Prifoner, yet I beg that I may have my Council heard to argue it.

L. C. J. Holt. To what Point would you have your Council heard?

L. Preston. To that Point, whether I may not have a Copy of my Indictment according to the 46th of *Edward the Third*. That is the Point I would have my Council heard to.

L. C. J. Holt. There is no fuch Statute as your Lordship mentions, that gives the Prifoner a Copy of his Indictment.

Mr. Jones. If your Lordship please to hear me for my Lord *Preston*—

L. C. J. Holt. Nay, *Mr. Jones*, you are miftaken in this Matter: If my Lord himfelf will fhew that there is any fuch Statute, we will confider of it; and if it be a Matter that requires Debate, we may affign my Lord Council to argue it; but till then Council are not to be heard. My Lord *Preston*, if your Lordship can fhew us that Statute, pray do.

L. Preston. My Lord, I defire none if it be not fo.

L. C. J. Holt. I have heard a Difcourfe concerning fuch a Statute, but I could never find it.

L. Preston. I fuppofe my Solicitor is here with it; there is fuch a Statute, my Lord.

L. C. J. Pollexfen. The Court over-ruled it in the Cafe of Sir *Henry Vane*.

L. C. J. Holt. And fo it was I remember in another Cafe, and in none of the Trials that have been fince King *Charles the Second* came in, was ever a Copy given that I know or heard of.

Mr. Soll. Gen. My Lord, this Statute that my Lord *Preston* mentions, 46 of *Ed. III.* is printed at large in the Preface to my Lord *Coke's* third Report; and has been infifted upon in feveral Cafes in the *King's-Bench*, where the Prifoner has defired a Copy of his Indictment; but a Copy has been always denied, and this Statute has been taken to extend only to Records, which may be Evidence for the Subject.

L. C. J. Pollexfen. 'Twas always ruled that it did not extend to this Matter.

L. C. J. Holt. My Lord, 'tis a Mifconftitution of that Statute that your Lordship thinks that it gives the Prifoner a Copy of his Indictment: For that Statute fays, that all Perfons fhall be free to make ufe of the publick Records, and take Copies of them, becaufe oftentimes the Records are Evidences of Mens Estates, and their Titles.

L. Preston. My Lord, an Indictment I fuppofe is a Record.

L. C. J. Holt. But not fuch a Record as is within the Intent of that Statute.

L. Preston. My Lord, I am tender of taking up your Lordships Time; but fince all that is dear to me is at Stake, I defire to this Point I may be heard by Council.

L. C. J. Pollexfen. My Lord, I am fatisfied you have had Council with you, I have heard a great many. Does any one of them tell you that this has been done? If ever any one of them will come and fhew us when it has been done, you fay something, but I dare fay none of them will, or can. *Mr. Jones* there, is as like as any body, but I believe he will not fay it ever was done.

L. Preston. My Lord, I cannot fay my Council has told me fo, but I have read fuch a Statute myfelf; for it ftands me upon it, and I believe there is fuch a Statute, and it will be produced before your Lordships. If your Lordships will infift upon not allowing me a Copy, I defire I may be heard to it by my Council; for I take it to be a Point of Law, with humble Submission to your Lordships.

L. C. J. Holt. My Lord, we muft not hear Council to debate plain Points that have no manner of Queftion in them: It has been always difallowed, and 'tis a fettled Point at Law, and as plain as any whatfoever, that no Copy of an Indictment ought to be allowed to a Prifoner in Felony or Treafon.

L. Preston. My Lord, there is a Statute that fays it fhall be allowed to all Perfons to have Copies of Records, as well for, as againft the King, and certainly the Indictment is a Record, and a Record of great Confequence to me at this Time; and though my Council has not told me when it was done, yet thofe that I have advifed with, do fay that the Statute is exprefs.

L. C. Baron. If any doubtful Words be in fuch a Statute, yet the conftant Praftice muft expound it; and fince it has been fo often denied, nay always, the Law is now fettled, that it is not within the Meaning of that Statute.

L. C. J. Holt. We muft go in the Way of our Predeceffors, we received the Law from them, and muft not contradift the received Praftice of the Judges in all Ages, nor alter the Determinations

tions that have been made in all Cafes of the like Nature.

L. Preston. I hope your Lordships intend, and I don't question it, that my Trial should be a legal Trial. If there be such a Statute that gives me a Copy of the Indictment, and the Court deny it me, I am not legally tried.

L. C. J. Pollexfen. If you please to name the Statute, my Lord, it shall be read to you; but you are mistaken if you think there is any thing in that Statute that will do your Lordship Service in this Point.

L. C. J. Holt. See the 46th of *Edw. III.* Read it.

L. Preston. Here is a Copy of the Record in Court.

L. C. J. Pollexfen. It is not printed, but it is mentioned in the Preface to my Lord *Coke's* third Report, and 'tis mentioned no where but there that I know of; but whether there were any such Statute or no, *Non constat*; for it is not printed. But if it be a Statute, it does not meddle with Things of this Nature, such as Indictments; for you must consider, my Lord, yours is not a Case different from all other Cafes of like Nature as to this; but it is the Case of all Men that are tried as you are to be. And if all People were to have Copies of their Indictments to make Exceptions out of them before they plead, instead of Days of Goal Delivery, the whole Year would not be sufficient, but would be spent before they could be brought to their Trial.

L. Preston. My Lord, I am to defend my self as I can by Law, and not to consider what other People's Cafes are. It is my particular Case now; what the Case may be as to any other hereafter, or what the general Consequence may be, is not to be considered; but if there be any thing that is legal, that can give me an Advantage in making my Defence, I know your Lordships are too just to hinder me from taking Advantage of it.

L. C. Baron. My Lord, it is no new Thing to demand it; it has been frequently demanded, but it has been always over-ruled.

L. Preston. My Lord, it is now desired, and a Reason is given you that perhaps was not given before: There is such a Law. My Lord Chief Justice says well it is not printed, but it is a Record, and there is a Copy of that Record in Court. I desired there should be, I am sure.

L. C. J. Holt. If you have a Copy of any Record of an Act of Parliament, it shall be read, if it be proved.

L. Preston. Nay, we offer nothing if we don't prove it; but there is such a Record, and the Solicitor is ready to attest it. Pray swear Mr. *Whitaker.*

Mr. Serj. Thompson. Swear him.

Clerk of Arr. You shall true Answer make to all such Questions as shall be demanded of you by the Court. So help you God. Is this a true Copy?

Mr. Whitaker. It is a true Copy.

L. C. J. Holt. Where did you examine it?

Mr. Whitaker. My Lord, it is a true Copy of the Record, I examined it at Mr. *Petty's* Office in the Tower.

L. C. J. Pollexfen. Upon what Number Roll is it?

Mr. Whitaker. There is the Number Roll and all upon the Book.

Clerk reads. *Item pria les Commõns que come recorde & quconque chose en la Court le Roy de reason devoient demurrer illeques par perpetual evidence & aide de tous parties a yeelly & de tous ceux a quoux en nul manner illz atteignent quant, messier leur fuit. Et ja de nouvel refusent en la Court nostre dit Seigneur de serche ou evidence encounter le Roy ou disadvantage de luy. Que please os deiner per Estatute que Serche & Exemplification soit faitz as toutz Gentz de quconque Recorde que les touche en aseur manner auxy bien de ce que chist encounter le Roy come autres Gentz. Le Roy le voet.*

L. C. J. Pollexfen. It is only Copies of Records that they shall have for Evidence.

L. C. J. Holt. My Lord *Preston*, your Lordship hears by this Record, you may as well pray that an Exemplification be made of this Indictment as a Copy; for so the Words of this Act run; it is only meant of those Records that were to be given in Evidence. But this Indictment that you would have a Copy of, is not now to be given in Evidence, nor to be exemplified, and so it does not reach your Case.

L. Preston. My Lord, this Indictment is a Record, and a Record against me, and I think it is given in Evidence against me.

Mr. J. Ayres. No, my Lord, it is no Evidence, but an Accufation; it is no Proof at all.

L. Preston. It is always sworn unto.

Mr. J. Eyres. The Witnesses are sworn that testify the Matter of it to the Grand Jury, but the Indictment itself is no Evidence.

L. C. J. Holt. Suppose a Statute be doubtful, as truly I do not take this to be, we are to expound the Statute as it has been expounded in all Ages. It was never thought by any Judges in any Reign, that this Statute did entitle a Prisoner to have a Copy of his Indictment, but always held the contrary.

L. Preston. Will your Lordship be pleased then to allow me Council to be heard to it?

L. C. J. Holt. No, my Lord, not Council in a plain Case: If the Court apprehend there is any Matter that may be debateable, or whereupon a Doubt may be made, we may assign Council, and shall; but never in a plain Case, where there is no manner of Question.

L. Preston. My Lord, here is a Doubt in this Case.

L. C. Baron. But, my Lord, it's not the Doubt of the Prisoner, but the Doubt of the Court, that will occasion the assigning Council.

L. Preston. But the Prisoner may offer his Doubt to the Court, and your Lordships are so just, that you will take Care that the Doubt may be legally resolved.

L. C. J. Holt. My Lord, it is our Duty to see Justice and Right done, and God willing, it shall be.

L. Preston. And I am bound in Duty to my self, in such a Case, to insist upon all Advantages I can have by Law.

L. C. J. Holt. My Lord, no body blames you, though your Lordship do urge Things that are unnecessary, or improper; and we shall take Care that it shall not tend to your Lordship's Prejudice. We consider the Condition you are in; you stand at the Bar for your Life; you shall have all the fair and just Dealings that can be; and the Court, as in Duty bound, will see that you have no Wrong done you.

L. C. J. Pollexfen. My Lord *Preston*, for this Thing that you now mention, in all Ages, in all our Books, it is the same Thing, and has been in all Mens Cases that have been for their Lives, denied; and this Statute that you bring is quite of another Intent: For it is said, the Records shall remain in Court for perpetual Evidence, and the aiding of all Persons to whom they shall belong. My Lord, this is none of your Case; for God knows, you expect no Aid from this Indictment: But this is meant of all Copies that concern the Estates of Men, that they may have Recourse to their Records to make out their Evidences to their Estates, or to have them exemplified under the Seal of the Court for Evidence: But to have a Copy of an Indictment, thereby to be enabled to consult with Council how to make Exceptions to that Indictment, is a Thing that has been denied in all Ages, by all the Judges that ever were. If any one can say to the contrary, it were something; but shall we now admit Council to debate a Thing that has been in all Ages denied, and never admitted so much as once? That cannot be expected from us.

L. Preston. The Act says, That it shall be all Records that shall be in Aid to any Person that shall desire it. Here is no Distinction made of what Kind the Records are to be. If it be for the Aid of any Person, it ought to be granted, and I may be aided by this Record, if I have a Copy of it; and I think it is hard, when I am so much concerned in this Record, that I cannot be help'd to it by this Law.

L. C. J. Pollexfen. Constant Experience has gone according to what we say.

L. Preston. If that be Law, and it has not been demanded, then they are not entituled to have the Benefit of it: But now I demand it, sure it is good Law.

L. C. J. Holt. It is no Question a good Law, but not applicable to your Lordship's Case: I suppose we are all of the same Opinion; if any think otherwise, I desire they would speak.

L. Preston. My Lord, I submit to the Court, but then I desire one Thing. You know my Life, my Fortune, my Reputation, my Posterity, and all are at Stake, and all that is dear to me must fall with me if I miscarry: Therefore I take Leave to represent, that I have had very short Notice of my Trial. I do assure you, I have not had above six or seven Days Notice: I hope you will not refuse me a little longer Time before I come to my Trial; and I have had no Copy of the Jury yet.

Mr. Soll. Gen. If my Lord please to plead to the Indictment, that will be Time enough to move afterwards, and till Issue is joined, it cannot properly be moved for.

L. C. J. Holt. It is not proper to desire Time yet, till you have put your self upon your Trial, by pleading to the Indictment.

L. Preston. It was granted in Colonel *Sidney's* Case: He had eight or ten Days granted him after he had pleaded; and in the Act for the Reversal of *Mr. Cornish's* Attainder, it is given as one Cause for the Reversal, that he had not Time to prepare for his Defence.

L. C. J. Holt. My Lord, seven Days is very fair Notice. Your Lordship knew when the Sessions would be, and your Lordship might reasonably expect, that you should be tried here: I think truly you have had very fair Notice.

Mr. Ashton. My Lord, we have had seven Days Notice of our Trials, 'tis true. This Day Sevennight at Night we had Notice we were to be tried as this Day; but three of the seven we had not the Liberty of seeing any Friend, or Council, or any body, not till *Tuesday* Night, and that we got with great Application, and great Charge, to get an Order for Council to come to us: So that though we had seven Days Notice, yet we have had but three Days in all to consult with any body; and we never have had a Copy of our Jury till this Minute.

L. C. J. Pollexfen. We see the Nature of the Thing, and I am sorry that I must say, it is fit that we should take Notice of it. Perhaps the Thing that you are accused of is not true; but if it be true, you see what it is, that there are Letters and Papers preparing for a Design to set all the Kingdom in Confusion. Men that will venture upon such sort of Things, are not to condemn the Law, if it be a little hard upon them; for 'tis the common Preservation that is principally aimed at in Prosecutions of this Nature; and if this Accusation be true, 'tis but just and reasonable, that all Speed should be used to enquire into, and prevent it; and as it falls out in this Case, it is not in our Power to do it. This Sessions is set before this Business is known, and this is an Act done in this County, and therefore the Sessions is the proper Place for the Trial; and so you have the same sort of Proceedings that all other Criminals have, which are very many, though I hope not many of so high a Nature. Seven Days Notice you have had, you acknowledge; if my Lords please we will indulge you as far as we can, and give you Time for your Trial till to Morrow, but you must plead presently.

L. C. J. Holt. My Lord, we debate the Time of your Trial too early; for you must put your self upon your Trial first, by pleading.

L. Preston. My Lord, I hope I shall always carry my self as becomes me towards the Court; but I do not really think that you have any Trials that are of so great Concernment, and this sure is a fit Time for me to offer it; for it may be I have a great many Witnesses in the Country, and at a Distance from this Place, and one another.

L. C. J. Holt. My Lord, we cannot dispute with you concerning your Trial, till you have pleaded. I know not what you will say to it, for ought I know there may be no Occasion for a Trial. I cannot tell what you will plead; your Lordship must answer to the Indictment before we can enter into the Debate of this Matter.

L. Preston. Will your Lordship give me Leave to move it afterwards?

L. C. J. Holt. You may offer any thing then concerning your Trial: If you can shew any Reason to defer it, it will be proper to do it then.

L. Preston. Truly, my Lord, I think one Reason why my Trial ought to be put off is, because I have Privilege of excepting against so many of my Jury; but if I have not Time to look into the Panel, I shall lose that Privilege.

L. C. J. Holt. We are not to come to that yet, you are to plead now.

L. Preston. Then your Lordships are pleased to over-rule my Claim of Peerage.

L. C. J. Holt. My Lord, we are of Opinion you ought to plead to this Indictment.

Clerk of Arr. What says your Lordship, are you guilty of this High Treason, or not guilty?

L. Preston.

L. Preston. Not guilty.

Clerk of Arr. Culprit. How wilt thou be tried?

L. Preston. By God and my Country.

Clerk of Arr. God send you a good Deliverance.

John Ashton, What sayest thou? Art thou guilty of the same High Treason, or not guilty?

Mr. Ashton. My Lord, I have only this to observe, besides what my Lord *Preston* has offered: As to the Business of the Act of Parliament, your Lordships have been pleased to over-rule that Plea; but, my Lord, I am told, that if an Indictment be faulty, but even in a Letter, we cannot be found guilty upon that Indictment. Now, if we never have a Copy of that Indictment, how shall we know whether there be any such Fault in it? Your Lordships, who are our Council, I suppose have never seen the Indictment, and suppose there be twenty Faults, we have not the Advantage of them, by not having a Copy; and how shall we come to have any Advantage, if neither your Lordships, who are our Council, nor we our selves can see them. It may turn upon that.

L. C. J. Holt. But we will see it when you come upon your Trial.

L. C. J. Pollexfen. That is a Mis-information, for it may be such a Letter as is not material, and it may be such as is material; as I suppose your Name being *Ashton*, the *A* should be left out, it would then be a Question, what there would be to charge you.

Mr. Ashton. We know that it has been so in several Instances.

L. C. J. Pollexfen. It may be such an Omission that may make it no Crime, but we must not presently conclude that it is so; but you have heard it read, and so have we; if there had been any such Letter mistaken, it would have been taken Notice of.

Mr. Ashton. As to the reading, there may in the reading of the Indictment be many Words not nicely observed. I suppose the Indictment be right; I say it is possible it may, or it may not; but if your Lordships never see it, who are our Council by Law, nor you will allow us Council to look into it, if there be forty Faults in it, we have no Advantage of it.

L. C. J. Holt. We must not allow you Council to pick Holes in the Indictment, that never was done. If you assign any Reason, we may assign you Council to debate any Matter of Law that may arise, but never was Council allowed to find out Faults in an Indictment. When you come to your Trial we shall try you upon your Indictment, and if there be any thing considerable, you are to suppose we shall observe it for your Advantage.

Mr. Ashton. My Lord, we never had a Copy of the Pannel of our Jury; I pray we may have it.

L. C. J. Holt. That you cannot have till you have pleaded.

L. C. Baron. *Mr. Ashton*, we have over-ruled my Lord *Preston* about a Copy of the Indictment: Do you think we shall grant it you, when we have denied it him?

Mr. Ashton. My Lord, I desire we may have a Copy of the Pannel.

L. C. J. Holt. You must plead first.

Clerk of Arr. Are you guilty of the High Treason, or not guilty?

Mr. Ashton. Not guilty.

Clerk of Arr. How will you be tried?

Mr. Ashton. By God and my Country.

Clerk of Arr. God send you a good Deliverance. *Edmund Elliot*, How say you, Are you guilty of the same High Treason, or not guilty?

Mr. Elliot. Not guilty.

Clerk of Arr. How will you be tried?

Mr. Elliot. By God and the Country.

Clerk of Arr. God send you a good Deliverance.

L. Preston. My Lord, I hope now it may be Time to pray that my Trial may be deferred.

L. C. J. Holt. Why would you have it deferred?

L. Preston. Because of the Distance of my Witnesses, and other Things that would be necessary for me to have to prepare me for my Defence; and besides, we have not had a Copy of the Pannel of our Jury, and the Reason of the Law does order, that because it gives us Liberty to except against them, and that we cannot know how to do, unless we inform our selves of the Men; and therefore I beg that I may have a Copy of the Pannel.

L. C. J. Holt. As for having a Copy of the Pannel, the Court grants it. Let them have a Copy of the Pannel.

Clerk of Arr. Here is one ready for you.

Mr. Soll. Gen. There was Direction given that there should be one ready.

Mr. Ashton. We have demanded it every Day since we had Notice of our Trial.

L. C. Baron. You could not have it till there was an Issue joined, and that could not be till you had pleaded.

L. C. J. Holt. And as to the putting off your Trial, I know not to what Time to put it off.

L. Preston. My Lord, I am willing to have this Matter tried as soon as possible; for it cannot but be uneasy to me to lie under these Accusations; but some of my Witnesses live in the Country, at a remote Distance. If it may be, next Term, my Lord, or the next Sessions; for, if I have a Copy of the Pannel to Night, and am to be tried to Morrow Morning, how can I provide for my Defence? I cannot be prepared to except against the Jury, and I am sure you will be tender, and consider the Case of a Man, whose Life and Fortune are concerned in this Business.

L. C. J. Holt. To put it off till the next Term, is to remove it out of this Court; that we cannot do, and to put it off till after the Term will be too long a Time.

L. C. J. Pollexfen. We cannot sit here after Monday, because the Term begins on Tuesday.

L. Preston. My Lord, this Term is always a short Term, and if I be tried to Morrow, it is trying me without giving me Time for my Defence.

Mr. Soll. Gen. My Lord, there has been all the Care taken that the Nature of the Thing was capable of, to prevent any Complaint of this kind. Order was given, that my Lord and these Gentlemen should have Notice as early as was possible. As soon as ever Mr. Attorney-General had had an Opportunity of looking into the Evidence, Notice was given them, that they should be tried, and that this was the Day appointed for their Trial. But there shall be no contending in a Matter of this Nature for a Day. If it be desired, and the Court please to put it off till to Morrow, we are contented; but there can be no Reason to put it off for a longer Time. As there is always a Tenderness to be used, and I know will be,

and

and, as far as I am concerned, always shall be towards Persons in these Circumstances; so there is a Regard to be had towards the Government and the Publick. I am sure if the Accusation that is against these Gentlemen is true, the Government is highly concerned that this Matter should come to a speedy Examination, and that Persons that enter into such Designs be brought to Judgment. The Charge in the Indictment is of such a Nature as draws very great Consequences along with it; it concerns no less than the Life of the King and Queen, the Destruction of the Fleet of the Kingdom, and the Invasion of the Realm by the Forces of a Declared Enemy. These are the Things that the Prisoners are charged with, and certainly there ought to be no Delay in the searching into such Matters as these. They have had a Week's Notice of Trial already, and for many Days of that Week, at least they have had as many Council to assist them as they desired, and all the Solicitors that they had a Mind to, have had free Access to them; so that they have wanted no Opportunity to prepare for their Trial that Men in their Circumstances could have. As to what has been said with relation to the Jury, the Law indulges them in the Number of their peremptory Challenges, without being put to the Cause, and the Court hath granted them at the very Instant of their Pleading, a Copy of the Panel; and there is a reasonable Time between this and to Morrow for their making such Enquiry into the Jury as is justifiable, and fit to be made: But if by Time to look into the Jury, it be meant, that there may be a Time for tampering, that I am sure your Tenderness of the Government will not permit; you will take Care as much that no such thing be done, as you will, that they should not be surprized. If your Lordships are pleased, that the Trial be put off till to Morrow, we will be ready to Morrow to attend it.

L. C. J. Holt. My Lord, 'tis a very hard Presumption that Mr. Solicitor makes of our asking a Copy of the Panel, that it is with a Design to tamper with the Jury.

Mr. Soll. Gen. I did not say so, but I said till to Morrow was Time enough to make a justifiable Enquiry.

L. C. J. Holt. But if I be to be tried to Morrow, I am willing to be tried to Day, for I am as ready now as I shall be then.

L. C. J. Holt. It may be so, and as ready as you will be after the Term; but I know not what your Lordship means by expressing such Resentment, that because you can't have what Time allowed you would, therefore you will have none, but be tried now.

L. C. J. Pollexfen. You may have Time enough to prepare yourself as to the Jury, certainly, between this and to Morrow.

Mr. Serj. Thompson. My Lord, we that are for the King, have given these Gentlemen Notice long enough to be prepared, if we should try them now; for that's the Time we gave Notice for: But because we would indulge them as far as we could, we are willing that they should have till to Morrow, and intending them that Kindness, are not ready to try them to Day, and there can be no Pretence for them to put off their Trial any longer; for there can be no want of Evidence as to the Fact we can charge them with; for all the Evidence that we shall bring against them was taken from themselves, or the greatest Part of it.

L. C. J. Holt. Well, what Time will you be ready then?

Mr. Serj. Thompson. To Morrow Morning.

L. C. J. Holt. Then to Morrow at Eight o'Clock you are to be tried.

L. C. J. Pollexfen. My Lord *Preston*, do but consider you have had seven Days Notice, and to Morrow makes eight.

L. C. J. Holt. You had Notice for this Day, this Day seven-night.

Mr. Astton. But we have had only three Days Time to consult with our Council, though we desired we might have our Council come to us that Day.

Mr. Soll. Gen. They were told, they must apply themselves to the King for that at the same Time.

Mr. Astton. We did so that Night to my Lord *Sidney*; then *Sunday* interven'd, which was no Day for Business, and we could not have our Order. On *Monday* we could not have it till Night; so that it was *Tuesday* before we could get any body to us. My Lord, it is a weighty Concern, and all such hasty Proceedings were thought very hard in the late Times, and particularly the denying *Mr. Cornish* Time; and 'tis one of the Reasons given in this King's Declaration for his coming here into *England*, the Hardships that the Law laid upon Men in their Trials, which he came to prevent.

L. C. J. Pollexfen. The Hardship that was upon *Mr. Cornish* was, that he was taken upon the *Tuesday* off from the *Exchange*, and tried before that Day seven-night, and that was hard indeed: But besides, he was taken about his Business off from the *Exchange*. I know not whether you were about your Business, your lawful Business, when you were taken, God of Heaven knows that. And pray consider, here is a Matter of very great Consequence on the one Side, and on the other: For if Men be plotting against the Government, to give them Time to carry on their Plots will be mischievous on that Side.

Mr. Astton. My Lord, till that be legally proved before your Lordships, that is but a Supposition.

L. C. J. Pollexfen. That will lie upon them to prove.

L. C. J. Holt. *Mr. Astton*, we are to suppose you not guilty, till you are proved guilty.

Mr. Astton. Then, my Lord, the Law says we may except against so many Persons; what is the End of the giving us a Copy of the Panel? 'Tis not to be presumed we can do it by their Faces; for what can I say to the Face of one I never saw? We must enquire concerning the Men, and that is a Work of Time; for some of these Gentlemen, I presume, live eight or ten Miles out of Town. Is it possible for me before to Morrow Morning eight o'Clock to send to thirty-five Men to enquire after them?

L. C. J. Holt. No, nor is it intended you should.

L. C. J. Pollexfen. Nay, if you intend to send to the Jury-men, we have no Reason to give you Time.

Mr. Astton. I mean to enquire after the Men, their Lives, what Religion they are of, what sort of Men they are.

L. C. J. Holt. I suppose they are all Protestants of the Church of *England*; but suppose they are all Strangers to you, and yet good and lawful

lawful Men of the County, and there be no Difference between you and them, then they are fit to try you.

Mr. Ashton. 'Tis true, my Lord, but if I have Liberty to except against thirty-five, I ought to know something of them.

L. C. J. Pollexfen. Yes, and inform yourself as well as you can of them, but not to send to them, that is not to be permitted.

L. Preston. There is another Point to enquire of them, and that is, whether they be Freeholders or not?

L. C. J. Pollexfen. We have neither your Lordship's Affidavit, nor the Oath of any other Person, only an Allegation.

L. C. J. Holt. My Lord, you must expect your Trial to Morrow Morning; we cannot put it off, we are limited in Time, the Sessions can hold no longer than *Monday*, because of the Term.

Mr. Ashton. Then will your Lordship please to put it off till *Monday*?

L. C. J. Holt. No, we shall not have Time to do it, it may be a long Trial.

L. Preston. I protest to your Lordships, I cannot be ready to Morrow to make that Defence I desire, and design to make, and which I may make if your Lordships give me a longer Day.

Clerk of Arr. Here is a Copy of the Pannel for your Lordship.

[*It was delivered to the Lord Preston, who gave it to his Solicitor.*]

Mr. Ashton. My Lord, we shall not have Time to enquire into the Jury.

L. C. J. Holt. Look you, we are not bound to do this, but you have it as soon as you have pleaded.

Mr. Ashton. My Lord, it will take up five or six Hours in Writing of it out, and we must each have a Copy.

Mr. Soll. Gen. They are all joined in one Indictment, and have joint Council, and joint Solicitors, as we are informed.

Mr. Ashton. Then I hope you will allow us Liberty till *Monday* for our Trial.

L. C. J. Pollexfen. The Court cannot allow longer Time; the Court here can sit no longer than *Monday*, and here must needs be a great deal of Business to do of the ordinary Business of the Sessions, and when that Day comes, perhaps it will not serve to go through with the Trial, and then it must be adjourned till after the Term, and in the mean while, some are in hopes the King of *France* may come and determine the Matter.

Mr. Ashton. Pray, my Lord, Let no Suggestion against us, prepossess the Opinion of the Court before we be tried.

L. C. J. Pollexfen. I don't suggest any thing, but 'tis in the Indictment alledged against you, and that you are to be tried upon, and if such Things be there suggested, as we would give you all reasonable Time for your Defence, so we must take Care that the Government sustain no Hurt by Delays.

L. C. J. Holt. It is observed by the King's Council, that they are Things of very great Consequence, and therefore they press for the Trial.

L. C. J. Pollexfen. I cannot believe but that you will be as ready to Morrow, as you can be on *Monday*.

Mr. Ashton. The Government cannot be prejudiced by putting of it off till *Monday*, sure.

L. C. J. Pollexfen. The Evidence that is to convict you, lies all on their Side that are for the King, and I cannot imagine where your Witnesses should be, unless they are in *France*; but you had Reason to expect your Trial, being apprehended in the Manner as you were, and to provide for it.

L. C. J. Holt. The want of Witnesses is only a Surmise, and a Pretence, for there is no Oath of any Witnesses that they want, or who they are: Indeed, if we had Oath made that they wanted material Witnesses, and to material Points for their Defence, that might be Occasion for our further Consideration; but shall we put off a Trial upon a bare Suggestion of the Want of Witnesses? Sure that was never done.

L. C. J. Pollexfen. Name any one particular Man that is your Witness, and the particular Thing that he can prove; for if any of your Witnesses do know any thing of this Kind, it must be Particulars, and not Generals: If you will not name them, it is plain, it is only a Pretence you insist upon for Delay.

Mr. Ashton. My Lord, I insist upon the Point of the Jury, that we have not Time to look after them.

L. C. J. Holt. Then that of the Witnesses is waved.

L. Preston. 'Twas I that desired Time for my Witnesses.

L. C. J. Pollexfen. But you neither name them, nor bring us any Oath about them, or of any thing they can prove for you.

L. C. J. Holt. Pray don't spend the Time of the Court, nor your own Time unnecessarily, you must prepare for your Trial to Morrow.

Mr. Ashton. My Lord, there is not a Person in Court, I believe, but will think it hard that we are so streightened in Time.

L. C. J. Holt. The Time you have had Notice to prepare for your Trial, is sufficient.

Mr. Ashton. Mr. Cornish's Case has been complained of as a very hard Case in this very Respect, and we would hope, the King that now is, came to reform such Abuses.

L. C. J. Holt. You have been already told, wherein the Hardship of that Case lay, I am sure yours is not like it; but take Notice, we will be sitting here punctually at Eight.

L. Preston. Will your Lordship please to let us have our Council come to us, and our Friends?

L. C. J. Holt. Yes sure, you shall have all that is necessary for your Defence that we can allow you, but unnecessary Delays must be avoided.

[*Then the Prisoners were taken away by the Keeper of Newgate to the Goal.*]

SABBATH, 17 *January*, 1690.

THIS Day, between the Hours of Eight and Nine in the Morning, the Court being sat, and those Persons who were return'd upon the Jury were called over twice, and their Appearances recorded; then the Prisoners were brought to the Bar.

Clerk of Arr. You the Prisoners at the Bar, these Men that you shall hear called and personally appear, are to pass between our Sovereign Lord and Lady, our King and Queen, and you, upon Trial of your several Lives and Deaths; if therefore you, or any of you, will challenge them, or any of them, your Time is to challenge them

as they come to the Book to be sworn, and before they be sworn.

L. Preston. My Lord, I beg your Lordship will inform me, whether if I have any thing to offer to the Court, it is proper before the Jury be impanelled, or after.

L. C. J. Holt. My Lord, I don't know what your Lordship has to offer; I think you have nothing to offer why the Jury should not be sworn, for now your Lordship has put yourself upon your Trial, and are going to proceed in that Trial, and the Jury are going to be sworn: If you have any thing to offer, as to them, you may challenge them.

L. Preston. Truly, my Lord, I have something to offer, but it is only what I did humbly offer Yesterday, and that is, That my Warning was so short, that I am not prepared for my Trial. We had not above three or four Days wherein we might consult about it, all the former Time we have been kept close Prisoners; we are now brought here to be tried, without having Time to look into the Pannel of our Jury. The Pannel we had not till Yesterday, and I humbly beg, that I may have some Time to prepare for my Defence.

L. C. J. Holt. My Lord, this is that which you insisted upon Yesterday. Your Lordship said you wanted Witnesses, and your Lordship did not then mention what Witnesses you wanted, nor was any Oath made of any one that you wanted; and therefore the Court over-ruled you, and wished you to prepare for your Trial, and would not put it off: For if it should not be to Day, but should be put off till another Time, it must be the putting of it off till another Sessions; for we are streightned with it in Point of Time, for the Session can last no longer than *Monday*, and you have had convenient Notice.

L. Preston. Truly, my Lord, I think it is hard when my Life and Fortune, and all are concerned, that I should be hurried on to a Trial, only because the Court is streightned in Point of Time; and yet that is the only Reason that I can perceive why such Haste is made. I desire a little more Time to prepare myself, and I think it very hard I should be denied; I must submit it to your Lordships: If you will not allow me Time, I cannot make my Defence as I would.

L. C. J. Holt. My Lord, as to the Shortness of the Time, that is no Objection; you have had convenient Notice; as much Notice as the Law requires, and as much Time as without particular Cause shewn, hath here at any Time been given in such a Case. If indeed there had been any particular Reason offered for putting off the Trial, and you had made it appear by Oath, the Court possibly might have put off the Trial; but because your Lordship only suggested you wanted a Witness, naming neither Person, nor Place, or Matter such Witness should prove, they are of Opinion no Cause appears for such Delay of your Trial.

L. Preston. My Lord, I assure you I am not prepared for my Trial.

L. C. J. Holt. My Lord, the Court over-ruled this Matter Yesterday, it cannot be put off.

Mr. Soll. Gen. My Lord, I would humbly offer your Lordship one Thing before the Jury be called and sworn. By the Law, these Gentlemen at the Bar have the Privilege to challenge peremptorily to the Number of Thirty-five; which is so

great a Number, that if each of them severally take Advantage of it (as they may do by Law, and God forbid they should be denied any Advantage the Law gives them) it will be next to impossible to have a sufficient Number of Jurors appear so as that we may proceed in the Trial.

L. Preston. Truly, my Lord, we don't hear what Mr. Solicitor says.

L. C. J. Holt. Do you not? Then I'll tell you what he says when he has done: Go on, Mr. Solicitor.

Mr. Soll. Gen. My Lord, all that I would know of them is, whether they intend to take the Advantage that the Law gives them, of single and particular Challenges; for then they must be tried severally; or whether they will be content that the same Persons that are challenged by any one, shall stand challenged for all three. I leave it to them to take their own Choice; let them do what they please in it.

L. C. J. Holt. My Lord *Preston*, Mr. Solicitor tells you that the Law is, that every one of you may challenge five and thirty without Cause; and if the Court should proceed to try you all together, and every one of you should challenge five and thirty, perhaps a sufficient Number will be wanting to try you: The Number challenged will then amount to 105 in all. If so be you agree in your Challenges, that what one challenges shall be challenged by the other two, then the Court will go on, and try you all together, otherwise they will be forced to sever you; therefore he desires to know, whether you will join, or sever in your Challenges.

Mr. Soll. Gen. Take your own Choice, Gentlemen, and do what you think best.

L. Preston. My Lord, the Matter of Challenging is so great an Advantage to a Man upon his Life, that for my Part I must insist upon that which the Law gives me, to challenge as many for myself as I think fit, to the Number that the Law allows me.

L. C. J. Holt. My Lord *Preston* says he will, as 'tis fit he should, take all Advantages he can: What says Mr. *Ashton* to it?

Mr. Ashton. My Lord, I expect the same Advantage.

L. C. J. Holt. You must have it; it is not proposed to preclude you from any Advantage that the Law allows you: If you insist upon that Advantage, you must have it, and then you must be tried severally.

Mr. Soll. Gen. Then, my Lord, since they are pleased to declare they will sever in their Challenges, we must desire to sever them in their Trial, and to begin with the Trial of my Lord *Preston*.

Mr. Ashton. My Lord, I desire the Liberty to be by when my Lord is tried.

L. C. J. Holt. No, no, that is not to be permitted.

Mr. Serj. Thompson. If you had joined in your Challenges, then you had been tried all together.

L. C. J. Pollexfen. That Advantage you lose by severing in your Challenges; you lose the Assistance of each other at your Trial.

L. C. J. Holt. That is the Consequence; but do as you please; set them by.

L. C. J. Pollexfen. It may be they do not so well weigh the Consequence, therefore call them

them again. Gentlemen, do you consider the Consequence of your not joining in your Challenges? You must not be by, if my Lord *Preston* be tried by himself, but must withdraw, and thereby you will lose the Advantage of helping one another.

Mr. Elliot. My Lord, I desire to be tried alone.

Mr. Ashton. And so do I, my Lord.

L. C. J. Holt. Then, Captain *Richardson*, take them away.

[Afterwards the Court was informed that *Mr. Elliot* desired to be tried with my Lord *Preston*, and thereupon they were called again.]

L. C. J. Holt. Gentlemen, do you desire to be tried alone, or with my Lord *Preston*?

Mr. Elliot. My Lord, if you please, I desire to be tried with my Lord.

Mr. Soll. Gen. Then we will try my Lord *Preston* by himself.

Mr. Soll. Gen. Does *Mr. Ashton* desire it too?

Mr. Ashton. No, my Lord, I desire to be tried by myself.

Mr. Soll. Gen. Then we will try my Lord *Preston* by himself.

L. C. J. Holt. *Mr. Elliot*, the King's Council do not think fit to try you with my Lord *Preston*, without *Mr. Ashton*; and unless you will all join, you must all be tried severally.

Mr. Elliot. I can only answer for myself.

Mr. Ashton. I am for being tried alone.

L. C. J. Holt. Then my Lord *Preston* must be tried alone.

[The other two were carried back to Newgate, and the Lord *Preston* was bid by the Clerk to look to his Challenges.]

Clerk of Arr. Sir *Goddard Nelbort*, Baronet. Challenged.

Sir *Thomas Cooke*, Knt. Challenged.

Sir *William Hedges*, Knt. Challenged.

James Boddington, Esq; Challenged.

Thomas Johnson, Esq; Challenged.

Ralph Bucknal, Esq; Challenged.

Craven Peyton, Esq;

L. Preston. I do not except against him. Sworn.

Clerk of Arr. Then swear *Mr. Peyton*. [Which was done.]

Lucy Knightley, Esq; Challenged.

Scory Barker, Esq; Challenged.

Thomas Cutbert, Esq; Challenged.

Alban Chaire, Esq; Challenged.

John Herbert, Esq; Challenged.

Hugh Squire, Esq;

L. Preston. I have nothing to say to him. Sworn.

Clerk of Arr. *John Tully*, Esq; Challenged.

George Ford, Esq;

L. Preston. I do not challenge him. Sworn.

Clerk of Arr. *Henry Whitecot*, Esq; Challenged.

John Crosse, Esq; Not appeared.

Thomas Smith, Esq; Challenged.

William Withers, Esq; Challenged.

Richard Cradock, Esq;

Mr. Cradock. My Lord, I know not how I came to be summoned upon this Jury; for I am no Freeholder.

L. C. J. Holt. Then set him aside.

Clerk of Arr. *John Cane*, Esq; Challenged.

William Jacomb, Esq;

Mr. Jacomb. My Lord, I am no Freeholder.

L. C. J. Holt. How long have you not been a Freeholder?

Mr. Jacomb. Near these four Months.

L. C. J. Holt. Give him his Oath. [Which was done.]

Have you no Freehold in the County of *Middlesex* in your own Right, nor in the Right of your Wife?

Mr. Jacomb. No, my Lord.

L. C. J. Holt. Then you must go on to the next.

Clerk of Arr. *Joseph Dawson*, Esq;

Mr. Dawson. My Lord, I am an ancient Man, and not fit to serve upon the Jury.

L. C. J. Holt. Well, now you are here, for this Time serve; we will excuse you hereafter.

Mr. Soll. Gen. My Lord, we challenge him for the King.

L. Preston. My Lord, I desire to know when any one is challenged for the King, whether they must not shew Cause.

L. C. J. Holt. By and by, if there be not enough they shall shew Cause.

L. C. J. Pollexfen. You shall have all that the Law allows you certainly, my Lord.

Clerk of Arr. *Thomas Austin*, Esq; Not appeared.

Richard Paget, Esq;

L. Preston. Has this Gentleman any Freehold?

Mr. Paget. Yes, my Lord, I have in the County of *Middlesex*.

L. Preston. I do not except against him.

Mr. Serj. Tremain. My Lord, we challenge him for the King.

L. Preston. My Lord, I humbly desire they may shew their Cause.

L. C. J. Holt. My Lord, Cause is not to be shewn by the King's Council till all the Pannel be gone through; and then, if there be not twelve left to try, then they are bound to shew Cause; that is the Law.

L. Preston. My Lord, it is a Thing of a very tender Concern to me; I desire to know, if it be not usual that they should assign the Cause, when they challenge any for the King: For if it be not according to Law, it may be a Prejudice to me; and I desire I may have Council heard to that Point.

L. C. J. Holt. My Lord, shall we assign Council to dispute Matters not disputable? There is not any more clear Case in all our Law than that: If your Lordship please, you shall have a Book to read, that the King is not bound to shew Cause till the Pannel is gone through.

L. Preston. Then I don't insist upon it.

Clerk of Arr. *Walter Bridal*, Esq; Challenged.

Samuel Hodgkins, Esq; Challenged.

Thomas Elton, Esq;

L. Preston. I do not challenge him.

Mr. Serj. Tremain. Then we challenge him for the King.

Clerk of Arr. *Arthur Bayly*, Esq;

L. Preston. I have nothing to say against him. Sworn.

Clerk of Arr. *John Milner*, Esq; Not appeared.

Richard Page, Esq;

L. Preston. I do not except against him.

Mr. Serj. Thompson. Then we challenge him for the King.

Clerk of Arr. *Richard Marlb*, Esq;

Mr. Marlb. My Lord, I desire to be excused; I am not fit to serve upon a Jury.

L. C. J. Holt. Why?

Mr. Marlb. I am thick of Hearing.

L. C. J. Holt. Methinks you hear me very well.

Mr. Marsh. Truly, my Lord, I do not hear well.

L. C. J. Holt. Well, you may spare him if there be enough.

L. Preston. My Lord, I do not challenge him; I desire he may be sworn.

Mr. Serj. Tremain. We challenge him for the King.

Clerk of Arr. Thomas Harriot, Esq; Challenged.

Nath. Wall, Esq;

L. Preston. I do not except against him.

Mr. Soll. Gen. We challenge him for the King.

Clerk of Arr. Matthew Browne, Gent.

L. Preston. I do not challenge him.

Mr. Serj. Tremain. We challenge him for the King.

Clerk of Arr. Thomas Crosse, Gent. Not appeared.

Robert Breedon, Gent.

L. Preston. I have nothing to say against him.

Sworn.

Clerk of Arr. James Partberick, Gent. Challenged.

John Baily, Gent. Challenged.

William Bourne, Gent. Challenged.

Henry Gervard, Gent. Challenged.

Richard Cooper, Gent.

L. Preston. I say nothing to him.

Mr. Serj. Thompson. I challenge him for the King.

Clerk of Arr. John Bignal.

L. Preston. I do not challenge him. *Sworn.*

Clerk of Arr. James Ferne, Gent.

L. Preston. I do not challenge him. *Sworn.*

Clerk of Arr. Robert Longland, Gent. Challenged.

Edmund Salter, Gent. Challenged.

John Howlet, Gent. Challenged.

Richard Fitz-Gerald.

L. Preston. I do not except against him.

Mr. Serj. Tremain. We challenge him for the King.

Clerk of Arr. John Owing, Gent.

L. Preston. I do not except against him. *Sworn.*

Clerk of Arr. Mark Lawne.

L. Preston. I do not challenge him. *Sworn.*

Clerk of Arr. Thomas Battle. Not appeared.

Francis Chapman, Gent. Challenged.

Gilbert Urwin, Gent. Challenged.

Richard Bealing, Gent. Challenged.

Edward Fuller, Gent.

L. Preston. I do not challenge him. *Sworn.*

Clerk of Arr. John Collins, Gent.

L. Preston. I do not challenge him. *Sworn.*

Clerk of Arr. Thomas Hollings.

L. Preston. I have nothing to say against him.

Mr. Serj. Tremain. We challenge him for the King.

Clerk of Arr. William Silcock, Gent.

L. Preston. I do not challenge him.

Mr. Serj. Tremain. We challenge him for the King.

Clerk of Arr. John Preston, Gent. Challenged.

Thomas Wright, Gent. Challenged.

Benjamin Boulby, Gent.

L. Preston. I do not challenge him. *Sworn.*

Then they were counted, and the twelve sworn were those whose Names follow.

J U R O R S.

Craven Peyton, Esq;

Hugh Squire, Esq;

George Ford, Esq;

Arthur Baily, Esq;

Robert Breedon, Gent.

John Bignal, Gent.

James Ferne, Gent.

John Owing, Gent.

Mark Lawne, Gent.

Edward Fuller, Gent.

John Collins, Gent.

Benjamin Boulby, Gent.

Then Proclamation for Information and Evidence was made as usual.

Clerk of Arr. Sir Richard Grabme. Hold up your Hand— [Which he did]— Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Sir Richard Grabme, late of the Parish of St. Anne within the Liberty of Westminster, Baronet, together with John Astton, &c.—prout in the Indictment *mutatis mutandis*—and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to enquire, whether he be Guilty of this Felony and High Treason whereof he stands indicted, or Not Guilty. If you find that he is Guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the Felony and High Treason committed, or at any Time since. If you find him Not Guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty. If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Knapp. May it please your Lordship, and you Gentlemen of the Jury, This is an Indictment of High Treason against my Lord Preston, who is indicted by the Name of Sir Richard Grabme, Baronet, and stands now Prisoner before you at the Bar; and the Indictment sets forth, that the Prisoner, together with one John Astton and Edmund Elliot, as false Traitors against our Sovereign Lord and Lady, King William and Queen Mary, not weighing the Duty of their Allegiance, the 29th of December, in the second Year of their now Majesties Reign, at the Parish of St. Clement Danes, in this County of Middlesex, did conspire, consult and imagine, to depose their Majesties from the Throne and Government of these Kingdoms, and to bring the King and Queen to final Death and Destruction, and to levy War within this Kingdom, and procure an Invasion to be made here; and that to bring their Treasons to pass, they did prepare and compose, and cause to be prepared and composed divers treasonable Letters, Notes, Memorandums, and Instructions in Writing, which were to inform the French King and his Subjects, and other Enemies of the King and Queen, of the Number, Force and Condition of their Majesties Ships, and how some of them were Mann'd, and the Names of several of the Commanders of them, and how the Castles and Forts of Portsmouth, South-Sea, and Gosport, within this Kingdom were fortified, and how they might be seized and surprized by the King's Enemies; as also to inform them of the Time, Places, Ways and Means how they might invade this Kingdom, depose their Majesties, and fight with their

their Ships against their Majesties Ships, and cause and procure great Forces to be raised against the King and Queen, and send Ships to plague the City of *London*, and War and Rebellion within the Kingdom to procure; and that they did knowingly and secretly prepare and conceal two several Bills of Exchange for the Payment of Money to the King's Enemies, and got these Bills of Exchange, Letters, Notes and Memorandums, into their Custody; and afterwards, the 30th of *December*, for the Sum of one hundred Pounds, by them, or some of them paid, they did hire a Ship to carry them and the said Bills of Exchange, Letters, Notes, Memorandums, and Instructions, into Parts beyond the Seas, to, and among their Majesties Enemies; and did also prepare a Boat, which was to carry them to the Ship, and accordingly they went into the Boat, and went on Board the Ship with the Bills of Exchange, and Papers aforesaid; and being on Board they set Sail, and made away towards *France* with those Bills of Exchange and Papers, with Intention to disperse them, and to perfect their said Treasons. And the Indictment further sets forth, that there was, and is a War between our King and Queen and the *French King*, and the People of those Parts, under his Dominions, who are Enemies of the King and Queen. The Prisoner, together with those other two named before, as false Traitors, did adhere to the Enemies of the King and Queen; and to bring about this Treason, they did procure such Bills of Exchange, Letters, Notes, Memorandums and Instructions, and did hire such Ship and Boat to carry them and those Papers into *France*; and did go on Board the said Ship, and sailed away for *France*, with Intention to aid and assist the King's Enemies in Counsel and Intelligence, by those Papers, and Bills of Exchange, as I before opened unto you; and this is laid to be against the Duty of his Allegiance, against the Peace of their Majesties, their Crown and Dignity, and against the Form of the Statute in that Case made and provided. To this Indictment, Gentlemen, the Prisoner pleaded, he is not guilty; and for his Trial hath put himself upon his Country, which you are. If we prove him guilty, it is your Duty to find him so.

Mr. Soll. Gen. My Lords and Gentlemen of the Jury, the Indictment hath been opened to you at large, and I do not doubt but you have observed it: It consists of two Parts, which are formed upon two several Branches of the Statute of the 25th of *Edward III.* The one is for compassing and imagining the Deposing and Destruction of the King and Queen; the other for aiding and assisting the King and Queen's Enemies.

Treason, Gentlemen, consists in the Imagination of the Heart; but because that Imagination of the Heart can be discovered no other way but by some open Act, therefore the Law doth require, that some Overt-Act, manifesting that Intention and Imagination, be assigned and proved. I doubt not but you have observed that there are several Overt-Acts of both these kinds of Treason, assigned in this Indictment.

Gentlemen, the general Design of the Conspiracy (as will appear by the Evidence) was this: The King and Queen were to be deposed, and this was to be effected by a *French Army*, and a *French Fleet*.

It will be easily granted, that nothing more dreadful can enter into the Imagination of an

Englishman, than the Destruction of our Fleet, and the Conquest of the Kingdom by the Arms of *France*.

But yet it will be part of the Evidence that we shall offer to you, that the Prisoners, and others of the Conspirators seem to be of another Mind; for amongst the Papers which were taken with the Prisoners, you will see one, which is stiled, *The Result of a Conference*, wherein they pretend to shew the Possibility of Restoring King *James* by the Power of the *French King*, and yet to preserve the Protestant Religion, and the Laws and Liberties of the Kingdom. They themselves went no farther than to think it possible; and I believe it will be hard to persuade any other *Englishman*, that it is possible, unless one Instance could be given, that the *French King* ever employed his Arms for setting up any body but himself, his own Religion, and his own Government. I never heard that he did pretend to form any Part of his Glories upon the Virtue of Moderation, or Self-denial. And there can hardly be imagined a greater Instance of Self-denial, than for the *French King*, after he had destroyed the *Dutch* and *English* Fleets, and subdued our Forces at Land, not to make use of his Success, so as to add these three Kingdoms to his Conquests, and possess himself of the uncontested Dominion of the Sea for ever, but only to entitle him, at so great Hazard and Expence, to become a Mediator between King *James* and the People of *England*, and, by his Mediation, to establish the Protestant Religion, and the Liberties of the People: And yet, as absurd as this seems, you will find this to be the Result of one of their Conferences. I did never think it was the Part of any who were of Council for the King in Cases of this Nature, to endeavour to aggravate the Crime of the Prisoners, by going about to put false Colours upon Evidence, or to give it more than its due Weight; and therefore I shall be sure to forbear any thing of that Nature. But I think it my Duty to give some short Account of the Nature and Course of the Evidence to be produced to you; which consisting of several Sorts, it will be in some sort necessary to open it, that you may the more clearly apprehend it, and with more Ease make your Observations upon it.

Gentlemen, we shall produce in Evidence, as well living Witnesses, as Papers and Writings, which by a strange kind of Providence were taken upon my Lord *Preston*, and the other two Persons named in the Indictment, when they were apprehended; and therein this Design that I have opened to you, will be made evident beyond all Contradiction.

As to the living Witnesses, the Course of the Evidence will be this. One *Nicholas Pratt* is the Owner of a Smack, called the *Thomas* and *Elizabeth*, he does usually entrust his Wife, *Jane Pratt*, with the hiring out of this Smack; *William Pasely* is Master of the Vessel, and has of late been made a Part-Owner, to protect him from being press'd; for it is a Privilege that the Owners of Vessels claim, not to be press'd.

Some Time since (the Witnesses will tell you the precise Time) this *Jane Pratt* was sent for to one *Mr. Burdet's* Houe in the City, where the met with *Mr. Ashton*, who desired to know, whether he could undertake to convey him and

and some others, with Safety into *France*. She said, she did not doubt but she could do so; and thereupon Mr. *Ashton* told her, that he and his Friends were Merchants, and Traders, and that they should make great Advantage, to the Value of a Thousand Pounds at least, if they could be there quickly. Their Discourse went no farther at that Time; but Mrs. *Pratt* was appointed by Mr. *Ashton* to bring the Master of the Vessel along with her, for he had a Mind to discourse himself with the Master, and they were to meet at the *Wonder Tavern* in *Ludgate-street*; and because there should be no Mistake about the Meeting, Mr. *Ashton* gave the Woman a Note of Direction in Writing, ready to be produced.

Accordingly, by the 29th of *Decemb.* Mrs. *Pratt* and the Master, came to the *Wonder Tavern*, where Mr. *Ashton* met with them, and there they treated of the Price to be given for the hiring of this Vessel to carry them to *France*, and I think 150 Guineas was the Sum then insisted upon, but no Bargain was made at this Time; but there was a new Appointment to meet the next Day, which was the 30th of *December*, at Mr. *Burdet's* House.

The next Day, when she and the Master came thither, they found there together *Ashton* and *Elliot*, the two other Persons named in the Indictment, and there this Matter was treated of with great Secrefy in Mrs. *Burdet's* Bed-Chamber.

And they came to an Agreement, that 100 *l.* should be the Sum to be paid to Mrs. *Pratt* for conveying into *France*, *Ashton* and *Elliot*, and two other Persons. So the Contract was originally made for others besides Mr. *Ashton* and *Elliot*, and the Money was actually deposited by Mr. *Ashton* and *Elliot* in Mrs. *Burdet's* Hand, and a Six-pence was broken; one Half of which was delivered to Mrs. *Burdet* to keep, the other Half Mr. *Ashton* was to take along with him, and when the Master had safely landed them in *France*, Mr. *Ashton* was to deliver his Half of the Six-pence to the Master; which being brought to Mrs. *Burdet*, either by him or Mrs. *Pratt*, upon the joining of the two Pieces together, the Master was entituled to receive the hundred Pounds.

The next Appointment was to meet at one Mr. *Rigby's* Houle in *Covent-Garden*, and that was to be on the one and thirtieth of *December*, when the Voyage was to be begun: And the Tide not serving to go through Bridge till late, the Appointment was to meet the later. When they, Mrs. *Pratt* and the Master, came there, they found only Mr. *Ashton* and Mr. *Elliot*; but before that Time Care was taken to provide a Sculler at *Surry-Stairs*, to be ready to carry them on Board the Smack, and the Waterman was appointed to stay in a little Ale-house thereabouts, to be ready when he should be called.

About ten o'Clock at Night four Persons came down together, and went into this Sculler with the Master of the Smack, and made what Haste they could through Bridge till they came to *Pickle-berring Stairs*, over-against the Tower, where the Smack lay, and there went aboard the Master and these four Persons, my Lord *Preston*, a Servant of my Lord *Preston's*, Mr. *Ashton*, and Mr. *Elliot*.

The Smack set Sail immediately after they were on Board, and their Haste made them carry away the Waterman's Coat, which he had lent them whilst they were in the Sculler, and that

Accident was the Occasion of discovering who the Waterman was that carried them from *Surry Stairs*.

After they were on Board the Smack, they were possessed with great Fear of being surprized. They knew the Nature of the Business they were about, and the Danger they were in, if they should be discovered; and therefore when they were to pass by the *George Frigate*, a Man of War that lay in the River, they desired the Master to hide them, which he did, by putting them under the Quarter-Hatches, a Place where they could not stand or sit, but must lie along on the Ballast. When they were passed by the *George Frigate*, they quitted that Place; but when they were near the *Block-House* at *Graves*, they grew apprehensive, and they desired to be hid a second Time, which was accordingly done.

And they continued to lie in that Place till they were taken; and it was a happy Thing they did so. The Place was such, that they had not any Possibility of throwing away their Letters and Papers, though they had made Preparation for it in Case of any Accident, having tied them together, and fix'd a Piece of Lead to them, that so if they saw themselves in Danger of being taken, they might easily sink the Pacquet: But being so close shut up in this Place, that they could not execute their Purpose, the Papers were taken, and will be offered to you in Evidence.

Gentlemen, Captain *Billop*, by the Order of a noble Lord, now present, was directed to use his utmost Diligence to seize some dangerous Persons, of whose Design of going beyond Sea for some very ill Ends, an Intimation had been given. He got ready a Pinnace well Mann'd, and went in Pursuit of them down the River; and both as he went and return'd, he took Care to search suspected Vessels. When he came to this, he demanded of the Master what Number of Men he had on Board, pretending he came to press Men: The Master told him he had but three, and for those he had a Protection. But the Captain said he must be better satisfied, and must search the Vessel; and in the Search he found these four Persons lying concealed in this secret Place, under the Quarter-Hatches.

As they were taken out one after another, one of the Seamen observed Mr. *Ashton* to take up a Bundle of Papers from off the Ballast, and put it in his Bosom; and near the Place where Papers lay, he took up two Seals, which after proved to be my Lord *Preston's* Seals when he was Secretary. Captain *Billop* being inform'd of this by that Seaman, he put his Hand into Mr. *Ashton's* Bosom, and took away from him the Bundle of Papers with the Lead fix'd to it.

When they were put on Board the Captain's Pinnace, they all pressed him much, that he would let them go on Shore at *Gravesend*, pretending want of Refreshment, they not having eaten, and the Night having been cold; but he did not think that proper nor safe, but told them, they should go on Board the *George Frigate*, and refresh themselves there.

When they came on Board the *George Frigate*, all the three Gentlemen, and my Lord *Preston* in particular, were very earnest with Captain *Billop* to dispose of the Bundle of Papers, mixing extraordinary Promises with great Completions.

Not prevailing there, when they were returned to the Pinnacle, they renew'd their Solicitations, and one of them told him, it would be easy to remove all Suspicion, by fixing the Lead to some other Papers of little Signification, which were found in my Lord *Presfon's* Pocket, which he might produce, and they would without Difficulty pass for the Papers that were taken.

But the Captain was too just to comply with this Proposal. When they found he was not to be moved, you will find from the Witnesses, that their Promises were turned into Threats, and they used another sort of Language.

When they were brought to *Whitehall* Stairs, upon their Landing they gave Money to the Master and the Seamen, desiring them to say, they were hired to go for *Flanders*, and not for *France*.

Gentlemen, These Things which I have opened, carry a strong Presumption of Guilt, for *Englishmen*, especially one of that Quality of my Lord *Presfon*, to go into the Country of an Enemy without any manner of Passport, and in such a Manner as they could not expect but to be seized for Spies, unless they were assured, that their Character was so well known there, that they should be look'd upon, not as Persons coming to get Intelligence, but to give it; unless they were well assured of a good Reception when they came there.

But there is no Occasion to leave any thing to conjecture in this Case; what is contained in these Papers makes the Design of the Voyage beyond Dispute. I think, Gentlemen, after you have heard the Evidence, you will be very well satisfied, that my Lord *Presfon*, and the other two who stand indicted, were equally concerned in the Papers; they were all alike earnest to preserve them from being seen; they all solicited for the disposing of them, and promised Rewards if they might prevail.

Gentlemen, these Papers are of various Natures.

One I mentioned before is entituled, *The Result of a Conference between several Lords and Gentlemen, both Tories and Whigs*; in which it was undertaken to prove the Possibility and Methods of Restoring King *James* by a *French* Power, without endangering the Protestant Religion, and the Civil Administration, according to the Laws of this Kingdom.

Another contains Heads for a Declaration to be prepared, in order to be published when the *French* have had Success at Sea, and are Landing; and that is filled with such Pretences as they thought most specious, and most likely to amuse and delude the People.

There is another sort of these Papers which consists of Letters. These Letters are directed in false Names, and are not subscribed; and it is not to be imagin'd it should be otherwise. Yet, Gentlemen (though that is not the present Business) the Hands of the Writers of these Letters are very well known, and the Subject Matter of them will easily reveal to you for whom they were intended; for though these Letters are most of them written under divers Cants, some under the Colour of Trade, some of them under the Colour of a Law-Suit for the redeeming of a Mortgage, others under the Notion of a Match, and a Settlement to be made upon that Match, yet the real Business is so plain, that you need but hear them read, to see through the Disguise.

Though they begin generally in the Stile of Merchants writing to one another, or the like, yet towards the End of the Letters you will observe Expressions of Duty and Reverence (Terms which do not usually pass in Correspondence between Persons of that Sort) sufficient to shew, that somewhat else was intended to be covered in what went before.

Gentlemen, It will appear to you, that some of the Writers of these Letters were of the Number of those who were secured the last Summer, when the *French* Fleet was upon our Coasts, and you will observe they complain, that by reason of that Restraint, the Design was very much hindered, though they have endeavoured to redeem that Loss of Time since their Discharge, and have carried on the Business with more Vigour than ever.

In short, the Design of these Letters is to importune the setting out of the *French* Fleet with all possible Expedition: They say they must not suffer such a fit Season to be spent unprofitably: That the best Time is between this and the first of *March* to come to a good Market; and if they come not before the tenth of *March*, all will be lost. In another of their Letters they say, If the Suit be well solicited and managed, it may come to a final Hearing before the End of *Easter* Term.

They complain, that there are several indidreect Letters came from *St. Germain's*, that turn to the Prejudice of the Design. Those Letters are not enough disguis'd to deceive the People here, but speak too plainly what is to be expected from themselves, and from the *French*. You will take Notice, that the Letters which all you will hear, are all Bills with high Characters of the Bearer; for which Reason they write in such general Terms, because the Bearer was entrusted with the whole. Some of the Letters say, no Particulars are, or need be expressed, because he will inform them of every thing: Others, that they could not write so much as he could say; and that nothing was wanting, but to allow him a full and fit Season to give an Account of all the Business; and that they entirely depend upon his Account of them and their Condition.

And, Gentlemen, in one of the Letters the Bearer is stiled a Lord; and to whom can that be applied, unless to the Prisoner at the Bar?

In another Letter, when they speak of sending the Copper and the Linnen (the Goods pretended for carrying on the Trade) it is added, And what the Meaning of that is, they must refer to the Bearer, who was able to give them a particular Account.

I have mention'd so much of the Papers, only that you might have a general Notion of them; that so when you hear them read, you may more readily make your Observations. I assure you I have been as careful as I could, not to exceed the Truth in opening any Part of the Evidence: But it is your Part to see whether what I have opened be made out in Proof.

There is another Paper that gives an Account of their Majesty's Fleet to be sent out this Summer; and there is an Observation at the End of it, that it was hoped it may be out in *March*. But you will find by other Papers (and particularly by one of my Lord's own Hand-writing) that he was of another Mind, that the Fleet would not be out before *June*.

Gentlemen, the last Sort of Papers which I will mention to you, are some *Memorandums* and Notes written by my Lord *Preſton*, wherein he gives an Account of ſeveral Things of great Moment; which, as his Memory ſerved him, are put together without Connexion or Method, being only to remind him of them when he ſhould have Occaſion to mention them.

He therein gives an Account of the Number and Strength of the *Engliſh* Fleet; how they are Manned, and who are the principal Officers and Commanders, and in what Time they will be out.

He likewiſe gives an Account of the Number and State of the *Dutch* Fleet, and how that is to be divided and diſpoſed of.

And with relation to the *French* Fleet, there is a particular *Memorandum*, That they muſt be out at fartheſt in *April*; that they muſt be out ſo as to ſeparate the *Dutch* Fleet and ours; that they muſt be ſure to look in at *Spithead* as they come by, and ſecure what Ships ſhould be in that Harbour from joining the reſt.

There is alſo a Hint given of thoſe that were moſt likely to come in to them: And there is Advice in what Place their Fleet ſhould fight ours. They muſt not come ſo high as *Beachy*, where they fought the laſt Year, but rather chooſe to fight in the Chops of the Channel.

There is an Account of *Portsmouth*, how fortified and gariſon'd, that it had but five hundred Men; that *Goſport* had nothing but Pallifadoes about it, and *South-Sea-Caſtle* very weak.

There are *Memorandums* of other Heads proper for a Declaration.

There are the Names of ſeveral Perſons, ſome of them with particular Characters, and ſome without; and amongſt the reſt, there is this Character given of the Clergy of the City of *London*, that they are the worſt of all others.

Gentlemen, we ſhall proceed to the Evidence, and firſt call the living Witneſſes, and then read the Papers; and when you have heard what the one can ſay, and what the other contain, we muſt leave it to your Conſideration, and ſubmit all to the Direction of the Court.

Mr. Serj. Tremain. Pray ſwear *Mrs. Pratt*, *Jane Pratt*.

[*Who was ſworn, with ſeven or eight more.*]

Mr. Serj. Tremain. *Mrs. Pratt*, pray will you tell us what you know concerning the hiring of a Veſſel, and whether it was to go? and by whom it was hired, and for what? Pray tell your whole Knowledge in this Matter.

Mrs. Pratt. *Mr. Burdet*, may it pleaſe your Lordſhip, ſent for me to his Houſe, to hire a Veſſel to go for *France*, and asked me, if I could carry them ſecure. I told them I could let them have a Smack that would carry them; and, if it pleaſe you, my Lord, we met ſeveral times at his Houſe, and at laſt there was *Mr. Aſhton* there, and *Mr. Aſhton* appointed to meet at the *Dog Tavern* upon *Ludgate Hill*; I think they call it the *Wonder Tavern*.

L. C. J. Holt. Miſtreſs, pray begin again, and ſpeak out.

Mrs. Pratt. *Mr. Burdet* ſent for me to hire my Smack to go for *France*, and they asked me if I thought it would carry them ſecure. I told them yes, I thought it would; and I came ſeveral times about it to *Mr. Burdet's* Houſe. The Smack was not then come to the *Tower*, as it did afterwards; and then after they ſent for *Mr. Aſhton*, and he

met me at *Mr. Burdet's*, and meeting at *Mr. Burdet's*, he gave me a Note, to meet at the *Dog Tavern* upon *Ludgate Hill*, and there *Aſhton* met, but *Mr. Burdet* did not come.

Mr. Serj. Tremain. Who was with *Aſhton* when you met at the *Dog Tavern*?

Mrs. Pratt. None but a Man of his, as *Mr. Aſhton* ſaid: There we ſat about an Hour and an half and did nothing. At length we went away, and appointed to meet at *Mr. Burdet's* Houſe the next Day at ſeven or eight o'Clock, and there we met, and the Bargain was made.

Mr. Serj. Tremain. What Bargain?

Mrs. Pratt. I ask'd 150*l.* and they told me that was too much. Says *Aſhton*, I will give you Fourſcore; ſays *Mr. Burdet*, pray encourage them, offer them 100*l.* Thereupon he did offer 100*l.* and we agreed for 100*l.*

Mr. Serj. Tremain. What Day was that, can you remember?

Mrs. Pratt. We met on the *Monday*, and the *Tueſday* we agreed.

Mr. Serj. Thompſon. What Money was paid?

Mrs. Pratt. Ninety-three Guineas and Six-pence.

Mr. Serj. Tremain. Who was by when the Bargain was made?

Mrs. Pratt. *Mr. Elliot* was along with them, *Mrs. Burdet*, and the Maſter of the Veſſel, at the Agreement.

Mr. Serj. Tremain. What is the Maſter's Name?

Mrs. Pratt. His Name is *Pafely*, and there was Six-pence broken, and *Mr. Aſhton* took one of the Six-pences, and *Mr. Burdet* ordered him to give his Wife the other, and ſo he did; and when the Money was paid, *Mr. Aſhton* brought in a Paper wrapp'd up, and ſaid, we ſhould ſee it told out, and he told it out there, and it was ninety-three Guineas, and the Six-pence.

Mr. Serj. Thompſon. Who did they tell you they were to carry into *France*?

Mrs. Pratt. Truly, my Lord, they ſaid three, that was all.

Mr. Serj. Tremain. What followed then? Did they give you any Note where you were to come for them?

Mrs. Pratt. *Mr. Aſhton* bid *Mr. Elliot* write a Note where they ſhould come; it was at *Mr. Rigby's* in *Covent Garden*, at the *Seven Stars*, and there we were to meet at eleven o'Clock at Night; and when we came there, *Mr. Aſhton* was within, and went out and fetch'd in ſome Company. *Mr. Elliot* came, and two other Gentlemen that I never ſaw in my Life before.

Mr. Serj. Thompſon. Miſtreſs, you ſpeak of the breaking of a Six-pence, what was to be done with that?

Mrs. Pratt. My Maſter was to bring the half of the Six-pence that *Mr. Aſhton* had, to *Mrs. Burdet*, and then we were to have the 100*l.*

Mr. Serj. Tremain. Had *Mrs. Burdet* the other Piece?

Mrs. Pratt. Yes, *Mr. Aſhton* had one half, and ſhe had t'other.

Mr. Serj. Thompſon. Was there any Proviſion carried on Board this Smack?

Mrs. Pratt. Yes, there was a Hamper and a Trunk, which were fetch'd from *Mr. Burdet's* Houſe; my Man, *John Fiſher*, carried the Trunk, and a Porter carried the Hamper, and I took Care to ſee it put in the Veſſel.

Mr. Serj. Tremain. When you came to *Covent-Garden* that Night, what Discourse had you? and what Enquiries were there made, and by whom?

Mrs. Pratt. Mrs. *Ashton* comes in, as she said Mr. *Ashton* was her Husband, and said there was some News from Court, of having Papers in a Hat, and that they had chosen some Lord or other: Something it was, I remember, I can't tell what, but says one Gentleman that stood by, and said, I was chosen the last Year, that signifies nothing; and another said, I missed it; it is only a *Christmas* Gambol, it signifies little.

Mr. Serj. Tremain. What further Discourse had they?

Mrs. Pratt. Mrs. *Ashton* said she was afraid they should have no very good Luck, for the Cock crowed.

Mr. Serj. Tremain. Was there any Discourse what Advantage they should get by going, or you by carrying of them?

Mrs. Pratt. They said they would help us to the earning of 1000*l.* before *Lady-day*, if they went this Time safe.

Mr. Serj. Tremain. Pray Mistress recollect your self; were they to go to *Flanders*? or where?

Mrs. Pratt. They were to go for *France*; they were not to go for *Flanders*.

Mr. Serj. Tremain. What Time of Night did you depart from Mr. *Rigby's*?

Mrs. Pratt. About Eleven o'Clock.

Mr. Serj. Thompson. How did they go away from Mr. *Rigby's*?

Mrs. Pratt. I did not go with them: Mrs. *Ashton* kept me, and gave me the Leg of a Goose, and some Drink.

Mr. Serj. Tremain. Do you know any thing further?

Mrs. Pratt. No; I think I have told all.

Mr. Serj. Tremain. Were you hired for *France* or *Flanders*? I ask you once again.

Mrs. Pratt. We were hired for *France*; any Place there where we could touch.

Mr. Serj. Tremain. Was there any particular Port mentioned?

L. C. J. Holt. If you have done with her, will my Lord ask her any Question?

L. Preston. My Lord, I desire she may be ask'd, whether she ever saw me before?

Mrs. Pratt. No, never, my Lord, but in the Tower.

L. C. J. Pollexfen. But she says, when they were at *Rigby's*, there came in two Gentlemen with Mr. *Elliot* that Night.

L. Preston. I desire to know of her whether I was one of them?

Mr. Serj. Thompson. My Lord, she does not say your Lordship was one of them.

Mrs. Pratt. No, my Lord, you were not one of them.

Mr. Serj. Thompson. Then set up *Pafeley*. *Pafeley*, what do you know about hiring of this Smack to go for *France*? I think you are Master of the Smack called the *Thomas* and *Elizabeth*, are you not?

Mr. Pafeley. Yes.

Mr. Serj. Thompson. Then pray give an Account of the whole Matter.

Mr. Pafeley. The Smack was hired of the Woman, and not of me; and when I came up to *London*, she told me she had got a Voyage over to *France*, if I was minded to go; I said, yes; and she appointed me to go along with

her to this Mistress what do ye call um's Houfe, this Mrs. *Burdet*; and when she came to this Houfe, there was no body within but Mr. *Ashton*: Presently after came in Mr. *Elliot*. After they came in they told us the Things were not ready yet, but they would be ready presently to carry on Board. When these Things were ready, *John Fisher* carried the Trunk down, and the Porter carried the Hamper, and I went along with them to *Billingsgate*, and carried them on Board; and when I carried them on Board I went to *Billingsgate* again, and so we went along to this Mr. *Burdet's* Houfe; and so when we came up to *Burdet's* Houfe, *Ashton* and *Elliot* were not there present; but we had been there but a little Time e'er they came in; and then they came and said to my Owner and me, You shall see the Money told: It was all in Gold but one Six-pence; there was Ninety-three Guineas: And, after the Money was told, there was a Six-pence that was broken in half, and the Guineas he rolled up in a Paper, and gave them to Mrs. *Burdet*, and bid her lay them up; and he gave her one half of the Six-pence, and kept the other half himself; and when I brought that other half that he had, or my Owner, then she was to give the Money to her or me.

Mr. Serj. Tremain. Pray what Room of the Houfe was this in at Mr. *Burdet's*?

Pafeley. It was on the left Hand going in.

Mr. Serj. Tremain. Was it a Bed-Chamber?

Pafeley. Yes, 'twas.

Mr. Serj. Tremain. What Time of Night was it, pray?

Pafeley. About Eight o'Clock.

Mr. Serj. Tremain. What Discourse had you with them there, pray?

Pafeley. They asked me if I thought they might get well over? I told them yes, I believed they might.

Mr. Serj. Thompson. Did they tell you what Part of *France* they were to go to?

Pafeley. No, they named no Place, but any Part in *France*.

Mr. Serj. Tremain. Well, go on, tell us what they said further.

Pafeley. So, Sir, they gave us Direction to meet them at the *Seven Stars* in the little Piazza's in *Covent-Garden*. When we came there it was Eleven o'Clock at Night, and they were not in the Houfe when we came in, except 'twere Mr. *Ashton*; but presently after *Ashton* and *Elliot* came in, and they sat down; and so in came two Gentlemen more, but what they were, or who they were, I don't know; and they discoursed about Papers shaking in a Hat, and said they should have no good Luck, for the Cock crowed: And after this *Elliot* and *Ashton* came out of the Houfe, and called me to go with them; and after we were gone out, Mr. *Ashton* leaves *Elliot*, and went away from him, and *Elliot* bid me go along with him; says he, come, Master, come along with me. He did not name any Place whither they were to go; but it happened to be *Surry-Stairs*, and going down, he calls in at the Corner Houfe, which is an Ale-house, for the Waterman, and bid me go before to the Water-side; and when we came thither the Waterman steps into his Boat, and I after him; and when I was in the Boat I went into the Stern, and by that time I was seated in the Stern, there came down four Men; but I never saw my Lord and his Man before they came into the Wherry.

L. C. J. Holt. Who came into the Wherry?

Pafeley. There was all those four, Mr. *Ashton*, Mr. *Elliot*, my Lord, and his Man.

L. C. J. Holt. Where was this do you say?

Pafeley. At *Surry-Stairs*, there the Boat was.

Mr. Serj. Tremain. Was the Prisoner at the Bar one of them?

Pafeley. Yes, he was.

L. C. J. Holt. Well, what did you do then?

Pafeley. After we were feated in the Boat at *Surry-Stairs*, we put off, and went down through Bridge, and going through Bridge we came on Board, the Vessel riding just against the *Tower* almost, and we went all on Board; and when we came on Board, my Men were all asleep, and being asleep, I call'd them out of the Cabin to hale up the Anchor; and there being very little Wind stirring, we could not go very far, but came just below the *Half-way Tree*, and then we stopp'd, and I order'd them to drop the Anchor for fear of the Vessels in the River; and the next Morning about Eight o'Clock we weigh'd our Anchor again, and went on till we came near to the *George* Man of War, and there they all of them hid.

Mr. Serj. Tremain. Who?

Pafeley. All of them, my Lord. There was *Ashton*, and *Elliot*, and my Lord *Preston*, and his Man.

Mr. Serj. Thompson. In what Place did they hide?

Pafeley. In the Quarter-Hatches, under the Hatches where we lie.

Mr. Serj. Thompson. Did they desire you to hide them?

Pafeley. Yes, they did.

Mr. Serj. Thompson. What did they say?

Pafeley. They said, that if there should come any Boat on Board to press, I should shew them my Protection; and so there came no Boat then.

Mr. Serj. Tremain. How big is this Place that they hid in?

Pafeley. 'Tis in the Quarter under, near the Cabin-Hatches.

Mr. Serj. Tremain. I ask you what kind of Place it is?

Pafeley. They cannot sit upright, nor stand upright, but they are fain to lie along, or lean upon their Elbows.

Mr. Serj. Thompson. Well, go on, what happen'd afterwards?

Pafeley. After that we were pass'd the Man of War, they came up and fate in the Cabin, where we used to eat our Victuals; and when we came to *Gravesend*, over against the *Block-house*, they would go down again and hide, and did so till we pass'd the *Block-house*, and then they were for coming up again; and then I saw a Boat coming about *Tilbury*, which made towards us, and thereupon they ducked down again, and the Hatches were laid down upon them, and there they remained till they were taken.

Mr. Serj. Tremain. Where were they taken?

Pafeley. They were taken between the North *Block-house* and the *Little* —

Mr. Serj. Tremain. But I mean in what Part of the Ship?

Pafeley. They were taken in that little Place where they were hid.

Mr. Serj. Tremain. Were the Hatches shut down upon them?

Pafeley. Yes, they were.

Mr. Serj. Tremain. How long had they been hid before they were taken?

Pafeley. A quarter of an Hour, or thereabouts.

Sir W. W. Did they desire to be hid there?

Pafeley. Yes, they did; and they were hid there.

Mr. Serj. Thompson. Now tell us, after such Time as they were taken, what they said, and what you observed.

Pafeley. After they were taken they said nothing to me; my Lord, nor none of them did speak to me after the Boat had taken them.

Mr. Serj. Thompson. But what happened after they were taken?

Pafeley. After they were taken, Captain *Billop* order'd them to go into the Boat, and us with them; and when we came to *Whiteball-Stairs*, one of them said to me, Master, when you come upon your Examination, say you were bound for *Flanders*, and not for *France*.

Mr. Serj. Thompson. Which was that that said so?

Pafeley. 'Twas *Elliot*, and he gave me half a Crown to bear my Expences that Night, and said he would remember to take Care of us afterwards.

Mr. Serj. Thompson. Did they give any Money to the Scamen?

Pafeley. Yes, *Ashton* gave one of my Men half a Crown, and bid him say he was bound for *Flanders*, and not for *France*; and my Lord's Man gave my other Man half a Crown.

L. C. J. Holt. Was my Lord *Preston* by when that Money was given?

Pafeley. My Lord was upon the Bridge, but near me.

Mr. Serj. Thompson. If my Lord have any Questions to ask him, we have done with him for the present.

L. Preston. No, my Lord, I have no Questions to ask him.

L. C. J. Pollexfen. Was my Lord *Preston* by when the Direction was given you to say you were to go to *Flanders*, and not to *France*?

Pafeley. I say, he was upon the Bridge, but was not near me.

Mr. Serj. Tremain. What Discourse had you on Board with any of them?

Pafeley. Very little. They ask'd me if I thought they should go clear, and I told them yes, I thought they might.

Mr. Serj. Tremain. Clear of what?

Pafeley. Clear of the Vessel's searching. They examin'd me that Night I was at the *Seven Stars*, if I knew the Way of the *Swing*, on the Back of the Channel, to go clear of the Town. I told them I did not know the Way by the Back of the Sands by *Margaret's*, but the *Swing* would not keep them clear of the Town.

Mr. Serj. Tremain. Was there a Note written whither you were to come?

Pafeley. Yes, there was a Note written to meet them at the *Seven Stars* in the *Little Piazza's*.

L. C. J. Pollexfen. Whereabouts is *Burdet's* House?

Pafeley. That is in *Queen-street* in the City.

Mr. Serj. Tremain. You *Pafeley*, Did the Waterman that brought them on Board leave two Coats behind him?

Pafeley. Yes, the Waterman did leave two Coats;

Coats; and I put them into my Chest, and afterwards they broke open my Chest and took them out, and brought them to my Lord Chief Justice's.

Mr. Serj. Tremain. Then we will next produce that Waterman. Set up *Charles Betsworth*.

Mr. Serj. Thompson. Come, will you give us an Account who you carried on Board a Smack, and what happened?

Betsworth. I was going over the Water from *Surry*-Stairs about seven or eight o'Clock, and a Gentleman at the Stairs called *Sculler*, and ask'd me if I would carry him down the River; said I, how far? Says he, to the Tower: Said I, 'tis against Tide, and I can't carry you down so low. He said he would stay till the Tide turn'd: Said I, if I be out of my Bed so long, I deserve to be well paid for it; if you will give me Half a Crown I'll carry you down. Says he, I'll give it you. So then I came Ashoar, and he ask'd me what my Name was; I told him *Charles Betsworth*: Says he, will you be sure to stay for us? Yes, said I, if you will be sure to come. If I be not at the Stairs, I'll be at that *Alchoufe* there in the Corner: So I staid, and carried a Fare or two over the Water; and about eleven o'Clock, as I was sitting in the Houfe a Gentleman comes, and calls *Charles*, and so out I went to my Boat, and took them in. There was one Man, as I suppose, in the Stern, and he that called me out, followed me down, and by and by came three more into my Boat; one of them had a whitish Cloak on, and the other a grey loose Coat, and a red Bag of the Quantity of a Peck, and so we put off, and row'd away; and just under the *Temple* Wall, which was all the Words I heard from them that I can remember, says one Gentleman, When do you hear the King goes away? and another made Answer, and said, on *Tuesday*. So we rowed down through *Bridge*; and when we were through *Bridge*, they asked where the Vessel lay; and he that was in the Stern said, it was *Southwark*-Side, over against the *Tower*, and bid me row over thither. And when we came just below *Battle*-*Bridge*, that Man said, that is she that rides a Head of us. I looked, and she had a Pennant up: So they were put on Board, and as soon as they were on Board, she went off, and I rowed up to the *Bridge*, and went through *Bridge*, and came up as far as and there I stayed, and took my Scull and my Staff out of my Boat; and when I took them out, I missed my Cloaths. Says I, God bless me, I have lost my Cloaths; but then I thought it was but a still Tide, and therefore I would try if I could overtake them; for I thought they could not be got far, there being little or no Wind; so I went down to the Place where the Vessel lay, and she was gone; and I enquired of several Smacks that lay there, but could hear nothing; and I rowed as low as *Limebouse*-*Reach*; and about *Black*-*Wall* and *Limebouse*-*Reach*, I came up to a Smack that I supposed was she, and cried out, Ho the Smack, and they answered me, So. I asked them if I did not bring a Fare a Board that Smack awhile ago? Then they said no. I told them I had brought a Fare a Board some Smack that lay about *Horsley*-*down* and *Pickle*-*berring*-*Stairs*, and they had got two Coats of mine, which I had forgotten, and it had a Pennant up when they went on Board, but this had none; so I rowed on further, till I came as far a

Barkin-*Sberf*; and I thought there being so little Wind, that none could be gone beyond me, and therefore waited to see a Smack with a Pennant coming down, but I could not meet with it, and there I lay all Night in my Waistcoat, and the next Day I came back to *Greenwich*, and as I came along, I went on Board several Vessels to enquire, because I took her for an Attendant upon a Man of War; but I could not hear of my Cloaths, till last *Friday* was Seven-night two Watermen came, and brought me the Cloaths I lost.

L. C. J. Then you have your Cloaths again?

Betsworth. Yes, I have.

Mr. Serj. Thompson. Pray look upon that Gentleman there, my Lord *Preston*, are you sure that he was one of them that was in your Boat?

Betsworth. I can't tell that ever I saw him in my Life before.

Mr. Serj. Tremain. You *Pafely*, I ask you, was my Lord *Preston* one of the Gentlemen the Waterman brought on Board your Smack?

Pafely. Yes, he was.

Mr. Serj. Tremain. Is that the Waterman?

Pafely. Truly, my Lord, I can't tell; but the Waterman's Coat was left on Board.

Mr. Serj. Tremain. Then let me ask you another Question, Had you a Pennant?

Pafely. Yes, I had when I came on Board.

Mr. Serj. Tremain. Did you take in your Pennant?

Pafely. Yes, I did afterwards.

Mr. Serj. Tremain. Why did you take it in?

Pafely. They asked me if there was a Pennant, and I told them yes; and they bid me take it in.

Mr. Serj. Tremain. Who bid you take it in?

Pafely. *Elliot* did; so we took it down.

Mr. Serj. Thompson. Will my Lord ask *Betsworth* any Questions?

L. Preston. No, I have nothing to say to him.

Mr. Serj. Tremain. What did they carry on Board with them, *Pafely*?

Pafely. They had nothing on Board but the Trunk and Hamper, that were brought down before from *Burder*'s Houfe; and there was nothing brought in the Boat but only a Leather Bag.

Mr. Serj. Tremain. Then set up *Fisber*. I think his Name is *John Fisber*. You was one of the Seamen that did belong to the Smack, I think.

Fisber. Yes, I was.

Mr. Serj. Thompson. Pray then tell us, who were brought thither, and what happened upon it.

Fisber. About six Hours before they came on Board us, our Master came himself on Board, and took me along with him; but whither I was to go then I did not know. He carried me to a Houfe in the City, and there gave me a small Trunk to carry, and a Hamper to a Porter; and we went away with them; and he bid us at *Billin*-*gate*, carry them on Board, which we did.

L. C. J. Holt. When was the Trunk and Hamper brought on Board?

Fisber. About six or seven o'Clock at Night, on *Wednesday*, I think.

L. C. J. Holt. Well, and what followed?

Fisber. My Lord, and *Mr. Ashton* and *Mr. Elliot*, and my Lord's Man, and the Master, came on Board between eleven and twelve: There was no more came on Board that I know of; but we were asleep when they came on

Board; and immediately our Master ordered us to hale up the Anchor. Now there was but little Wind stirring; and by that Time we were fallen down as low as the *Half-way Tree*, it being still Flood, we could go no farther: So there we were ordered to stop, and we lay by till Morning; and about eight in the Morning we weighed Anchor again, and about nine, when we came to the *George* Man of War, they hid; they desired to go down into the Quarters, and we laid the Hatches upon them.

Mr. Serj. Tremain. What kind of Place is it that they hid in?

Fisher. They could not stand upright, nor sit upright, but they must lie, or lean upon their Elbows. So when we were got below the Ship, they came up again into the Cabin: And when we came at *Gravefend* near the *Block-House*, then they hid again till we were below the *Block-House*, and then we spied a Boat coming, which made them to keep below; and there they continued till Captain *Billop* took them.

Mr. Serj. Tremain. Were they all four there?

Fisher. Yes, all four.

Mr. Serj. Tremain. After they were taken, what said they?

Fisher. After such Time as they were taken, and come up to *Witchball*-Stairs, Captain *Ashton* gave me a Half Crown Piece, and bid me say, they were going to *Flanders*, and not to *France*.

Mr. Serj. Tremain. But whither were you going?

Fisher. Truly, I did not know where we were to go, till since we came on Shoar. I understood nothing till they hid; and then indeed I thought we were going to *France*.

Mr. Serj. Tremain. When did any body tell you you were to go to *France*?

Fisher. Since we came on Shoar.

Mr. Serj. Thompson. Will my Lord ask him any Questions?

L. Preston. No.

Mr. Serj. Tremain. Then the next Witness we call is one *Amonds*. Pray tell us what you know of this Matter.

Amonds. May it please you, my Lord, I know nothing concerning my Master's Business; but all that I know of this Business is, That they came on Board about Twelve o'Clock at Night, and I was then asleep in the Cabin, and hearing some come on Board, and my Master call, I looked out, and there were three or four Gentlemen, and my Master, and he ordered us to set Sail immediately, and make our Way down as fast as we could. There was little or no Wind: So that when we came down to the *Half-way Tree*, we were forced to come to an Anchor, and there we rid at Anchor till it was broad Day, and there was a brave Gale to the Westward; and by that Time we got down to *Long-Reach*, about nine o'Clock we came to the *George* Frigate, a Man of War, and they understanding that, desired to hide these Gentlemen.

L. C. J. Holt. What Gentlemen?

Amonds. My Lord *Preston*, Mr. *Ashton*, and Mr. *Elliot*, and the other Gentleman that was with them.

L. C. J. Pollexfen. Look upon my Lord there, was he one?

Amonds. Yes, that Gentleman was one.

L. C. J. Holt. Well, go on.

Amonds. And so, Sir, after we were passed the Frigate, they came up again, and did not de-

sign to go down any more till they see some other Danger. When we came almost to *Gravefend*, they went down again: When we pass'd the *Block-House* I was at the Helm, and they were resolving to go to Dinner, and bid that Man, my Fellow, to reach them some Victuals out of the Hamper: And while he was reaching them some Victuals, I see the Pinnace coming towards us: Said I, here is a Pinnace coming a Board: Says my Lord, and they, we must go down again and hide; and so they did go down again. We apprehended that they were coming a Board to press us, and they had no Mind to be seen. When the Pinnace came near, they waded to us in this manner, as much as to bid us stay: So we laid the Sail by, and staid for them till they came up; and when the Captain came on Board, says he, this is worth our coming on Board, here are a Couple of brisk Seamen will do the King Service; I must have them, I think. Says I, I hope not so, noble Captain: Says he, have you any thing to keep your selves clear? Yes, says our Master. I am sorry for that, says the Captain. What is it? Says the Master, I have a Protection. Says the Captain, let us see your Protection: So the Master pulls out his Protection, and shews it. Well, says the Captain, I must look a little further, and away he goes into the Cabin, and takes up the Hatches, where these Gentlemen were. Says the Captain, Hye, hye, who is here? Turn out, says he: But I suppose they did not make so much Hast as the Captain expected; so he called some of his Men on Board; and when they came on Board, my Lord came out, and the rest of the Gentlemen; and says my Lord to the Captain, I hope you will be so kind as not to take any thing from us. Says he, I'll meddle with nothing but Papers; 'tis Papers I look for, and put his Hands in both his Pockets, and pulled out Papers, and put them into his own Pocket; but whether they were new or old I can't tell; and there was a Watch likewise, but that he gave my Lord again, and said, I'll meddle with nothing but Papers. Then he search'd Mr. *Elliot*, and Mr. *Ashton* was the last that came out, and there was one of my Lord's Watermen in the Cabin with him; and, says he, and please you, noble Captain, that Gentleman put something in his Bosom. Says the Captain, What did you put in your Bosom, Sir? Nothing, says he, but my Handkerchief.

L. C. J. Holt. Who said so?

Amonds. Mr. *Ashton*, and shews him his Handkerchief; and afterwards the Captain put his Hand in Mr. *Ashton*'s Bosom, and pulled it out.

Mr. Serj. Thompson. What did he pull out?

Amonds. A Roll of Papers, with a Piece of Lead to it.

Mr. Serj. Thompson. Did you see the Lead fix'd to the Papers?

Amonds. I did see it fix'd to the Packthread that tied the Papers.

Mr. Serj. Tremain. What sort of Place is it in which they were taken?

Amonds. They could not sit, nor stand upright in it.

Mr. Serj. Tremain. Had you any Money given you?

Amonds. I had Half a Crown given me by my Lord's Man.

L. C. J. Holt. Who was it gave you the Money?

Amonds. It was my Lord's Man; he that was on Board the Ship: He gave me Half a Crown in *Whiteball*, and said, I should say we were bound for *Flanders*, and not for *France*; but who the Half Crown came from I cannot tell, my Lord said nothing to me at all.

Mr. Serj. Tremain. Did you hear any Discourse as they came down?

Amonds. No, I did not mind any thing of Discourse; for I never came among them, unless it were at the Hour of Watching.

L. Prefson. Pray did I say any thing to you at *Whiteball*?

L. C. J. Holt. My Lord, your Way is to propose your Questions to the Court, and they will ask them for you.

L. Prefson. My Lord, I desire to ask him if I said any thing to him at *Whiteball*.

L. C. J. Holt. What say you, Did my Lord *Prefson* say any thing to you at *Whiteball*?

Amonds. No, my Lord, he never said anything to me at all; it was his Man that gave me the Half Crown, and spoke to me.

L. C. J. Holt. Will your Lordship ask him any other Questions?

L. Prefson. No, my Lord.

L. C. J. Holt. Then call your next Witnesses.

Mr. Serj. Tremain. Swear Captain *Billop*. [*Which was done.*]

Mr. Serj. Thompson. Come, Captain *Billop*, pray will you tell my Lord and the Jury, where you did apprehend my Lord *Prefson*, and the Circumstances of what happened at their Taking.

Capt. Billop. Sir, I met with them at the upper End of the *Hope*.

Mr. Serj. Thompson. Pray give us an Account, from the Beginning to the End, what passed; how you came with the Boat, and all that happened at that Time.

Capt. Billop. About two o'Clock, or between one and two, upon the last of *December*, my Lord *Danby* came to me at one of the Doors of the House of Lords, and told me his Father would speak with me; and he carried me to my Lord *Lindsay's* Chamber, where immediately my Lord President came, and told me there were some Persons going for *France* about Business of dangerous Consequence, and he desired me to use some Means to get them apprehended: I then proposed what I should have to enable me for the Undertaking. My Lord *Danby* said, there was such a Boat that he would procure me, and my Lord President gave me a Letter to another Person, who was to instruct me further about this Matter. My Lord *Danby* got the Boat ready, and some Men and Arms in it: But I thought there were not Arms enough; so I borrowed some Arms of my Lord *Lucas*, and about eleven o'Clock, as near as I remember, we put off from *Tower-Wharf*. It being very calm, I thought we should be swifter than any Vessel, and should have the Advantage of them all; and therefore run down as far as *Gravesend*, and I brought several Vessels by the Lee, in which Time I pressed some *Barkin* Men, two or three of them; and amongst them one that knew the Vessels that lay in the River, having been on Board several; and we did board divers, and took out some Men, having a *Pris-Warrant*; and he that I had taken of the *Barkin* Men, after he had passed by several Vessels, seeing this Vessel sailing, told me that was the *Thomas* and *Elizabeth*: Whereupon we made up to them, and waving

towards them, they staid for us. When we came up, there was standing by the Master two lusty Sailors, and I told him I would take but one of them: He said he had a Protection; I bid him shew it me. When I was come on Board, and had looked upon his Protection, I told him I must look a little further, and went down into the Cabin, and took up the Hatchets, and there I found them all four lying together.

Mr. Serj. Thompson. What four?

Capt. Billop. My Lord *Prefson*. I did not know him then, nor till afterwards.

Mr. Serj. Tremain. Who else was there?

Captain Billop. Mr. *Elliot* was there, and Mr. *Ashton*, who were both my former Acquaintance; but my Lord *Prefson* I had forgotten, till one of them called him my Lord, and I asked them what Lord it was; and they said it was my Lord *Prefson*; so then I saluted my Lord: So we rowed up.

Mr. Serj. Thompson. Pray Captain tell us what happened in the Vessel before you went out of it, after you found them there.

Capt. Billop. I handed my Lord *Prefson* up first; and after he came out of that little Place, which he was forced to creep out of on his Knees, I turned my Lord about, and told him I must search him. He said, he hoped I would not meddle with any thing, I told him I would meddle with nothing but Papers: So I put my Hand in his Pocket, and took all the Papers I could find, and put them in my own Pocket; and taking out a Watch, I delivered it to my Lord again. The next was Mr. *Elliot*, and I search'd him, and found nothing at all upon him. After that *Ashton* came up, and one of my Men told me, that Gentleman had put something in his Bosom: Whereupon I gave him a sudden Turn, his Back being towards me, and asked him what was that he put in his Bosom? He told me nothing but his Handkerchief, and pluck'd his Handkerchief out; with that I clapp'd my Hand in, and got the Packet, and took it out, with the Lead fix'd to it. I have the Lead now in my Pocket.

Mr. Serj. Tremain. Pray will you produce it, Sir. [*Which he did.*]

Capt. Billop. This is the Lead, several of my Men saw it when 'twas fix'd to the Packet.

Mr. Serj. Thompson. What did you do with the Packet?

Capt. Billop. I put it immediately into my Pocket, as soon as I had search'd Mr. *Ashton* further, and then commanded these Gentlemen all into my Boat, and took all the People that belonged to the Smack with me, after I had brought her to an Anchor, and left two of my Men on Board of her, and there she rid till next Day, when I sent two more of my Men to bring her up; and those two Men I order'd to search all the Parts of the Vessel, and take what they could find; and whatsoever they found, they should carry it to the *Tower*, to my Lord *Lucas*; which, I supposed, they did.

Mr. Serj. Tremain. Well, *Capt. Billop*, after such time as you had taken these Papers, and brought these Gentlemen into your Boat, pray what Discourse had you with them? What said they to you concerning the Papers?

Capt. Billop. It was a pretty while before we talked of any thing: The Beginning of our Talk was, I remember, they desired to go Ashore at *Gravesend* to refresh themselves, for it was cold, and they had not eaten any thing. It was my Lord

Lord that desired it; but I begg'd his Pardon for that, and told him there was a Man of War that lay at *Long-Reach*, where, as I believed, his Lordship would be very well accommodated with any thing he wanted.

Mr. Serj. Thompson. Well, what said they afterwards?

Capt. Billop. My Lord *Preston*, after I had saluted him, upon knowing who he was, and *Mr. Abston* and *Mr. Elliot* telling him I was of their Acquaintance, he said he was glad he was fallen into the Hands of a civil Gentleman, and they said they were glad they were fallen into the Hands of an Acquaintance. I told my Lord, I hoped he should never find any thing otherwise than civil from me. My Lord was very civil to me in complementing, and assuring me he would acknowledge my Favour and Kindness to him.

Mr. Serj. Thompson. Ay, what did he say to you?

Capt. Billop. My Lord *Preston* told me, if ever it lay in his Power to do me Service he would, and he did not doubt but he might; and he used a great many Words and Expressions of Kindness, and his Readiness to do me Service; and amongst the rest, my Lord said once to me, if I would dispose of the Packet—

Mr. Serj. Thompson. Pray speak that again.

Capt. Billop. My Lord *Preston*, in one of his Discourses of his Kindness in doing me Service, had this Expression, as near as I can remember, if I would dispose of the Packet.

Mr. Serj. Tremain. What he would do for you, if you would dispose of the Packet?

Capt. Billop. He did not come to any particular Instance of what he would do; but he said he would serve me in any thing that lay in his Power. *Mr. Elliot* and *Mr. Abston* discoursed me several times about it: They courted me, and desired me to throw the Packet over Board; but I told them I would not do any thing of that kind: And *Mr. Elliot* said, that I might take the Papers that I took out of my Lord *Preston's* Pocket, and tie the Lead to them, and say that was the Packet, and throw the other over Board. I told him, he took the King's Council to be odd People, and very indifereet, that could not find out such a Thing as that. After this was over, we had a little Interval, and there was a Hamper in the Boat's Stern, and there was some Bottles of Wine taken out, and we drank several times; and by and by we had some Discourse a little further about the same thing, and they pressed me to throw the Packet away; and one time particularly *Mr. Abston*, I remember, said it would be a generous Thing. *Billop*, if you would go along with us, I think you may do as well there as here.

Mr. Serj. Tremain. Whither would he have had you gone with them?

Capt. Billop. He did not name any Place, as I remember.

Mr. Serj. Tremain. What promises did they any of them make you?

Capt. Billop. *Mun Elliot* whisper'd me several times, Dear *Billop* throw the Packet over-Board; what Good would it do you to injure so many honest Gentlemen? And *Mr. Abston* and *Mr. Elliot* said, I had it now in my Power to make my self as great and as rich as I would be.

Mr. Serj. Tremain. What did any of them say about the Tide turning?

Capt. Billop. *Mun Elliot* also said, it was impossible the Current, or the Tide could run long this Way, or always this Way.

Mr. Serj. Thompson. When you had refused this that they desired of you, notwithstanding their Promises, pray tell us how they turned their Discourse into Threatnings.

Capt. Billop. *Elliot* told me, when nothing would prevail, that every Dog had his Day; but I answered, I hoped never to see it your Day: But, however, said I, pray desist from any such Language, for I can't bear it. After that they never ask'd me any thing about it.

Mr. Serj. Thompson. Now tell us what you did with these Gentlemen, and these Papers, afterwards.

Capt. Billop. I brought these Gentlemen up to my Lord *Nottingham's* Office, and delivered the Packet with the Lead fix'd to it, and stood by my Lord *Nottingham* in the Room till he had opened the Papers, except while my Lord *Preston* was examined; and when he opened the Papers I stood by, that I might see him make them up again; and I think I took some of them in my Hand, and he said I might read them; but I was uneasy, and not disposed at that time to read many of them; so I did not read them all.

Mr. Serj. Tremain. They were all by when *Abston* said you would do generously to go along with them, were they not?

Capt. Billop. Yes, they were all in the Boat.

Mr. Serj. Tremain. Did not one of them say to you, I know if Captain *Billop* do serve us, he will do it generously?

Capt. Billop. Yes.

Mr. Serj. Tremain. Who was it?

Capt. Billop. It was *Abston*.

L. Preston. I desire I may ask Captain *Billop* a Question.

L. C. J. Holt. Pray, my Lord, put your Question to the Court, and they will ask it him.

L. Preston. I desire to know, my Lord, where it was I said this to Captain *Billop*, that he would dispose of the Packet.

Capt. Billop. Just after I had first saluted your Lordship, you said you were glad you were fallen into the Hands of a civil Gentleman.

L. Preston. Was it aboard the Boat that I desired you to dispose of the Packet?

Capt. Billop. Yes, and before we came on board the *George* Frigate, when we drank about, upon the opening of the Hamper; it was in the Boat I am very sure, and before we came on Board the *George*.

L. C. J. Holt. My Lord *Preston* said to you, you say, he would do you all the Kindness that lay in his Power, if you would dispose of the Packet; how would he have you dispose of it? What did he mean by it?

Capt. Billop. I don't remember he used any other Word but that, dispose of the Packet.

Mr. Serj. Thompson. But *Abston* and *Elliot* did desire of you a great many times to throw it over Board?

L. Preston. I desire he may be asked this Question. You said you carried these to my Lord *Nottingham*: Did you see them opened?

Capt. Billop. Yes, I did see them opened, and I saw my Lord as he opened them, lay them one by one, and read them over, and put them up again. And I looked upon several of them, while my Lord *Nottingham* was reading others; and

and I stood by the Fire, and I see my Lord make them up, and he tied them with a Piece of Twine, and he clapp'd his Seal upon them, and delivered them to me; and I went immediately and delivered them to my Lord President.

L. Prefson. Were you all the while by, while my Lord *Nottingham* was reading the Papers?

Capt. Billop. Yes, I was by when he opened them, and read them, and staid till he put them up again; and as they came from his Hands, I presently carried them to my Lord President.

L. Prefson. Are you sure, or can you swear that these are the same Papers which were taken on Board the Smack, that you carried from my Lord *Nottingham* to my Lord *Danby*?

Capt. Billop. So many of them as I looked into, I mark'd; and all that I mark'd I can swear to, and no more than them I cannot.

Mr. Serj. Thompson. I think you say all those Papers that you delivered to my Lord *Nottingham*, you saw my Lord *Nottingham* seal up, and all them you carried to my Lord President.

Capt. Billop. Yes, I did so; all that my Lord opened at that Time, were put together again, and his Seal put to them.

L. C. J. Holt. But my Lord asks you, whether you can swear to the particular Papers?

Capt. Billop. What I read I mark'd, and them I can swear to.

L. C. J. Holt. You say you carried all those Papers to my Lord *Nottingham* sealed; after he had opened them, to my Lord President.

Capt. Billop. Yes, my Lord, I did see my Lord *Nottingham* open them: I see him make them up again, and when they were made up, he put his Seal to them, and I carried them to my Lord President.

Juryman. My Lord, I desire Captain *Billop* may be asked one Question.

L. C. J. Holt. Ay, what is it you would ask him?

Juryman. I desire to know whether the Papers were sealed when he took them and brought them to my Lord *Nottingham*?

Capt. Billop. No, they were all tied up together with a Tape, or a Twine, I think with both, very fast together.

Juryman. There was no Seal on them when he took them.

Capt. Billop. No, but there were several Letters within the Packet that were sealed.

L. C. J. Holt. Was not the Outside of the Packet sealed?

Capt. Billop. I don't remember the Outside was sealed: There was a Cover, but as near as I remember, they were Folds of Paper fast tied together.

Mr. Serj. Thompson. You delivered them as you took them, to my Lord *Nottingham*?

Capt. Billop. Yes, I never took them out of my Pocket, after I had taken them from Mr. *Ashton*, till I came to my Lord *Nottingham's* Office, where I delivered them to him.

Mr. Serj. Thompson. Had you ever opened them, or seen them opened, before they came to the Hands of my Lord *Nottingham*?

Capt. Billop. No, indeed.

Mr. Serj. Tremain. Then set up *Johnson*. [*Which was done.*] Pray tell us what you know of this Matter.

Johnson. I was in my Lord *Dunblain's* Barge, and I went down with this Captain *Billop*, and

we were on Board several Vessels; and we light upon a Ketch, where we pressed some Men. We thought it had been only some Seamen that were to be pressed; we did not know of any thing else. When we had rowed down as far as you have heard, we rowed up again, and searched several little Vessels and Smacks that were in the River, when a Fisherman that we had press'd said, that that was the Vessel the Captain enquired after: And then the Captain bid us take some small Arms, and I took a Pistol and went on Board. The Captain read the Protection, and then said, he must look further. When the Captain look'd into one of the Cabins, and took up the Hatches, I saw a great Piece of Roast-Beef, and my Lord *Prefson* by it, and a Mince-Pie, and a Fowl, and we took the Beef out; but my Lord's Man said, he missed his Knife, it lay upon the Bench: And then came my Lord up, and his Man, and Mr. *Elliot*; and when Mr. *Ashton* (the Man with the Pock-holes) came up, he went down again, and pretended to look for his Hat; but when he was down, I see him cram something into his Bosom, and I told the Captain, I had seen him put something in his Bosom; and the Captain took him hold by the Buttons of his Coat, and turned him about, and asked him what he put into his Bosom? He said, Nothing but his Handkerchief; and pulling it out of his Bosom, he shewed it the Captain; but the Captain put his Hand into Mr. *Ashton's* Bosom, and pulled out the Packet.

Mr. Serj. Thompson. You say, you see him put something in his Bosom when he went down. Did you observe whence he took it?

Johnson. It was upon the Gravel, and there were a Couple of Seals, which he afterwards took up lying by; and I believe he took up the Packet and forgot the Seals.

Mr. Serj. Tremain. Pray let us see the Seals.

Mr. Soll. Gen. Your Lordship observes, the Packet was not at first in Mr. *Ashton's* Bosom.

L. C. J. Holt. No, it was not.

Mr. Soll. Gen. But he took it up from the Place where the Seals lay, and put it in his Bosom. Pray in what Place did this Packet and these Seals lie?

Johnson. Upon the Ballast, for they had shov'd away the Board.

Mr. Soll. Gen. Was my Lord *Prefson* upon the Ballast?

Johnson. Yes, my Lord lay almost upon his Back; he was the first that we saw, and he came out first. They were all four lying together there.

Mr. Soll. Gen. Who lay next my Lord *Prefson*?

Johnson. My Lord's Footman; Mr. *Ashton* lay next, and Mr. *Elliot* lay next.

Mr. Soll. Gen. Where were the Seals then?

Johnson. My Lord was the first that I see come up.

Mr. Soll. Gen. But I ask you where the Seals were?

Johnson. The Seals were down upon the Ballast; whether they were my Lord's or no, I cannot tell, or whose they were.

Mr. Serj. Tremain. Now that we will ask Captain *Billop*. Are these the Seals?

Capt. Billop. Yes, these are the Seals this Man gave me.

Johnson. I took them from off the Ballast.

Mr. Serj. Thompson. Did my Lord own these to be his Seals?

Capt. Billop. I did not ask him, that I know of.

Mr. Serj. Thompson. Well, *Johnson*, go on, tell what you know further.

Johnson. After we came to *Long-Reach*, a Gentleman that had a long Perriwig, a black Gentleman, *Mr. Elliot*, I think they call him, had a pair of Whiskers on when he was taken, and he took a Pair of Scissars and cut them both off; and he said, if ever he liv'd, he should remember me, having a Tooth out, because I was so sharp upon him to make him come out: And when we came on Board the *George* Frigate in *Long-Reach*, my Lord's Man came to me, and said, he would give me something to drink, if I would deliver him the Seals.

L. C. J. Holt. Had you any Discourse with my Lord *Preston* himself about them?

Johnson. No, it was his Footman that came to me, and said there was no body there but my self and him: I had them, and he would give me something to drink, if I would deliver them; but I delivered them to *Captain Billop*.

L. Preston. My Lord, may I ask a Question or two of this Witness?

L. C. J. Holt. Yes, my Lord, if they have done with him. What say you, Brother *Thompson*?

Mr. Serj. Thompson. We shall have done with him presently, my Lord. Pray had you any Money given you?

Johnson. No, but my Lord gave the Ship's Company ten Shillings to drink, and one Piece was a Brass Half-Crown.

Mr. Serj. Thompson. What did they say as they went along, as you remember?

Johnson. They had a great deal of Discourse while we rowed. I was at the next Oar to them, but I cannot tell what 'twas.

Mr. Serj. Thompson. Who did discourse?

Johnson. *Ashton*, *Elliot*, and the Captain.

Mr. Serj. Thompson. Cannot you remember what they said, any of them?

Johnson. They did talk together several times; *Elliot* said he was a cold, and came and rowed at the Oar a while; and *Elliot* swore an Oath, says he, they row all as if they were rowing to Prison; but truly I did not much mind their Discourse, I minded my Rowing. There were some Victuals handed to us, which we did eat.

Mr. Serj. Tremain. Did *Elliot* seem to be angry? What did he say?

Johnson. *Elliot* wished that a Thunderbolt might drop into the Boat several times, and sink it; and when we went through Bridge against Tide, he wished that *London-Bridge* might have fallen upon our Heads.

L. Preston. Now I would ask him, if your Lordship please, Did you see *Ashton* take up the Packet?

Johnson. Yes, I did, as it lay by the Seals.

L. Preston. I perceive there seems to be some Strefs laid upon my lying next to *Mr. Ashton*, and Seals lying by the Packet.

L. C. J. Holt. My Lord, there has been no Inference made from that yet by the King's Council.

L. Preston. My Lord, it is in vain to deny we were all together there.

Johnson. You were the first that I see, my Lord.

L. Preston. We were all together; but there is no such Thing to be gathered from thence as they would insinuate; but I suppose 'twould be deduced from hence, as if this Packet, because it lay near these Seals, should be my Packet.

L. C. J. We have not yet heard, my Lord, what Use they will make of it.

L. Preston. But I desire to take Notice of it, my Lord, and I think it is a very hard Presumption, because we were in one Place, and the Seals at a little Distance from the Packet, therefore the Packet must be presumed to be mine; I hope it shall not be presumed against me.

L. C. J. Holt. Since your Lordship mentions it, I will take Notice a little of it too. It is only a circumstantial Evidence that is made use of against you; how far it will weigh, is to be left to the Jury, when all the Evidence is heard. The Packet is found in the Place where your Lordship lay, and by it Seals that belong to you; one is the Seal of your Office, as Secretary of State, the other is your own proper Coat of Arms.

Juryman. With Submission, my Lord, I desire this Witness may be asked this Question, Whether he saw *Captain Billop* take the Packet out of *Ashton's* Bosom?

Johnson. Yes, I did.

Juryman. And whether he saw *Billop* deliver the same Packet to my Lord *Nottingham*?

Johnson. No, I did not.

L. C. J. Holt. You Gentlemen of the Jury, consider this; he was not then by. *Captain Billop* tells you, that very Packet which he took out of *Ashton's* Bosom he carried to my Lord *Nottingham*; and he tells you, my Lord opened it in his Presence, and he is sure he put all the Papers together again, and set his own Seal upon them, and then he took them from my Lord *Nottingham*, and carried them to my Lord President.

Johnson. As soon as I came to *Whitehall*, I was set Sentinel over those three Men that came out of the Smack, and was not admitted into the Room.

Mr. Soll. Gen. Then we must desire my Lord *Nottingham* may be sworn.

[*The Earl of Nottingham sworn.*]

Mr. Serj. Tremain. Where are the Papers?

Earl of Nottingham. *Mr. Bridgman*, I think you have the Papers.

Mr. Soll. Gen. Pray, my Lord, does your Lordship remember *Captain Billop* brought a Bundle of Papers to you, and what became of them? Will your Lordship be pleased to give the Court and the Jury an Account of it?

Earl of Nottingham. My Lord, all that I have to say in this Matter is, *Captain Billop* brought to me a Bundle of Papers tied about with a Packthread, to which was fixed a Piece of Lead, I believe the same Piece that was now produced; at least it was one very like it: He brought also a Signet, which I presume I can know again when I see it.

Mr. Serj. Thompson. Pray shew my Lord the Seals. [*Which was done.*]

Earl of Nottingham. This is the Signet I presume which he brought to me; I am sure he brought just such a one, if not the same. Those Papers, when he delivered them to me, I opened in his Presence, and when I had so done, I read them, and put them up together again, and sealed them with my own Seal, and delivered them to

him back again. What the Papers are, and what he did with them, I suppose he will give you an Account.

L. C. J. Holt. But your Lordship says, the Bundle of Papers he delivered to you, you sealed up, and delivered to him again.

Earl of Nottingham. All those Papers that he brought to me I did seal up, and deliver back to him again.

Mr. Serj. Thompson. Pray, my Lord, were they ever out of Captain *Billop's* Sight while your Lordship had them?

Earl of Nottingham. Not after they were opened. There was a little Paper that was tied to the Bundle, which fell loose upon the taking away the Lead, and I opened that while he was by, and the Bundle lay upon the Table while I examined my Lord *Preston*; and after my Lord *Preston* was gone out, I called in Captain *Billop* (who went out while I examined my Lord) and I opened that great Packet in his Sight, and read the Papers, and he read some of them; and all the Papers in the great Packet, and the little Paper that was stuck in, I delivered, sealed up, to Captain *Billop*.

Mr. Serj. Thompson. Pray, my Lord, were the Letters in the Packet sealed?

Earl of Nottingham. Yes, there were some of them sealed; and all that I received from him I delivered to him, and no more.

L. C. J. Holt. The Gentlemen of the Jury hear what my Lord says.

Earl of Nottingham. The very same, all, and no more, I say.

Mr. Serj. Thompson. Captain *Billop*, when you had them back from my Lord of *Nottingham*, pray to whom did you deliver them?

Capt. Billop. To my Lord President.

Mr. Serj. Tremain. Then we must desire my Lord President would be pleased to be sworn.

[*The Marquess of Carmarthen, Lord President of the Council, was sworn.*]

Mr. Soll. Gen. We must desire the Favour of your Lordship to acquaint the Court when Captain *Billop* came to your Lordship, what he said, and what he brought with him.

L. President. Captain *Billop* did bring me a Bundle of Papers, and he told me he brought them from my Lord of *Nottingham*, and they were seal'd, wrapp'd up with a Packthread, and seal'd with a Seal, which I knew to my Lord's Seal. He delivered them to me my self; and these Papers I kept till I shew'd them the King the next Morning. And after I had shewed them the King, the King delivered them up back to me, having read some of them, and commanded they should be delivered to the Cabinet-Council. A Cabinet-Council was called, and accordingly there I did deliver them, Paper by Paper, and they were all marked by my Lord *Sidney*, and some I think by my Lord *Marlborough*; and so I delivered them all together to my Lord *Sidney*.

Mr. Soll. Gen. Then we desire my Lord *Sidney* would please to be sworn.

[*The Lord Sidney sworn.*]

Mr. Serj. Thompson. Will your Lordship please to acquaint the Court and the Jury, what Papers were delivered to you, and by whom, and where those Papers are?

L. Sidney. The Papers that were delivered by my Lord President, I have kept them, my Lord, ever since. As soon as I had them, I read them,

and mark'd them with a Letter of my own Name, the Letter *H*. I have kept them ever since; only one Morning I gave them to Mr. *Bridgman* to be copied out as soon as he could, and he delivered them me back again, and they have not been out of my Custody since; only the Night before last Night they were sent to Mr. Solicitor to read, and brought immediately to me again.

Mr. Soll. Gen. To whom did your Lordship deliver them to be copied?

L. Sidney. To Mr. *Bridgman*, I tell you.

Mr. Soll. Gen. So that they were never out of your Lordship's Hands till now, but only in Mr. *Bridgman's* Hands?

L. Sidney. No, I kept them in my Pocket ever since, only the Night before last, when they were sent to you.

Mr. Soll. Gen. Did your Lordship mark them before they were delivered to Mr. *Bridgman* to copy?

L. Sidney. Yes, I marked them when I received them.

L. Preston. My Lord Chief Justice, your Lordship does observe that Captain *Billop* swears that they were never out of his Possession till he delivered them to my Lord *Nottingham*; my Lord *Nottingham* says he never opened them, but left the Packet upon the Table while I was examining.

L. C. J. Holt. Pray, my Lord, will you speak a little louder, that I may hear you?

L. Preston. My Lord, I am saying, my Lord *Nottingham* says, that while he was examining me, the Packet lay upon the Table unopened, and were never out of his Eye till he sent them sealed by Captain *Billop*, and so they come to my Lord President, and they were kept by my Lord President; my Lord President says, my Lord *Churchill* saw the Papers, and they were in his Possession.

L. C. J. Holt. My Lord *Preston*, your Lordship does mistake my Lord President: He does not say that they were in my Lord *Marlborough's* Hands; but he did communicate them at the Cabinet-Council, where my Lord *Marlborough* was. He said, indeed, they were in the King's Hands, but he was by all the while.

L. Preston. From that Time they came out of my Lord President's Hands, I know not what may be put in, nor what taken out. These Papers were not sealed, as I hear of, afterwards; and passing through so many Hands, no body knows what may be done to them. Truly, I think it very hard to swear, after all this, that these are the Papers that were on Board the Smack.

L. C. J. Pollexfen. Will you please to ask any Questions to satisfy your self of any of these noble Lords?

L. C. J. Holt. My Lord, I'll put your Lordship right.

L. Preston. With all my Heart, my Lord.

L. C. J. Holt. Your Lordship hears what Captain *Billop* says. He says, he brought them as he took them out of *Ashton's* Bosom, to my Lord *Nottingham*: My Lord *Nottingham* opened them before him, and did deliver them to him again, having made them up: My Lord *Nottingham* says, the same Papers Captain *Billop* delivered him, he delivered back again, all, and no more; and *Billop* says, he carried them to my Lord President; my Lord President shewed them to the King, and afterwards carried them

to the Cabinet-Council; there the same Papers were opened, and there they were marked, some by my Lord *Marlborough*, and all by my Lord *Sidney*.

L. Preston. Your Lordship will please to observe this: My Lord *Nottingham* was pleased to say, he opened no Papers till I was called in and examined, and then Captain *Billop* withdrew. Now, my Lord, I don't know whether the Captain can say that these were the very same Papers that he took in the Smack?

L. C. J. Holt. Captain *Billop* says, that he saw the Papers opened by my Lord *Nottingham*.

Capt. Billop. My Lord *Preston* observes a Thing that is very right, my Lord, that after I had delivered the Packet to my Lord *Nottingham*, while my Lord was examined, I withdrew; but my Lord *Nottingham* has given your Lordship an Account, that he had not opened the Packet then, but only the small Letter or Note that lay apart from the rest: But, my Lord, the Packet was in the same Condition when I came in again, upon the Table, as when I left it: My Lord *Nottingham*, as I believe, had not opened that Packet; for I found it just as I left it, upon the Table.

L. C. J. Pollexfen. My Lord *Nottingham* says, he delivered back to Captain *Billop* all the Papers that he received from him: They were never out of my Lord *Nottingham's* Presence; nor were they opened, as my Lord says, but in *Billop's* Presence, nor opened till after my Lord's Examination, except the little Paper that was stuck in, and was loose upon taking away the Lead.

Mr. Soll. Gen. Pray swear Mr. *Bridgman*.

[Which was done.]

Mr. Serj. Thompson. Pray when you receiv'd the Bundle of Papers from my Lord *Sidney*, to whom were they carried, and to whom were they delivered?

Mr. Bridgman. My Lord *Sidney* gave me these Papers to have them copied, and I copied some of them with my own Hand, the others I delivered to Mr. *Poultney*, and were copied in my Presence in the Office: They were never out of my Sight; and as soon as ever they were copied, I carried them back to my Lord *Sidney*, and delivered them to him my self.

L. Preston. Were any of them taken from you, Sir?

Mr. Bridgman. My Lord, I say I copied some of them my self, the others were copied in my Sight and Presence, in the Office.

Mr. Serj. Thompson. Pray, Sir, let me ask you one Question; Were the same Papers that were delivered to you by my Lord *Sidney*, re-delivered back again and unaltered?

Mr. Bridgman. I am very sure I gave them all, the same back again, because I read them every one before they were copied.

Mr. Serj. Thompson. Did you observe my Lord *Sidney* had mark'd them before you had them?

Mr. Bridgman. Yes, they were all marked before I had them.

L. Preston. My Lord, I desire to ask Mr. *Bridgman* this Question: Pray, Sir, were they sealed up when you sent them to my Lord *Sidney*?

Mr. Bridgman. No, they were not sealed, they were tied up; but about the Seals I remember when I was in my Lord *Sidney's* Office —

L. C. J. Holt. The Question is ask'd you, whether you carried them back sealed or no?

Mr. Bridgman. No, they were not sealed when they were delivered to me; but I can safely swear they were never out of my Custody till I delivered them back again; for what I did not copy my self, were copied in my Sight.

Mr. Serj. Thompson. But your Lordship is pleased to observe they were all mark'd by my Lord *Sidney* before they were delivered unto him.

Mr. Soll. Gen. Then, my Lord, we have done with our living Witnesses for the present, and will read the Papers.

Mr. Bridgman. One thing, my Lord, I do remember; as soon as my Lord *Sidney* received the Papers back again, he looked over every one of them, and read them, and looked upon the Marks.

L. Preston. If your Lordship please, I would beg the Favour to ask one Question of my Lord *Sidney*: Pray, my Lord, did your Lordship number the Papers?

L. Sidney. No, my Lord, I did not number them.

L. Preston. But your Lordship says upon your Oath and Honour, that those are the very Marks upon them that your Lordship set there?

Mr. Soll. Gen. We are indeed to produce them, and then we shall ask that particular Question.

L. C. J. Holt. My Lord *Sidney* will see them, and then he will answer your Lordship's Question.

L. C. J. Pollexfen. My Lord *Preston*, my Lord *Nottingham* is here a Witness, and his Occasions call him away, have you a Mind to ask him any more Questions?

L. Preston. No, my Lord.

L. C. J. Pollexfen. What say you, Gentlemen, have you any farther Occasion for my Lord *Nottingham*?

Mr. Soll. Gen. My Lord, we must beg his Lordship's Patience, we do not know what Occasion there may be: I desire this Paper may be shewn to my Lord *Sidney*. [Which was done.]

L. Sidney. That is my Mark; that Paper I know is one of the Papers.

Mr. Serj. Tremain. Here are two of them; one of these is the Copy of the other: Both were taken in the same Packet; the one is fairer written than the other.

Mr. Soll. Gen. Gentlemen, the Paper we are now offering to you is that which I mentioned before; it is the Result of a Conference: There were two of them taken in this Bundle; the one of them seems to be the first Draught, the other is a Copy more fairly written; but I think they are both in Effect the same: However, they were both taken in the same Packet, and you shall hear them read.

L. Preston. My Lord, I desire that before it be read it may be shewn to Captain *Billop*, to know whether it be the very Paper that he took.

L. C. J. Holt. Ay, let Captain *Billop* look upon it.

Capt. Billop. My Lord, I do not remember that Paper.

L. Preston. Your Lordship observes that Captain *Billop* cannot swear that this was one of the Papers that he took.

Capt. Billop. All the Papers that I looked into I marked, and all the Papers that I mark'd I can swear to, and no others.

L. C. J. Pollexfen. Did you look into all the Papers?

Capt. Billop. No, I did not.

L. C. J. Holt. But he swears all that he brought to my Lord *Nottingham* were sealed up by my Lord *Nottingham*, and carried by him from my Lord *Nottingham* to my Lord President; and my Lord President swears he delivered them all to my Lord *Sidney*; and my Lord *Sidney* swears this is one of those Papers.

L. Preston. Certainly, my Lord's swearing to a Paper in this manner cannot be a good Proof. My Circumstances, my Lord, are very hard, and your Lordship, I have heard, ought to be of Council for me in any Point of Law; and, my Lord, I humbly desire to know, whether this can be a Proof of a Paper, that he says was taken in a Packet, and yet he can't swear it?

L. C. J. Holt. My Lord, he does not swear that this was one of the Papers; but the Question is, Whether all these Witnesses together do not prove it? You see how the Evidence runs: All the Papers taken were delivered to my Lord *Nottingham*; all that were delivered to him were sent back by him sealed, and delivered to my Lord President; my Lord President brought them all to the Cabinet-Council, and delivered them to my Lord *Sidney*, and this my Lord *Sidney* says is one of those Papers.

L. Preston. My Lord, I have a very great Honour for that noble Lord, and I am sure, if he had not been upon his Oath, he would have said that which was Truth; but in this Condition that I am in, I must crave Leave to observe every thing that I can for my self; and I cannot but say these Papers are very oddly managed, and delivered up and down from one Hand to another; I desire your Lordship would please to observe, that these Papers are here brought after a very odd manner.

Mr. Serj. Thompson. My Lord *Preston*, you are not to sum up the Evidence to the Jury till we have done, nor to make your Observations.

L. C. J. Holt. Brother, my Lord opposes the reading of the Paper, as not well proved.

L. Preston. I do so, my Lord, and I hope your Lordship will advise me whether you do think it a sufficient Evidence and Proof of these Papers. They are Papers that have been copied out, and sent unsealed from Hand to Hand by some Messengers from one to another, and which now appear to be unsealed, and some of which he that took them cannot swear to.

Juryman. My Lord, we cannot hear one Word that is said.

L. Preston. That is my Misfortune; but I am urging to my Lords the Judges, whether this Paper ought to be read; and I desire your Lordship to advise me, whether it can be admitted as Evidence, being thus oddly proved.

L. C. J. Holt. It is Evidence surely, my Lord; but the Question is, what Credit the Jury will give to this Evidence; the Jury are Judges of that: But certainly it is Evidence to have the Paper read.

L. Preston. I doubt not but your Lordship will do me Justice, and I readily acquiesce in what your Lordships do appoint.

L. C. J. Pollexfen. Pray, my Lord, see how the Evidence stands about this Matter. First, it is sworn by *Billop*, that he took a Bundle of Papers, though 'tis true, the Particulars he does not undertake to swear to. Well, what is next? Why, says he, all that was in that Bundle I carried to my Lord *Nottingham*, and I received from my

Lord *Nottingham* all that I carried to him. What says my Lord *Nottingham*? He swears I delivered back again to Captain *Billop* the same Papers he delivered to me, and all, and no more, sealed up with my Seal. When he has it sealed up, what does he do with it? why, he carries it to my Lord President. Is there any Possibility of creeping out of this Evidence? Well, he delivers them to my Lord *Sidney*, and my Lord *Sidney* says this is one of those Papers. Can there be a plainer Evidence than this? when he says, all he had he carried to my Lord *Nottingham*, and my Lord *Nottingham* swears, all he did receive he sent back, sealed by him, to my Lord President; and my Lord President swears, all he received, so sealed, he gave to my Lord *Sidney*; and my Lord *Sidney* swears this is one of those Papers.

L. Preston. But your Lordship will please to observe they were carried to the King, and they were in the Hands of my Lord *Marlborough*.

L. C. J. Holt. No, my Lord, not out of the Sight of my Lord President. My Lord President says my Lord *Marlborough* marked some of them, but they were delivered to my Lord *Sidney*; and my Lord *Sidney* does say they are the same Papers that he had from my Lord President; and my Lord President says, they are the same that were brought him by Captain *Billop* from my Lord *Nottingham*; and my Lord *Nottingham* swears he sealed them, the same Papers, all, and no more than he received from Captain *Billop*.

L. C. Baron. Your Lordship should observe where the Defect of the Proof is, and then it may be supplied; for truly, put it all together, I cannot see how there could be a plainer Proof given.

L. Preston. My Lord, I desire to be heard as to this: My Lord President was pleased to say, that some of them were delivered to the King.

L. C. J. Holt. No, they were shewn to the King, but my Lord President was by all the while that the King did read them.

L. Preston. My Lord, where a Man's Life lies at Stake, and all that is dear to him, your Lordship will certainly allow him to make what Observations he can for himself.

L. C. J. Holt. Ay, in God's Name, by all Means: You shall have all the Liberty you can desire.

Mr. Soll. Gen. My Lord, we desire my Lord President will be pleased to look upon those Papers. [*Which was done.*]

L. President. This is one of the Papers that I received from Captain *Billop*, and which I shewed to the King, and which I brought to the Cabinet-Council; and this is another of the Papers.

L. Preston. Pray, my Lord, was your Lordship by when his Majesty read those Letters?

L. President. Yes, my Lord, I was.

L. Preston. My Lord, I ask it for this End, to know whether they were out of your Lordship's Sight.

L. President. No, never; I was in the King's Cabinet; his Majesty read some of them, and then put them up again, and gave them me, and I delivered them at the Cabinet-Council to my Lord *Sidney*.

Mr. Soll. Gen. My Lord, we desire this Paper may be read.

L. C. J. Holt. Read it.

Clerk of the Peace reads.

The Result of a Conference between some Lords and Gentlemen, both Tories and Whigs, in which it was undertaken to prove the Possibility and Method of restoring by a Fr. Power, without endangering the Protestant Religion, and Civil Administration, according to the Laws of this Kingdom.

“ 1. **F** Must either oblige or conquer us : If
“ the last, he will find few Helps here ;
“ but a bloodier Resistance than ever the *Romans*,
“ *Saxons*, or *Normans* found : It being incredible
“ how unanimous and obstinate that very Thought
“ renders the People ; so that it may make us a
“ Heap of Ruin, but no Nation that can ever help
“ or import anything to *F*.

“ 2. If *K. L.* desires to oblige us, and make the
“ Work easy, that he may be at Leisure to ply the
“ Empire or *Italy*, or to have an advantageous
“ Peace, he must take off the frightful Character
“ we have of him, and shew us he has no such
“ Design as returning our offended *K.* a Conqueror
“ upon us, but that he can, and will be our
“ Friend and Mediator ; upon which Terms he
“ will find that many Lords and Gentlemen will
“ speedily shew themselves to his Satisfaction ;
“ especially if he makes Halte, and loses no ap-
“ proaching Opportunity.

“ 3. If he incline to this sort of Sense, he must
“ over-rule the Bigotry of *St. G.* and dispose their
“ Minds to think of those Methods that are more
“ likely to gain the Nation ; for there is one silly
“ Thing or other daily done there, that comes to
“ our Notice here, which prolongs what they so
“ passionately desire. The Methods thought upon
“ are these :

“ *First*, To prevent dangerous and foolish In-
“ telligence, by forbidding all in that Court to
“ write any News hither, and that *K. J.* only
“ have his Correspondence by whom to hear from,
“ and speak to People here ; since Letters so often
“ miscarry, and are filled with nothing but what
“ we should not hear ; and what we have are Ar-
“ guments for the most Part against the *K*'s Re-
“ storation.

“ *Secondly*, Since there is a great Body of Pro-
“ testants that never deserted, and that many
“ Thousands are returning, and that they are the
“ natural Weight and Power of these Kingdoms,
“ by having the Heads, Hands and Wealth of their
“ Side, to the Odds and Advantage of at least
“ two hundred Protestants to one Catholick ;
“ the *K.* may think of nothing short of a Prote-
“ stant Administration, nor of nothing more for
“ the Catholicks than a legal Liberty of Consci-
“ ence ; for much e mutt is against all other No-
“ tions, to which all private Passions, and artifi-
“ cial Frames in Government, must yield or break.
“ He may reign a Catholick in Devotion, but
“ he must reign a Protestant in Government.
“ *Cromwel* could not, yet on a broader Bottom,
“ with a victorious Army, subsist or keep what
“ he had got.

“ *Thirdly*, He must give us a Model of this at
“ *St. G.* by preferring the Protestants that are
“ with him above the Catholicks ; one being Loy-
“ al upon less Ties of Interest ; and to tell the
“ Nation here what they are to hope for when he
“ comes.

“ *Fourthly*, He must give Encouragement to
“ Lords and Gentlemen here to come to him, at
“ least Seven or Nine for a standing Council,

“ which will make us here think he is in some
“ Degree ours again, and that we have a Relation
“ to him, and some Interest and Share in him, by
“ the Men of Quality of our own Religion that
“ are with him. This will incomparably facili-
“ tate the Matter here, nor will they, when they
“ come, come empty, and in their own Names,
“ which is still better, and will be more satisfacto-
“ ry there.

“ *Fifthly*, To induce this, *English* Protestants
“ should be encourag'd by an Edict of Liberty
“ from the *K. of F.* to have Chapels at their own
“ Coſts, in which to worship God after their re-
“ spective Ways ; by which that *K.* will make us
“ reflect upon his Conduct towards his *Hugonots*,
“ rather to flow from the Hazard he thought
“ himself in by their Antimon. and resisting Prin-
“ ciples, than a Desire of Persecution.

“ *Lastly*, All other requisite Measures depend-
“ ing upon the Acceptance this finds, an Answer
“ hereunto is impatiently desired by those that
“ have discoursed the *K*'s Business to this Matur-
“ ity. So ended with an unanimous Consent,
“ both *Tories* and *Whigs* upon this Occasion, that
“ are in a Way of closing in his Interest.

L. Preston. I can very safely swear, my Lord,
that I never saw that Paper in my Life.

L. C. J. Holt. Come, go on with your Evi-
dence.

Mr. Soll. Gen. This is another Paper of the same,
but the Words that are written short in that, are
written at Length in this.

[*The Paper was read accordingly, and in the first
Blank there was written K. J. in the first Pa-
ragraph (France) twice, in the third Para-
graph (St. Germain) in the fifth (Mathemat.
for Much e mutt) the rest are obvious, and
need not to be supplied.*]

Mr. Soll. Gen. Pray shew my Lord *Sidney* that
Paper. What says your Lordship to it ?

L. Sidney. This is one of the Papers that I
marked, and that I received from my Lord Pre-
sident.

Mr. Soll. Gen. Pray will my Lord President
be pleased to give himself the Trouble to cast
his Eye upon that, and see if that be one of the
Papers.

L. President. My Lord, I remember it well, it
is one of the Papers I received from *Capt. Billop*.

Mr. Serj. Tremain. This Paper is what *Mr. Sol-
licitor* mention'd as Heads of a Declaration.

L. Preston. My Lord, I think it necessary to
offer one Thing to your Lordships before it be read.
I desire *Captain Billop* should swear it to be one of
his Papers.

Mr. Soll. Gen. If your Lordship pleases, you ob-
serve what has been done already. My Lord Pre-
sident says 'tis one of those Papers that was sent
him by my Lord *Nottingham* ; and my Lord *Sidney*
has sworn it is one of the Papers he had from my
Lord President.

L. Preston. I shall not give your Lordship any
more Trouble than needs ; I only offer it to your
Lordship : I wave it.

L. C. J. Holt. There is Evidence enough to
have the Paper read.

Clerk of the Peace reads,
“ That the King will return with a Design of
“ making an entire Conquest of his People, is
fo

“ so ridiculous as well as difficult, that it needs
 “ not be spoken to.

“ That the King’s Declaration be worded in
 “ general Terms, That he will govern by the
 “ Laws; that they shall be the Rule of his A&ti-
 “ ons; that he will endeavour to settle Liberty of
 “ Conscience by Law; that whatsoever Things
 “ were formerly done by him, which occasioned
 “ Jealousies in the Minds of his People, shall be
 “ left to the Determination of a Parliament, to
 “ be formally and regularly called as soon as is
 “ possible.

“ That he has given sufficient Evidence of his
 “ Unwillingness to bring an Army of Strangers in-
 “ to his Kingdom, by refusing the Succours of the
 “ King of France offered him, and which were
 “ even ready to be embarked upon the first No-
 “ tice of the P. of Orange’s intended Invasion.

“ That he brings with him such an Army only
 “ as is necessary for his own Defence, and for the
 “ Security of such of his loyal Subjects as shall
 “ resort to him; that he will dismiss them as soon
 “ as he shall have rid the Nation of those Foreign-
 “ ers who have invaded it, and trampled upon the
 “ Laws and Liberties of his People.

“ The King’s large exercising his Dispensing
 “ Power gave the great Alarm to the People,
 “ and contributed most of all toward the general
 “ Defection. Yet when that Power came to be
 “ debated in the last Convention, there appeared
 “ so many Difficulties in the limiting of it (every
 “ body, even the present Judges believing it ne-
 “ cessary, that a dispensing Power should be in
 “ the K.) that it was let fall, and that Point re-
 “ mains as it was. And without mentioning
 “ that, or any other Particular, the K. can be in
 “ no Danger by leaving all things which have
 “ been the Occasion of Jealousies, to the Determi-
 “ nation of Parliament, where, besides the King’s
 “ professed Friends and Servants, there will not
 “ want others who will be glad of Opportunity
 “ to ingratiate themselves.

L. C. J. Pollexfen. Gentlemen of the Jury, if
 you desire any thing to be read again, or any thing
 doubtful in it should be explain’d, tell us, and it
 shall be done.

Juryman. No, my Lord, there is no Occasi-
 on for that. I believe we apprehend these three
 Papers that have been read.

L. Preston. My Lord, it is necessary the Gen-
 tlemen of the Jury should be satisfied in this
 Point.

L. C. J. Pollexfen. Ay, in any Point; and if
 they desire any Scruple should be cleared, the Court
 will do it for them.

Juryman. My Lord, I desire to know whether
 Captain Billop signed that Paper or no.

L. C. J. Holt. No, he did not sign half of them;
 but unless it be proved, you ought to take it for
 granted that it is not signed by him.

L. Preston. My Lord, I think it fit the Jury
 should be satisfied in any Scruple they raise.

L. C. J. Holt. They asked this Question, Whe-
 ther Captain Billop did sign the Paper? And I
 told them Captain Billop did not say so; and
 therefore they are to take it for granted, that he
 did not.

Juryman. My Lord, we take this last Paper that
 was read, to be a Paper that was delivered in the
 Bundle taken from Mr. Ashton to my Lord Notting-
 ham, but not signed by Captain Billop.

L. C. J. Pollexfen. Then you take it right.

Mr. Soll. Gen. Then the next Paper that we pro-
 duce is a List of the English Fleet, that these Gen-
 tlemen were carrying over into France.

L. Preston. That is printed, and to be found in
 every Coffee-House.

Mr. Serj. Tremain. Shew that Paper to Captain
 Billop. [Which was done.] Can you take it
 upon your Oath, Captain, that that Paper was in
 the Packet that was taken in Mr. Ashton’s Bosom?

Capt. Billop. That Paper I have marked, and
 that Paper I wear was in the Packet I took away
 from Mr. Ashton on Board the Smack.

L. C. J. Holt. You are sure of it.

Capt. Billop. Yes, my Lord.

L. C. J. Holt. Then read it.

Clerk of the Peace reads.

	S	H	I	P	S.
Rates.					
Ships.	8				
In Repair.		5			
Not.			3		
Building.				1	
1	8	5	3		
2	12	11	1		
3	35	34	1		
4	38	34	4		4
5	14	14			1
6	9	9			
Fireships	25	25			8
Bomb- Vessels }	1	1			8
Ketches	1	1			
	143	134	9		21

Brought in by Admiral Ruffel to the House of Com-
 mons, December the 24th, 90. the Fleet,
 whereof 60 Dutch.

Memorandum, The new Ships building, are ex-
 pected will be ready to be launched by the End
 of March.

Mr. Serj. Tremain. Pray shew this Paper to Cap-
 tain Billop. [Which was done.] Pray was that
 Paper there among the others that were taken with
 these Gentlemen?

Capt. Billop. Yes, it was.

Mr. Soll. Gen. Can you take it upon your Oath,
 that that Paper was in the Packet that was in
 Mr. Ashton’s Bosom?

Capt. Billop. Yes, my Lord, I can.

Mr. Serj. Tremain. Pray shew him that Paper
 too. [Which was done.]

Mr. Soll. Gen. And can you take upon you to
 say, that that was one of the Papers in the
 Packet?

Capt. Billop. Yes, it was.

Mr. Soll. Gen. My Lord, we desire these may
 be read.

Clerk of the Peace reads. New-Year’s Eve, and it
 is directed for Mr. Redding.

S I R,

“ T H O U G H the Bearer of this will do us
 “ the Justice to assure you, we are as full of
 “ Duty, as unfeignedly and unconcernedly yours,
 “ as your self could wish; yet this Gentleman
 “ has undertaken.— You will forgive the Pre-
 “ sumption, if I do my self the Honour to give
 “ you this fresh Assurance in a few Words, which
 “ I hope we do by our Accounts. I shall omit no
 “ Occasions, not neglecting the least, and making
 “ zealous Wishes for the greatest, to shew our
 “ selves such as we ought to be.

“ Sir, I speak in the Plural, because I write
 “ my elder Brother’s Sentiments as well as my
 “ own, and the rest of the Family, though less
 “ sen’d in Number; yet if we are not mightily
 “ out in our Accounts, we are growing in our
 “ Interest, that is in yours. He that delivers
 “ this, will, I hope, entirely to your Satisfaction,
 “ represent us, and me in particular, as with all
 “ the Devotion imaginable, and unchangeable
 “ Affection.

Yours, God grant the happiest New-Year.

Mr. Serj. Tremain. Read the other Paper.

Clerk of the Peace. This is dated Decemb. 31.
 1690. “ I must not let this Bearer depart, Madam,
 “ without assuring you —

Mr. Soll. Gen. Hold, Sir, don’t read that yet.
 Here, shew this Paper to Captain *Billop*. [*Which
 was done.*] What say you, Captain *Billop*? Is
 that one of the Papers taken from Mr. *Astion*?

Capt. Billop. Yes, this is one that I read, and
 marked.

Mr. Soll. Gen. Then read it.

Clerk of the Peace reads. This is directed for
Mrs. Redding.

“ **A**S ’tis impossible for me to express that
 “ extraordinary great Satisfaction it gave
 “ me this Time Twelve-month, when I had the
 “ Honour to receive that Mark of your Favour
 “ and Goodness under your own Hand; so I
 “ have lived in some Pain for an Opportunity to
 “ write you my humblest Acknowledgments and
 “ truest Duty, from which, by the Grace of
 “ God, I am no more capable of swerving, than
 “ of renouncing my Hopes of Heaven: I say
 “ this in Behalf of my elder Brother, and the
 “ rest of my nearest Relations, as well as for
 “ my self: You may entirely depend upon us,
 “ not only for a constant Adherence to so well
 “ chosen a Principle, but for our utmost Activity
 “ to promote your Interest, which are insepa-
 “ rable from our own. I need come to no Par-
 “ ticulars by this Bearer, who can, and will tell
 “ our whole Heart; and I wish you could see
 “ them, how sincerely they are devoted to your
 “ Service. God grant you a most happy New-
 “ Year, and many, very many, and very happy.
 “ Our young Master hath all our best Wishes;
 “ he daily gains more Friends, and we get Ground
 “ of his Adversaries.

New-Year’s-Eve.

Mr. Soll. Gen. Now read your other Paper of
 the 31st of December, 1690.

Clerk of the Peace reads. December 31. 1690.

“ I Must not let this Bearer depart, Madam,
 “ without assuring you of my best Respects.
 “ I have written by him to a Friend of yours,
 “ but depend upon you to give my Note Credit.
 “ Though my Creditors were no Friends to
 “ the Match which has been so long in Treaty;
 “ for your Relations have been very hard upon
 “ me this last Summer; yet as soon as I could go
 “ safely Abroad, I pursued the Business, and do
 “ beg you to believe, that no Endeavours of mine
 “ shall be wanting to perfect the Settlement.
 “ You once put me in Hopes of seeing you be-
 “ fore this *Christmas*: Your Friends are sorry for
 “ the Disappointment, pray lose no more Time
 “ than is of absolute Necessity. The Bearer will

“ tell you all Things may be now easily settled,
 “ if the right Way be taken. I long to hear
 “ how your young Daughter does; she will find
 “ many Friends, and I hope her Portion will be
 “ well secured. God send you a happy New-
 “ Year, and that I may be merry with you before
 “ it be far spent; and I beseech you keep me in the
 “ good Opinion of your Friend. I will always
 “ make good what I promised to you. [*It is di-
 rected for Mrs. Charlton.*]

Juryman. My Lord, I desire to know who
 that is directed to.

Clerk of the Peace. ’Tis directed to Mrs. *Charlton*.

Mr. Serj. Tremain. Shew Captain *Billop* those
 two Papers. [*Which was done*] What say you
 to them, Captain?

Capt. Billop. My Mark is on the Outside, but
 there is nothing written in that, I believe it is taken
 off from the inner Paper.

L. Preston. Pray my Lord is this any Proof? I
 beseech you for God’s sake to have a Regard to a
 Man’s Life.

Mr. Soll. Gen. Pray shew the Paper to my Lord
Sidney. [*Which was done.*]

L. Sidney. This was one of the Papers I re-
 ceived from my Lord President.

Mr. Soll. Gen. Then we must beg my Lord Pre-
 sident would be pleased to look on it. [*Which
 was done.*]

L. President. This was one of the Papers brought
 me by Captain *Billop* from my Lord *Nottingham*,
 in that Bundle.

L. Preston. Captain *Billop* does not know the
 Paper, though his Mark be to it.

L. C. J. Pollexfen. It is not indeed very material
 whether he does or no, because he did not read all;
 but I would observe, that ’tis sworn by Lord
Sidney, that this was delivered to him by my Lord
 President, and sworn by my Lord President, that
 he had it in that Bundle from Captain *Billop*.

L. Preston. But, my Lord, it does shew that
 there may be some Alteration in the Papers; be-
 cause he having mark’d it, and marking none but
 what he read, he does not now own that to be the
 Paper.

Mr. Soll. Gen. Pray will your Lordship be pleased
 to take it as it is. These are two Papers; the one
 is only the Cover, the other is the Writing: Cap-
 tain *Billop* has only mark’d the Cover, and not the
 Writing; but my Lord *Sidney* he has marked the
 Paper it self, as delivered him by my Lord Pre-
 sident, and my Lord President has given you an
 Account, that it is one of the Papers he received in
 that Bundle from Captain *Billop*.

L. Preston. I only mark, that there may be Al-
 terations made in these Papers since they were
 taken.

Mr. Serj. Tremain. Pray read it.

Clerk of the Peace reads. December 31. 1690.
 It is directed to Mr. *Jackson*.

“ **T**HE Bearer can give you so full an Account
 “ of all things relating to your Estate here,
 “ that I need not have troubled you at this Time,
 “ but that I am desirous to lay hold of any Op-
 “ portunity I think safe to assure you of my Ser-
 “ vice, and that I will never quit your Interest,
 “ whatever the rest of the Freeholders do. Your
 “ Adversary has been so hard to his Neighbours,
 “ that he has extremely disoblig’d all the old
 “ Tenants, and a little Matter would redeem the
 “ whole Estate, if you would appear in *Westmin-
 ster*

“ *per Hall* your self; the best Council have a good
 “ Opinion of your Title, and will zealously pur-
 “ sue your Instructions: I only beg you would
 “ hasten them to us, and that you will appear your
 “ self as soon as is possible: No Time should be lost,
 “ and the Cause may be brought to a final Hearing
 “ before the End of *Easter* Term, if it be well
 “ solicited. I heartily wish you a happy New
 “ Year, and beg you to tell Mr. *Chariton*, that I
 “ long to know wherein I may serve him; and
 “ that I will follow his Directions to the utmost,
 “ while I live. God keep you and yours.

L. Preston. Pray, Sir, to whom is that Letter directed?

Clerk of the Peace. To Mr. *Jackson*, my Lord.

Mr. Serj. Tremain. Pray shew that Paper to my Lord *Sidney*. [*Which was done.*]

L. Sidney. This is one of the Papers I received from my Lord President.

[*Then it was shewn to my Lord President.*]

L. President. This is one of the same Papers that I received in the Bundle from Captain *Billog*.

L. C. J. Holt. Read it.

Clerk of the Peace reads. December the 31st.

“ THE Interruption of the former Corres-
 “ pondency had a very ill Effect many ways;
 “ but for that Reason, no Opportunity ought now
 “ to be lost, and I hope this will prove a happy
 “ one.

“ In Trade, as well as in Government, Schemes
 “ must be laid; for there is no living from Hand
 “ to Mouth any more in Commerce than in Poli-
 “ ticks: Lay therefore your Designs probably,
 “ and pursue them diligently, and with Vigour;
 “ though it be a hazardous Time, yet by ventur-
 “ ing boldly, where venturing is advisable, it
 “ often returns great Profit.

“ There is nothing more to be said, but to give
 “ the Bearer fit and full Seasons to tell what he
 “ knows, both as to Goods fit for our Market, and
 “ when and where to be sent. The Sea will quick-
 “ ly grow so troublesome, that unless you dispatch
 “ what you intend for us, you will lose a great
 “ Opportunity of Advantage. I hope the Ac-
 “ count he has to give of our Negotiations here
 “ with the Merchants that deal with us, especi-
 “ ally those that have lately brought us their Cu-
 “ stom, will both encourage a larger Trade, and
 “ excite the utmost Diligence. I will say nothing
 “ of my self, it shall be enough that I can live in
 “ the good Opinion of one I bear so great a Re-
 “ verence and Affection for; but for this honest
 “ Factor I must own, I can hardly say enough.
 “ Truth and Boldness are excellent Qualities in a
 “ Servant, and he has shewn both, as Occasion
 “ has required him to shew them.

“ I have but one Word to add, and pray take
 “ it as the truest Mark of unalterable Respect:
 “ Choose well, but have to do but with a few;
 “ for a Multitude may give, but can never keep
 “ Council.

“ I shall, with more Impatience than becomes
 “ me, wait the Result of this, and it will be a
 “ great Mark of Goodness to let us have it the
 “ best and safest Way.

“ Once more; let not the Season spend unprofita-
 “ bly, for a more likely one can hardly come
 “ than between this and the 1st of *March*. Inter-
 “ pret this, I pray, as no private Interest of my
 “ now, or partial Motion of any other Person.
 “ It is my Sense, my Duty, and my Friendship,

“ which will not let me prevaricate, nor suffer those
 “ I love and honour to lose so happy and pressing
 “ an Occasion of Advantage. With the best
 “ Wishes I close up this, and am, &c.

L. Preston. Pray, my Lord, who is that Paper directed to?

L. C. J. Pollexfen. This is directed to no body at all.

Mr. Soll. Gen. Shew that Paper to my Lord *Sidney*. [*Which was done.*]

L. Sidney. This was one of the Papers I had from my Lord President.

[*Then it was shewn to my Lord President.*]

L. President. This is one of the Papers I had from Captain *Billog*.

L. C. J. Holt. Read it.

Clerk of the Peace reads. This is dated *December* 31, but is not directed to any body at all.

“ IT is a Presumption incident to those that
 “ are any where upon the Spot, to think that
 “ they know better than those that are not, what
 “ is fittest to be done in any Occurrence. This
 “ makes me say, that now is the Time to make
 “ large Advantages by Trading, the Sea being
 “ freer than two Months past, or we can hope
 “ it will be two Months hence. This Gentleman
 “ is well instructed in our Markets, and what
 “ the Goods are we want, and when and where
 “ they should be sent. It is most earnestly desired
 “ that this happy Opportunity may not be lost,
 “ especially by the late Undertakers, and I would
 “ not for much, they should receive the least Dis-
 “ gust. They are somewhat positive in their
 “ Terms; but they also say, they will be good and
 “ constant Customers; and I have more than once
 “ seen the Mischief of over-rating and over-staying
 “ the Market. Opportunities are to be used, they
 “ cannot be given by Men.

“ The Bearer needs nothing from me to recom-
 “ mend him, but he is deserving in our Opini-
 “ on here, and many will take their Measures by
 “ the Usage he finds there; and indeed the pres-
 “ sing Posture of our Trading Affairs will not
 “ permit more Experiments. If the several Par-
 “ cels arrive not, that have been promised, be-
 “ fore the 10th of *March* at farthest (especially
 “ the *Copper* and *Linnen*, of which the Bearer
 “ will be more particular) I am satisfied we shall
 “ lose this Summer's Profit. I am the more pres-
 “ sing, because I am well assured of what I
 “ write; and if ever I judged right, it is upon
 “ this Occasion.

“ I have said nothing of another Gentleman
 “ that takes this Opportunity to see those Parts;
 “ but he has shewn a Zeal and a Sincerity in this
 “ Affair equal to most. *Jo.* is not yet gone, by a
 “ Misfortune, but he will follow with a good
 “ Postscript in this Affair. Of my self I will say
 “ nothing; I hope I need not, for no body with-
 “ out Vanity can be more sincerely and affectionate-
 “ ly a Friend and Servant to the Company than
 “ my self. I writ at large Yesterday, and cannot
 “ write what the Hand that gives this can say;
 “ and therefore will write no more, but that with
 “ the greatest Respect I am, &c.

Mr. Serj. Tremain. Pray shew this Paper to my Lord *Sidney*. [*Which was done.*]

L. Sidney. This is one of those Papers I received from my Lord President.

[*Then it was shewn to the Lord President.*]

L. President.

L. President. This was one of the Papers in the Bundle I received from Captain *Billop*.

L. C. J. Holt. Then read it.
Clerk of the Peace reads.

S I R,

I Vow to you, I do not repine at having lost all for your Sake, which I got by your Favour; but it grieves me extremely that there is not that left which can secure me from being troublesome to you; for that is the thing in the World I would not be. I have told my Lord my Condition. What I desire of you he thinks very moderate, I hope you will. Pray, Sir, be not backward in settling my little Affair, for I have deserved your Care. Your Daughter and I must starve, if this Government can make us. I hope our Interests are not divided, that is, you have an equal Tenderness at least for both. If you think fit to speak what I would have you to this Bearer, he will give me a just Account of it. You know he is obliged to be my Friend, and I believe him grateful, since he ventures so boldly for you. He brings with him some merry Papers. Adieu, for I dare write no more; but pray send a Messenger on purpose to me, that I may know exactly what you will do, and would have me do. If you send upon no other Business, there will be no Danger. Pray, Sir, ask my Lord, and he will tell you how I have been used, and upon what Account. I believe you know it not.

Decemb. 29.

Your Daughter is very well, very tall, and very pretty, as I am told.

L. C. J. Pollexfen. That is not directed to any body neither.

Mr. Serj. Tremain. Pray then shew these Papers to my Lord *Sidney*, and my Lord *President*. [*Which was done.*] They were two.

L. C. J. Pollexfen. These Papers my Lord *Sidney* swears he received from my Lord *President*, and my Lord *President* swears he received them in the Bundle from *Billop*.

Mr. Serj. Thompson. We pray they may be read.
Clerk of the Peace. December 31. 90.

WAS my Condition more desperate and uneasy than it is, I desire no greater Satisfaction than to have done my Duty to so good a Master: I wish it was of more use to him; that is not my Fault, nor of those I have acted with. Let it be look'd into what has been foretold both as to *Engl. Scot. and Irel.* and see if most of it is not come to pass already, and the rest will follow, if not prevented. I wish it may also be considered what Usage we have met with from Men employ'd, and how they have left your Business and Friends; how they managed it, you will know from all Hands: Things they could not do, nor durst not undertake, were better undone than not done by them. Men in this Place, and in these Times, must have some Courage as well as Sense to do any thing with People here. It is not my own ill Usage makes me say this, but my Concern for one I wish the best to in the World, and will give my Proofs of this upon all Occasions. I need not enlarge, since all our Grievances are known to him that brings this. For my own part, I will stay here, so long as I can be safe, if with ne'er so great Trouble; but it would be some Comfort to know Men (when driven from hence) may be so; there-

fore the Reports of People's Usage are terrible, as well as of the Indiscretions of *St. Germ.* Family: We feel the Smart of it by ridiculous Letters falling daily into the Hands of the Government. Their Master and Mistress are little oblig'd by it no more than we: If there is any thing, Sir, you do particularly command me, or depend upon me for, let me know it. I cannot undertake much, nor furnish more. I have still help'd every body, and paid to every thing I could; and if a Twelvemonth ago my Condition was what I then represented, you best know if it has been mended. Use, and considering that of others, makes me grow more contented; and if the Prospect of Misery to us all was any Satisfaction, that is now plainly seen.

Pray God bless us all, by restoring every Man his own, and you with long Life.

He that gives you this, hath furnish'd for your Use to me, &c. two hundred Pounds, which I desire may be repaid.

Mr. Soll. Gen. Read t'other; it is in the same Hand, and was enclosed in the former.

Clerk of the Peace reads. "I only beg, Madam, no ill malicious Report may take any Place in your Thoughts, in regard to me. I value your good Opinion, and will endeavour to deserve it. I can do little towards, but with most hearty for your Happiness. I know no Interest, Madam, but my Master's and yours, nor do I think they are to be made two: If you command me any thing, I will faithfully obey you, as I have ever done him.

We all depend upon this Bearer's Accounts of us, and our Condition. His Faith and Courage hath been enough experienced.

Mr. Serj. Tremain. Here is another Paper, shew that to Captain *Billop*. [*Which was done.*]

Capt. Billop. This Paper I did mark, and this was one that was in the Bundle.

L. C. J. Pollexfen. What is it Brother? pray open it.

Mr. Serj. Tremain. 'Tis a Draught of a Cypher, with an Alphabet of Names, for carrying on the Correspondence.

Mr. Serj. Thompson. Your Lordship observes these Matters were designed to be carried on under several Sorts of Cants.

L. C. J. Holt. What says Captain *Billop* to that Paper?

Capt. Billop. That was one of the Papers that I read at my Lord *Nottingham's*, and mark'd it there.

L. C. J. Holt. Then read it.

Clerk of the Peace reads. For Mrs. *Anne Russell*, to be left with Mrs. *Richeyson* at the *Blue Boar* in *Ryder-street*, near *St. James's*.

A— the King.

B— the Queen.

C— the Prince of Wales.

D— the Prince of Orange.

E— Canon and the Scotch Officer.

F— the Duke of Berwick.

G— Duke Tyrconnel.

H— Major General Sarsfield.

I — Lieutenant General Shelden.

L— King of France.

M— Marshal Luxemburgh.

N— Marshal Belford.

O — Duke Powis.

P — Dutcheffs Powis.

Amsterdam ——— Breast.
 Rotterdam ——— Deipe.
 Hague ——— Havre de Grace.
 Brill ——— Dunkirk.
 Harlam ——— Callis
 Italy ——— England.
 Germany ——— Scotland.
 Spain ——— Ireland.

Mr. Serj. *Tremain*. Then the next Papers we produce are the Bills of Exchange; Pray shew them to Capt. *Billop*. What say you, Capt. *Billop*, were those among the other Papers?

Capt. *Billop*. Yes, they were I remember very well.

Mr. Serj. *Tremain*. My Lord, they are in French, and therefore we must swear a Gentleman that we have here, to interpret: Call Mr. *Humphry Levermere*.

Mr. *Levermere*. Here I am.
 (He was sworn.)

A Londres, le 29 Decembre.

Monsieur,

LE presante vous sera rendus par Monsieur *Orbinet*, qui est un de mes bons amis, & qui se fera cognoistre par quelque Personne de vostre Cognoissance. Vouz m'obligerez tresensiblement en de luy rendre service en tout ce que vous pourriez. Il pourra vous communiquer quelque Affaire en Commission; vous pouvez avoir Confiance en luy de toutes les manieres, je vous prie doncque l'obliger en tout ce que vous pourriez. Je suis, Monsieur,

Vostre tres humble & tres obeissant
 Serviteur,

A Mon. Mon. *Jo. du Livier*, Paris. P. du *Livier*.

A Londres le 29 Decembre } 1690.
 8 Janvier }

Monsieur,

AUN jour de veue il vous plaira payer par cette premiere d'Eschange, a l'Ordre de Mr. *Michel Orbinet*, Trois mille trois cents trente trois Livres valeur, du dit Sieur suivant l'avis de

Vostre tres humble & tres obeissant Serviteur,

A Mon. Mon. *Jo. du Livier*, Paris. P. du *Livier*.

Londres le 29 Decembre } 1690. Pour Liv. 3333.
 8 Janvier }

Monsieur,

AUN jour de veue, plaira payer par cette me premiere d'Eschange, a l'Ordre de Mr. *Michel Orbinet*, Trois mille trois cents trente trois Livres *Tournois*, valeur du dit Sieur & suis

Vostre tres humble Serviteur,

A Mon. Mon. *Anthoine Pelletyer*, Merchand, a Paris. *J. Berionde*.

London, the 29th December.

S I R,

THIS Present will be delivered you by Mr. *Orbinet*, who is one of my good Friends, and who will make himself known by some Person of your Acquaintance. You will very sensibly oblige me in doing him Service in all that you can. He will be able to communicate some Affair in Commission; you may have Confidence in him about all Points: I pray you then to oblige him in all that you can. I am, Sir,

To Mr. *Joseph Du Livier*, Paris.

VOL. IV.

Your most humble, most
 obedient Servant,

P. du *Livier*.

London, the 29th December } 1690.
 8 January }

S I R,

AT one Day's Sight be pleased to pay by this my First of Exchange to the Order of Mr. *Michael Orbinet*, Three thousand Three hundred Thirty-three Livres, Value of the said Gent. according to the Advice of

To Mr. *Joseph Du Livier*, Paris.

Your most humble, and most
 obedient Servant,

P. du *Livier*.

London, 29 December } 1690. For 3333
 8 January } Livres.

S I R,

AT one Day's Sight be pleased to pay by this my First of Exchange, to the Order of Mr. *Michael Orbinet*, Three thousand Three hundred Thirty-three Livres *Tournois*, Value of the said Gent. And I am

To Mr. *Anthony Pelletier*,
 Merchant, at Paris.

Your most humble
 Servant,

J. Berionde.

Mr. Serj. *Tremain*. Pray how much do they all come to?

Mr. *Levermere*. They come to 500*l*. wanting but Twelve-pence.

Mr. Serj. *Tremain*. My Lord, we have shewn your Lordship part of the Papers that were taken in this Pacquet, but we have reserved three of the Papers till the last Place; and these three Papers, if we had no other, were sufficient to maintain this Indictment, for they are written all with my Lord *Preston's* own Hand, wherein he gives an Account how the French should Invade us, how the Forts may be taken, how London should be plagued, and what a sort of Rascals the Clergy of London are; these are the Contents of the Papers, among other Things. Pray shew them to Captain *Billop*.

(Which was done)

Captain *Billop*. These were two Papers that were in the Pacquet, and the other little one with them.

L. *Preston*. My Lord, I would desire your Lordship to observe one Thing, to the best of my Remembrance, Captain *Billop* said, he only mark'd six of the Papers.

L. C. *J. Holt*. How many has he sworn to?

L. *Preston*. I believe he has proved more.

Capt. *Billop*. I never said so; I mark'd a great many, tho' not all, but I did not say how many.

Mr. Serj. *Tremain*. Were these Papers taken in the Pacquet?

Capt. *Billop*. Yes, all three.

L. *Preston*. Just now he said but two.

Mr. *Sol. Gen*. Have you look'd upon them all, Sir?

Capt. *Billop*. Yes, I marked but two of them, but the other little Paper was with them; I read them myself, I remember it very well.

Mr. Serj. *Thompson*. Then we pray the Clerk may read them.

(Cl. of Peace reads) Lady D. 2000*l*.

And 200*l*. for Shop Debts.

Mr. Serj. *Thompson*. My Lord, we would open this Piece of Evidence before we read it,

that it may be understood, and we shall prove it to be my Lord's Hand afterwards. It consists of many Heads and Particulars, without Order or Method, and seems to be no more than Memorandums made by my Lord *Preston*, to put him in Mind what he was to enlarge upon when he came thither.

(*Cl. of the Peace reads.*) Lady D. 2000*l.* And 200*l.* for Shop Debts.

Pension upon the
14—3 Deckt Ships. — *Britania*, Ad.
Sovereign out and R. — *James*.

33 3d Rates, make the 14 and 30 67.
Sundry Hospitals and Fire-Ships, some built on purpose proportionable.

Of Third Rates most mann'd: 14 not mann'd, great ones.

Rest in some proportion mann'd, not well mann'd, nor will be.

— *Britania* not out till *March*, the rest, perhaps, in *April*.

— The *French* must be out in *April*, and in the *Dowms*: Look in at *Spithead* to secure them.

The *Dutch* Fleet cannot then join them.

Carter and others at *Portsmouth*, the likeliest Men to come to him — *Dutch* Fleet 36 Sail, 9 from 70, to 60 Guns; — 12 from 50 to 60 — the rest betwixt 60 and 70 — Get to it before the Conjunction, otherways nothing. To fight in the Chops of the Channel; not to come so high as *Beachy* — *Portsmouth* not mann'd above 500 — One *Gibson*, a *Scotch* Pedlar — Lands behind *South-Sea* Castle. — Nothing but *Pallifado's* about *Gosport* — *Jennings*, or *Strickland*, or *Trevannion* comes from *St. Maloes* in one Night — most of the Gentlemen have done him most Mischief, the *Tarpaulins* his best Friends, which dispirited — *Danby* desires to be in the *Monk*, keeps and fortifies *Hull* — King not to be on Board the Fleet — Foolish Letters from *St. G's* taken every Day in the *D. Post*, and read in Council — about *June* — *England* 67 great Ships.

Dutch 60 — commanded 36 to us, 24 to act by themselves — *Russel* in the *Britania* Admiral — *Killigrew* the *Blue* — the *Duke* — *Asbby* the *Royal James* — *Dalaval* the *Sovereign*, Vice-Admiral *Blue* — *Carter* the *Vanguard* — Those who shall not oppose or resist him to be pardoned — Not 21 Days coming in, or shall not help the P. of O. 600000*l.* to the States of *Holland* — No Taxes in his Time — and the K. of *Fr.* will require nothing — Chimney-Money to be taken away — not excepting *Outlaws* — *Scotland* — let know whether the King will come or not soon, and acquaint him with the Weakness of the Pr. Council — 3 *Dashes* — or the like F. of — That some kind Anfwer —

Mr. *East* Merchant of *Bristol* to be kept till called for *William St.* — from *Amsterdam* —

Alexander — *England* — *George* — *Scotland* — *Dorset*, *Cornwallis*, *Montague*, *Stamford*, *Sbrewsbury*, *Macclesfield*, *Monmouth*, *Devonshire* —

In *Feb.* the K. come to *Scotland* — endeavour to unite the *Episc.* and *Presbyt.* Parties. — A less Sum not interfere with the *Fr. K.* from *Highlanders* — Campaigns — land at *Leith* — the *Scotch* Army not a *French* one, 5000 good *Suedish* Foot, the Reputation of a Protestant Ally, two Months to settle *Scotland* — a Commission given to me from Mr. P. — For *Fl.* hinder *Eng.* and *D.* from joining — two Vessels of 150*l.* Price for *Pennsylvania*, for 13 or 14 Months

— *Ormond* and *Brandon* disobliged about the Guards.

— *Ormond* and *Brandon* disobliged about the Guards.

To have 1200 Seamen from *Denmark* and *Holland* — To save *Cambell*. — To be left at the Ship in *Sheets Westminister* — *Flanders*. — R. — *Scotch* Ships in *Newcastle* Harbour to plague *London* — The *Modest Inquiry*, the *Bishops* Answer. — Not the Chilling of them. — But satisfying of Friends. — To tell him that to protect Friends, and as soon as Foreigners are gone, he will dismiss his — The Woman that was with the K. in *Ireland*, and sent

Commission to *Stafford*, and sailing, not to be sent again; her Friends live in *Covent-Garden* — Private Letters not — Protesting Lords against the *Ufurper*, Three of Five against the Vacancy of the Crown, *Beauford*, *Newcastle*, *Tbanet*, *Sawyer*, *Lutwich*, *Pemberton*, *Levintz*, *Wilmington*, *Montague*, *Shore* — *London* Clergy the worst, we have their Wishes and they their Oaths — K. betrayed by *J. Porter*, *Seymour* said it — Lord *Nottingham* says there will be a Peace with *Fr.* and the K. left out. — Bring Foreigners to drive out Foreigners, then dismiss them, leave all to Free Parliament. — No Justices of Peace, &c. actually in Commission to be criminal.

L. C. *J. Holt*. Well, Gentlemen, have you any more Evidence?

Mr. Serj. *Tremain*. My Lord, We shall now prove these Papers to be my Lord *Preston's* own Hand. Pray call Mr. *Warr*, Mr. *Townesend*, Sir *Henry Johnson*, and Mr. *Bland*.

Mr. *Townesend* sworn.

Mr. Serj. *Thompson*. Pray shew Mr. *Townesend* that Paper. (*Which was due*) Pray, Sir, whose Hand-writing is that?

Mr. *Townesend*. I believe this to be my Lord *Preston's* Hand: I did not see him write it.

L. C. *J. Pollexfen*. Are you well acquainted with my Lord *Preston's* Hand?

Mr. *Townesend*. I have seen his Lordship's Hand sometimes.

L. C. *J. Pollexfen*. How often?

Mr. *Townesend*. Not very often, but I have seen it sometimes.

Mr. Serj. *Thompson*. Pray were you Clerk in any Office?

Mr. *Townesend*. Yes, I am in the Office of the Great Wardrobe, where I have had occasion to see his Lordship's Hand sometimes, and I believe this to be his Hand.

Mr. Serj. *Thompson*. Look upon the t'other two.

Mr. *Townesend*. I do believe these three Papers are my Lord *Preston's* Hand.

Mr. Serj. *Tremain*. Those are the three Papers that have been read last, which he says are my Lord's Hand.

Mr. *Townesend*. I do believe it, Sir.

Mr. Serj. *Tremain*. Pray look upon that Paper, with the little one within it; do you know whose Hand that is?

Mr. *Townesend*. I did not see it written, Sir.

Mr. Serj. *Tremain*. Do you believe you know who writ it by the Hand?

Mr. *Townesend*. The latter Part looks like my Lord *Preston's* Hand; but I cannot well say any thing to the other, it is written so small.

Mr. Serj. *Tremain*. Then swear Mr. *Bland*.

(*Which was done.*)

Mr. Serj. *Thompson*. Give him the Papers. We ask you, Mr. *Bland*, Whether you were well acquainted with my Lord *Preston's* Hand?

Mr. *Bland*.

Mr. Bland. I have seen my Lord's Hand sometimes.

Mr. Serj. Thompson. Have you looked upon those Papers, Sir?

Mr. Bland. Yes, I have.

Mr. Serj. Thompson. Pray whose Hand are they?

Mr. Bland. I do believe these three Papers are my Lord Preston's Hand-writing?

Mr. Serj. Tremain. Then we pray Mr. Warr may be sworn. (*Which was done.*)

Mr. Serj. Thompson. Do you know my Lord Preston's Hand?

Mr. Warr. I have seen my Lord Preston write, but not very often; most commonly it was only his Name: But I have seen him write some Letters too.

Mr. Serj. Tremain. Pray, Sir, look upon those Papers; whose Hand are they do you believe?

Mr. Warr. This Paper seems to be like my Lord Preston's Hand; the other I cannot say much of, because that which I commonly saw him write was a large fair Hand, and this is a little Hand.

Mr. Serj. Tremain. Pray, Mr. Warr, look upon these Seals; whose Seals were they?

Mr. Warr. I believe the Seals to be my Lord Preston's; one of them was his Seal when Secretary of State.

Mr. Serj. Thompson. You were under him in that Office, were you not?

Mr. Warr. Yes, my Lord, I was.

Mr. Serj. Tremain. Now, my Lord, we have done with our Evidence, and shall rest here till we hear what my Lord Preston says to it.

L. C. J. Holt. My Lord Preston, you have heard what has been said concerning the Matter you have been indicted for: What has your Lordship to say for yourself?

L. C. J. Pollexfen. If the Gentlemen of the Jury desire to see the Seals, they may have them.

(*The Seals were shewn to the Jury.*)

Mr. Sol. Gen. My Lord, we have done for the present.

L. C. J. Holt. Then if your Lordship please, you make your Defence.

L. Preston. My Lord, In the first Place I must refer myself again to my Indictment, for I find, my Lord, that the Treasons of which I am accused, were none of them done in the County of Middlesex, and they are laid to be done within this County; I find nothing of that kind proved upon me to be done here; for any Memorandums that they say may be in that Hand, I hope the Gentlemen of the Jury will consider, that there was nothing followed upon any of these Things, that may be found in those Papers: And in the next Place, I desire to know, whether they are sufficiently proved to be mine; that is, whether Similitude of Hands is Proof or not against me in such a Case? I humbly offer these Things to your Lordship, and hope your Lordship and the Jury will consider of it.

L. C. J. Holt. Is this your Lordship's Defence, my Lord?

L. Preston. My Lord, I leave these Things to the Consideration of the Court and the Jury.

L. C. J. Holt. Your Lordship insists upon it first, that there is no Act of Treason proved in the County of Middlesex; and then, whether Similitude of Hands be a good Proof to prove

these three Papers, or any of them, to be your Hand?

L. Preston. Nobody saying they see me write them, if I did write them.

L. C. J. Pollexfen. My Lord, have you no Witnesses, nor nothing that you would use of Evidence for yourself?

L. C. J. Holt. Would your Lordship disprove any Thing of the Matter that has been proved against you?

L. Preston. I must deny the whole Fact; but I have no Witnesses or Evidence to offer you.

L. C. J. Holt. Then your Lordship has no more to say?

L. Preston. I have not, I must leave it so with your Lordship and the Gentlemen of the Jury.

Mr. Sol. Gen. We shall offer nothing farther, but leave it wholly to your Lordship.

L. C. J. Holt. Your Lordship has done then?

L. Preston. Your Lordship observes none of the Witnesses have declared that I was going into France, nor knew any thing of it. I did not hire the Ship, nor any thing of that kind; tho' I suppose if they had, it is not Treason; but your Lordship observes there is no such Thing has been sworn.

L. C. J. Holt. My Lord, as to the first Matter that your Lordship makes a Question upon, Whether there be any Act of Treason proved in Middlesex, that does depend upon the Proof of your Lordship's being concerned in the Papers; for if your Lordship had an Intention in carrying these Papers into France, which speaks a Design to invade this Realm, your Lordship took Boat in Middlesex at Surrey-Stairs, in Prosecution of that Intention, there is an Overt-act in this County of Middlesex.

L. Preston. Your Lordship, and the Gentlemen of the Jury observe, these Papers were not found upon me.

L. C. J. Holt. No, my Lord; but if it be proved that your Lordship had an Intention to carry these Papers into France, and took Boat in order to go with them into France, in the County of Middlesex, where-ever your Lordship acted in order to that Design, that is Treason, and there you are guilty. It is a Treason complicated of several Facts, done in several Places.

L. Preston. My Lord, I humbly desire to know, whether they have been proved to be my Papers?

L. C. J. Holt. That is a Question that must be left to the Jury upon the Evidence.

L. Preston. Nobody swears they are mine, nor were they found upon me.

L. C. J. Holt. But what I am speaking to your Lordship, is in Answer to your Question about the Place; for you say, that there is nothing proved done in the County of Middlesex: Now the Question is, Whether your Lordship had a Design to go to France with these Papers? if you had, and if your Lordship did go on Ship-board in order to it, your taking Boat in Middlesex in order to go on Ship-board, is a Fact done in the County of Middlesex.

L. Preston. It is not proved by any Witnesses that I designed to go into France.

L. C. J. Holt. That is before the Jury upon the Evidence.

L. Preston. I hope your Lordship, and the Jury will observe 'tis not proved, and in the next Place, there are no Papers taken upon me; with humble Submission, there is no Proof of any such Thing.

L. C. J. Holt. Well, how fir your Lordship was concerned in these Papers, and whether you were going with them into *France*, is to be left, upon the Evidence that hath been heard, to the Consideration of the Jury.

L. Preston. But I humbly submit that.

L. C. J. Holt. Have you any more to say?

L. Preston. As to what I offer, that nothing has been proved in *Middlesex*, I hope your Lordship will take it to be a Point of Law, and then it ought to be argued; and I desire I may have Council.

L. C. J. Holt. No, 'tis a Matter of Fact only; but if you please, the rest of my Lords the Judges may give you their Opinion; for this is a Question upon a Supposition that your Lordship was guilty of a Design of going into *France*, and this with a Purpose to depose the King, and alter the Government; then the Question is upon such a Supposition that you were guilty of that Design, whether you were guilty in *Middlesex* or no?

L. Preston. My Lord, they have not proved that Design.

L. C. J. Holt. We do not say, it is taken for granted now, but 'tis a Question upon a Supposition. Now, my Lord, I'll tell your Lordship in short my Opinion, the rest of the Judges will tell you theirs: I am of Opinion, If your Lordship had such a Design to go with these Papers into *France*, and these Papers were formed by you, or you were privy to the Contents of them, then it is plainly proved, that you went into a Boat in the County of *Middlesex*, in order to carry on this Design, and that will make it a good Indictment, and here is a plain Overt-act of High-Treason in *Middlesex*.

L. C. J. Pollexfen. I am of the same Opinion; for your Fact as to this particular Point in Law stands thus: You are indicted of High-Treason in two Points; one is, For conspiring to depose the King and Queen, and alter the Government: And the other is, For aiding and assisting the *French* King, and his Subjects, declared Enemies, and in open War against the King and Queen, and to invite the Enemies of the Kingdom to invade the Kingdom. Now this Design, and this Help and Assistance, are written in these Papers; for they are Instructions for the carrying on of this Design. You, my Lord, are the Person that is charged to go with these Papers to help on this Design; you began your Journey in the County of *Middlesex*, for according to the Evidence, you took Water at *Surrey* Stairs, which is in the County of *Middlesex*, and every Step you made in pursuance of this Journey, is Treason, where-ever it was: So then here is a sufficient Proof of a Fact in *Middlesex*.

L. Preston. That, my Lord, is a Point of Law, and I humbly desire your Lordship, that I may have Council in this Case. It is not proved by any Body, that I said I would go into *France*; and in the next Place, it is not proved that I had these Papers about me; there has been no Evidence given that I did take Water with an Intention to go with these Papers into *France*.

L. C. J. Holt. The Jury are to be Judges of that.

L. Preston. Then, my Lord, what have I done? I have not done any Thing within the Danger of any Statute upon which I am indicted; besides, my Lord, what I have to offer further is this, I think I ought to have two credible Witnesses to

prove every Fact, and I hope the Gentlemen of the Jury will consider, there is nothing but Supposition as to me; and I hope I and my Family shall not be ruin'd upon a Supposition.

L. C. J. Holt. Has your Lordship any more to say?

L. Preston. All the Judges have not given their Opinion.

L. C. J. Holt. The rest will give their Opinions, if you desire it.

My Lord Chief Baron, what say you?

L. C. Baron. My Lord *Preston*, I am called upon, it seems, to give my Opinion in this Case, but this I take it must be left to the Jury, what Credit they will give to the Proof. Your Lordship makes a Question, as the Proof stands, whether here be any Thing done in this County? here are Instructions given to the *French* King how to invade *England*, and carry on the War against us. These Instructions are contained in several Papers, and these Papers in a Packet are carried to the Smack, which Smack was hired to go to *France*. You are found taking Water at *Surrey* Stairs, which is in the County of *Middlesex*, in order to go to the Smack: You did go to the Smack; the Papers were taken in your Company, and were seen lying by your Seals; and the Witnesses swear, they believe some of them to be your Hand; you took care to desire to have them disposed of. Now how far the Jury will believe this Matter of Fact, that is thus testified, is left to them; this seems to be the Proof, and if the Jury do believe it, here is a plain Evidence of an Overt-act in the County of *Middlesex*.

L. Preston. I do insist upon it, with humble Submission, it is not proved that these Papers were taken upon me, or that I did take Water at *Surrey* Stairs to go to *France*.

L. C. Baron. That must be collected out of all the Circumstances; the Credit of which is left to the Jury.

L. C. J. Holt. All the rest of my Lords the Judges are of the same Opinion, as they tell me? Have you any more, my Lord?

L. Preston. I must submit.

L. C. J. Holt. Gentlemen of the Jury, My Lord *Preston* stands indicted for High-Treason, in imagining and compassing the Deposition, Death, and Destruction of the King and Queen; and for that Purpose, did write, or cause to be writ, several treasonable Papers and Letters, designed to go into *France*, and there to correspond with the *French* King and his Subjects, who are Enemies to the King and Queen; and to carry with him those treasonable Papers and Letters, containing a Project, and a formed Design how this Kingdom should be invaded by Foreigners.

There is another Treason in the Indictment mention'd, and that is for adhering to, and abetting the King's Enemies, there being open War declared between the King and Queen, and the *French* King.

You have heard, Gentlemen, a very long Evidence, Witnesses have been produced *viva voce* , and several Papers have been read to you; some of the Papers that have been produced, tho' they may seem mysterious and canting, yet they are not so very obscure and unintelligible, but if you consider them well, the Meaning of them will appear. Others of them are more express, and do plainly demonstrate a Design, that this King

King and Queen should be deposed, and that there should be another Prince set upon the Throne, and restored to the Government of this Kingdom.

Gentlemen, There are two other Persons mentioned in the Indictment with my Lord; and tho' my Lord is only now upon his Trial, yet the Evidence which doth affect them, doth also concern my Lord.

You have heard how there was an Intention of some Persons to go to *France*, and how Mr. *Ashton*, one of the two others, that stands indicted with my Lord, did treat with one Mrs. *Pratt*, one of the Witnesses, to hire a Vessel for that Purpose, and it was by the Means of one Mr. *Burdett*, that lives in the City; they had a Meeting at *Burdett's* House, where they treated about the Price that should be given for the Hire of this Ship to go to *France*, but at that Time they did not agree. It was concluded, that the Woman and *Ashton* and *Burdett* should meet at the *Wonder Tavern*; but Mr. *Burdett* not being there, nothing was concluded upon them.

After that the Woman, Mr. *Burdett*, and *Ashton*, and *Elliot*, met at Mrs. *Burdett's*; the Woman insisted at first upon 150 *l.* After they had been treating for some time, the Bargain was made to go to *France* for 100 *l.*

Then the next Thing considered was, how this Money should be paid; by Agreement, 93 Guineas, and 6 *d.* which made up the 100 *l.* was deposited in Mrs. *Burdett's* Hand; a Six-pence broken, one Part Mrs. *Burdett* had, and the other Part of the Six-pence Mr. *Ashton* had: And when either Mrs. *Pratt*, or the Master of the Vessel did bring back that Part of the Six-pence that *Ashton* had, to Mrs. *Burdett*, the Money was to be paid.

After this Agreement, they were appointed to go to the *Seven-Stars* in *Covent-Garden*, to the House of one Mr. *Rigby*; and there the Woman, Mrs. *Pratt*, and the Master of the Vessel, *Ashton* and *Elliot* met, and they were that Night to go away and to take Water at some Place near to go on Ship-board; and having stayed there till it was about ten a Clock at Night, then they went away into the *Strand*, and so into *Surrey-Street*, and took Water at *Surrey* Stairs.

But before that they came from Mr. *Rigby's*, some Persons went to *Surrey* Stairs to see for a Boat, and met with that Fellow that was here produced, who was a Sculler, and did hire him to go through the Bridge when the Tide served, and to carry some Gentlemen on Ship-board; they agreed with him for half a Crown, and he was to stay in an House near the Stairs until they came.

And at the Time appointed, Mr. *Ashton* and Mr. *Elliot*, and the Master of the Vessel, came to that Place, and my Lord *Preston* and his Man with them, to take Water. My Lord *Preston* was not at *Burdett's* House at the Hiring of the Ship, nor at Mr. *Rigby's*; but it is proved by the Master of the Vessel, that he took Water with the rest of them at *Surrey* Stairs, that he went with them on Ship-board, and was to go along with them.

Being on Board the Ship, they did appear to have some Apprehensions of Danger, and passing by a Man of War, my Lord *Preston*, his Man, and the other two went under the Quarter-Hatches, where they lay down to prevent themselves from being taken or discovered; and they hid another time when they came near *Grave-*

end, and coming up they seeing a Boat coming towards them, they hid themselves again. Captain *Billop*, who it seems, was sent to apprehend them, pretended he was to press Seamen, and when he came on Board the Smack, he said he would press the Mariners, who answered they had a Protection: But he being upon his Search, pulled up the Boards of the Quarter-Hatches, and there was my Lord *Preston* and the other Persons lying down: It was not a Place that was very proper for Gentlemen, or, indeed, for any Passengers, to repose themselves in; it was an uneasy Place, nobody could stand or sit upright in it; nay, there was no convenient Place for lying down, but they must lean upon their Elbows, which Posture those Gentlemen were in; so that their Purpose was plainly to conceal themselves, and their concealing themselves must be because of some Design they were about, which they would not have discovered.

They being taken out from under the Hatches, one of the Witnesses tells you, he saw a Paquet lying there, and *Ashton*, pretending to fetch his Hat, went down, took it up, and put the Paquet into his Bosom; and the Witnesses informing Captain *Billop* thereof, he caused *Ashton's* Coat to be searched, and from thence took the Paquet, and a Piece of Lead tied to it, which was produced here in Court.

When they were bringing away in Custody, they seemed all of them to be very much concerned about this Paquet; some of them, that is, *Ashton* and *Elliot*, would have had it thrown with the Lead over-board. My Lord *Preston* did not say so much, but complimented Captain *Billop* in this manner, He was glad he was fallen into the Hands of a civil Gentleman, a Person of Worth, and he should always acknowledge his Kindness, and would do him all the Service he could, if he would dispose of the Paquet.

My Lord *Preston* was searched at that time, and Letters of no great Moment taken about him. *Ashton* and *Elliot* would have had Captain *Billop* to take those Letters which were taken in my Lord *Preston's* Pocket, and tie the Lead to them and have thrown the Paquet over-board, and to report to the King and Council, That those Letters were the Paquet that was taken with the Lead; and so have persuaded him to be false to the Trust that was reposed in him.

And *Ashton* and *Elliot* used many Expressions to induce him to that Compliance; they told him the Government was unstable, and every Dog had his Day, and the Tide would turn; and that he would deserve very well if he would change Sides, and go with them where they were going; and that he had Opportunity to get any Preferment he would have.

L. Preston. My Lord, I hope your Lordship observes that I said none of all this.

L. C. J. Holt. No, my Lord, I do not say you did; my Lord *Preston* did not say any thing of all this, but only about disposing of the Paquet; that his Lordship spoke of to Captain *Billop*, and complimented him, and promised him Kindness if he would dispose of the Paquet.

But, Gentlemen, as there was a Paquet taken, so there were two Seals taken at the same Time, and in the same Place, which have been produced and shewn to you; they lay both of them upon the Ballast under the Quarter-Hatches, near the Paquet: The one of them is the Seal of
my

my Lord *Preston's* own Coat of Arms, the other Seal belongs to the Secretaries Office, which Office my Lord once held in the late Reign.

L. Preston. I beg your Lordship would be pleased to observe that the Papers were not taken upon me, and it can be no Treason to have Seals, I suppose.

L. C. J. Holt. Good my Lord, I will not do your Lordship any Wrong; I do not say that the Papers were taken about you, no nor the Seals; but only, that they lay upon the Ballast from whence the Pacquet was taken: And I say further, That these Seals are not denied by your Lordship to be your Seals; the one is your own Seal of your Coat of Arms which was taken at that Time, and so I do not your Lordship any Wrong, and by the Grace of God will not.

L. Preston. It is no Crime, I hope, to have Seals.

L. C. J. Holt. I do say, my Lord, the Papers were taken about *Ashton*, and not about your Lordship; but they lay upon the Ballast where the Seals were, and where your Lordship lay: But how far my Lord *Preston* is concerned in this Matter, is to be considered by you of the Jury by-and-by.

Now, Gentlemen, you have heard how earnest Mr. *Ashton* and Mr. *Elliot* were; one of them, to wit, *Elliot*, wish'd a Thunder-Bolt might strike the Boat under Water as they were coming back; and when they came through Bridge, he wish'd that *London-Bridge* had fallen upon them and knock'd them upon the Head.

L. Preston. But I hope that is not to lie upon me neither, for I said no such Thing.

L. C. J. Holt. No: But *Ashton* and *Elliot* did say these Things, and how the Case stands as to that in relation to your Lordship, is to be considered. It is proved, they afterwards gave Money to the Seamen, half a Crown apiece, to two of them, to say they were going to *Flanders*, and not to *France*.

Now, Gentlemen, that my Lord was on Board this Vessel, that my Lord was under the Hatches, and that the Papers were taken in this manner, is beyond all Contradiction: So likewise that the Ship was hired for *France*; that my Lord took Water at *Surrey Stairs*, and was taken in this Vessel in that manner that you have heard.

The next Thing, Gentlemen, is about the Papers: I must tell you, though there are several of them that do seem mysterious, yet they are Papers that do shew a very great Design of Depositing the King and Queen, and a Purpose of altering the present Government.

But, Gentlemen, I will mention to you those Papers that are very plain, and leave you to consider what Construction to put upon those that are obscure. There is one Paper that seems to be Instructions and Heads for a Declaration, that is to say, That the King of *France* must not come with a Design to make an intire Conquest.

L. Preston. My Lord, with Submission to your Lordship, I hope you will please to remember and observe to the Jury, that Paper is not proved to be mine.

L. C. J. Holt. No, my Lord, I'll do your Lordship no Wrong, but I cannot speak all my Words at once.

L. Preston. I am sure you will not my Lord; but I beg leave to put your Lordship in Mind.

L. C. J. Holt. Well, then, Gentlemen, the Paper begins, *That the King's Declaration is to be formed in general Terms; that he will govern by the Laws; that they shall be the Rule of his Actions; that he will endeavour to settle Liberty of Conscience by a Law, and that whatsoever was done by him that gave any Occasion of Jealousy, shall be settled by Parliament. That the King hath given sufficient Proofs and Evidence of his not being willing to bring an Army of Strangers into the Kingdom, by refusing the Succours the King of France offered him, and that were even ready to be embarked upon the first Notice of the Prince of Orange's coming. That he brings such an Army only as is necessary for his own Defence, and securing such of his Loyal Subjects as should come to him; and that he will dismiss them as soon as he shall have rid the Nation of those Foreigners that had invaded us, and trampled upon the Laws.*

So that, Gentlemen, here is a Paper in this Pacquet, that has plainly laid open and proved the Design, and shews the Meaning of it was to seduce their Majesties Subjects from their Allegiance; it was to be in such general Terms, making general Promises, hoping thereby that People would be the more easily imposed upon to renounce their Allegiance to their present Majesties.

But, Gentlemen, the Declaration imports farther, that the Realm was to be invaded by Foreigners; and to palliate it, it is pretended, that Foreigners were only brought in to rid the Nation of Foreigners, and you know who are meant by that: So that this Project was only to colour a foreign Invasion; and this Declaration was to direct them how, and upon what Pretences they should invade this Kingdom.

Gentlemen, there is no manner of doubt but this is a treasonable Declaration, and if any Person had this in his Possession, and was going into *France* to carry, with an Intention there to make use of it, that is Treason, though it be couch'd under specious Pretences of restoring People to their Liberty: It was plainly a Design to invade *England* by a *French Army*.

L. Preston. My Lord, that Paper was not found about me.

L. C. J. Holt. No, no, my Lord, it was not; but, good my Lord, give me your Favour, I will certainly observe every Thing that is fitting; but I tell you I cannot do it all at once.

Then, Gentlemen, there is another Paper found in the Pacquet, that is said to be the Result of a Conference that was had between divers Lords and Gentlemen, as well *Tories* as *Whigs*, as they call them, to prove it possible to restore the late King by *French Arms*; and how this may be effected, were Proposals made: Yet still it was pretended to preserve the Protestant Religion, and the Civil Administration according to Law.

And that it might be brought to pass, the Credulous were to be imposed upon, and made to believe that the *French King* would not conquer *England* for himself; no, but he would conquer it for the late King; he would be at that vast Charge, that great Expence of Men and Arms to restore King *James*, and make no Profit of it himself.

And it was propos'd how to seduce the People of *England* into a Belief of the *French King's* Kindness; he was to indulge the *English* Protestants in *France*, and let them have the Exercise of their own Religion there at their own Charges; and this to satisfy the *English* Protestants,

that his Persecution of the *Hugonots* in *France*, was not out of Aversion to the Protestant Religion, but only because of their Antimonarchical and Resisting Principles. So that they were proposing among themselves what they were to do to make the People believe the *French* King had no dangerous Design against our Religion and Liberties; and if they could meet with Persons to believe this, that was a probable way thought upon in this Conference to get a great many Adherents to the *French* King, thereby this Invasion was to be facilitated, and the whole Project rendered more successful.

There is another thing, Gentlemen, in this Paper, and that is this; They complained of the Mismanagement of their Affairs at *St. Germain's*; that though they did earnestly desire the Restitution of the Late King, yet there was always some foolish thing or other that came from *St. Germain's* that obstructed their Design.

What that foolish thing is, I can't say, it does not appear; but whether it were not too great a Discovery of their Zeal for Popery, and the Advancement of the Popish Religion, is worth your Consideration.

And something is to be done for Satisfaction of the People as to that; and it is advised that there should be Seven or Nine, or such a Number of *English* Men, that should go over, and be received into Favour at *St. Germain's*, and they should be of the Council there, and these were to be Protestants; and that was to be a Colour and Pretence that the late King was reconciled to the Protestant Interest, because he chose Protestant Counsellors, and had received them at *St. Germain's*, and was advised by them.

This, says the Paper, will make the World believe, he is ours, and that we have gained him; which was to delude a great many of the People of *England*, that they should not be affrighted in case there should be such an Invasion of *England*, but invited rather and encouraged to join with the *French* when they came.

But, Gentlemen, the three last Papers that do somewhat more nearly concern my Lord *Preston*.

The first Paper contains several Memorandums; It begins with *Lady D.* 2000 *l.* who that *Lady D.* is, I must leave it to you to imagine, tho' perhaps it may not be hard to guess.

It takes notice that the *English* and *Dutch* were like to join; and these Memorandums do also shew a Design and Purpose of something to be done for the Prevention of that Conjunction, They seem also to be Instructions to be made use of upon going into *France* to negotiate or transport some Matters of dangerous Consequence.

L. Preston. My Lord, I hope that your Lordship will observe, that these Memorandums are broken kind of Notes, incongruous and incoherent.

L. C. J. Holt. Ay, my Lord, they are so, they are but broken things; but I say still, they are Memorandums that were to be used for some Purpose; Now I leave it to the Jury to consider of the Matter of them: What can be plainer than what is there expressed? The *French* are to come in time, before the *Dutch* and the *English* join; they are to watch their Opportunity and come betimes, and they are to fight at the Chops of the Channel, and not to come so far as *Beachy*.

L. Preston. This is all but presumptive Evidence, my Lord.

L. C. J. Holt. I appeal to your Lordship if it was not in the Paper, and I appeal to the Memory of the Jury, whether I mis-repeat it or not.

The Paper mentions *Jennings* and *Strickland* and *Trevannion*, that they were to come from *St. Malo's* in one Night; the King (meaning the late King) was not to be on board; and there were Ships to lie at *Newcastle*, to plague *London*: It is easy to understand what they meant. Among these Memorandums, it is made as a Remark, that the *London* Clergy are the worst. It gives an Account how *Portsmouth* was fortified, and *Gosport*, and what Number of Men were in them; and of the State and Condition of our Navy; what Rates our Ships were, and how many, and who were to be the Commanders.

L. Preston. I beg your Lordship to observe this is not Treason.

L. C. J. Holt. I shall tell you that, my Lord, by-and-by; I am now stating the Evidence.

Gentlemen, my Lord *Preston* insists upon it, that these Papers were not found about him: It is true, they were not, but it does not therefore follow that they were none of his Papers: But you have three Witnesses, *Mr. Townesend*, *Mr. Bland*, and *Mr. Warr*, produced to prove these Papers to be my Lord's Hand; *Mr. Townesend* says, he was acquainted pretty well with my Lord *Preston's* Hand; he was one of his Clerks in the Office of the Wardrobe; he says, he has seen my Lord write several times, and does believe the Writing to be his Hand; and to the same Purpose says *Bland*; and *Mr. Warr* swears to one of the Papers, that he believes it to be my Lord *Preston's* Hand.

L. Preston. I hope your Lordship will please to observe to the Jury, that this is only a Proof of Similitude of Hands: no-body see me write them.

L. C. J. Holt. They only say they do believe it to be your Hand; no-body says they saw you write them; if I omit any thing, pray tell me when I have done.

Gentlemen, there are other Papers which have been produced and read, that are writ in Canting Terms, which yet plainly shew the general Design; they tell the Party, that Council are of Opinion, he has a very good Title; they hope he will appear himself, and if the Cause be well solicited, it may come to a Hearing before the End of *Easter Term*.

There is another Matter mentioned in another Letter which is under the Disguise of Trade, That the Goods must come before the first of *March*. And another of them says, that unless the Copper and the Linen come before the Tenth of *March*, they should lose this Summer's Profit.

Gentlemen, what can be the Meaning of all this?

L. Preston. I know not indeed, my Lord.

L. C. J. Holt. In another of the Papers it is said, 'Tis thought our Fleet will be ready by *March* or *April*, but they believe not till *June*.

Truly, Gentlemen, I have not been able to take Particulars of every Letter, but I must leave it to your Observation; only there is one of them that makes Mention of acquainting my Lord with the Condition of the Writer, and Direction is therein given to speak to the Bearer; and what other Lord was there, but he, in the Company?

L. Preston.

L. Preston. I desire to observe, my Lord, that I was not the Bearer.

L. C. J. Holt. Truly, my Lord, I can't tell who was meant; I must leave it to the Jury to judge of that; but there was no other Lord in that Company.

L. Preston. I give your Lordship Thanks for observing that it was not proved that they were taken upon me before; but I beg your Pardon for interrupting of your Lordship.

L. C. J. Holt. Interrupt me as much as you please, if I do not observe right; I will assure you I will do you no Wrong willingly.

Now, Gentlemen, the Question is, in the first place, whether this be Treason? and I told you before, without question, if any Persons do go into *France* to negotiate such a Design as this, or do purpose to go into *France*, and do any Act in order thereunto, that is High Treason; and these Letters do import High Treason as great as can be committed; a Treason against the King and Queen, a Design to invade the Realm, to subvert the Government, to restore another Prince to the Throne by the Assistance of Foreign Force.

There was a Design to delude and impose upon a great many People; and those that would not be deluded into a Belief by these fair Pretensions of Friendship, they were to be subdued by an Army of Foreigners.

Then, Gentlemen, the next Question will be, how my Lord *Preston* is affected by this Evidence, and whether you have sufficient Proof from what has been offered, to satisfy you, that he is guilty of this Treason or no?

First, my Lord tells you, there has not been a clear Proof that these are the Papers that were taken; for (saith he) they have been conveyed from Hand to Hand, and therefore possibly there might be some Alteration made in them. You, Gentlemen, are to consider, notwithstanding this Objection, whether the Identity of the Papers be not proved.

Captain *Billop* tells you, he took them, and in what Manner; and afterwards carried them to my Lord *Nottingham*, who laid them by for a little while upon his Table, and Captain *Billop* withdrew (that is part of my Lord's Objection) while my Lord *Nottingham* examined my Lord *Preston*: after that, my Lord *Nottingham* called in *Billop* again, and *Billop* swears the Pacquet was not opened, but remained intire in such manner as they were delivered to my Lord *Nottingham*; and so says my Lord *Nottingham*. Then Captain *Billop* saw my Lord *Nottingham* open it at that time, and he saw all these Papers every one put up again by my Lord *Nottingham*; so that he could not be deceived: and my Lord *Nottingham* delivered them to him, and he carried them to my Lord *President* all sealed up with my Lord *Nottingham's* Seal: and my Lord *President* tells you he opened them, and brought them to the King, and had them back from the King; but they were never out of his Sight while the King read some of them, but he took them all, and brought them to the Cabinet Council, where my Lord *Sidney* received all these Papers that have been read, and marked them. You have my Lord *Sidney's* Oath that these are the Papers he had from my Lord *President*; you have my Lord *President's* Oath that he had them from *Billop* sealed with my Lord *Nottingham's* Seal; you

have my Lord *Nottingham's* Oath that he had them from *Billop*; and *Billop* swears that they were taken in the Smack.

So that it is plain, if you believe this Evidence, that they are the same Papers. Besides, as to several of them, *Billop* marked them, and swears directly to them. If you believe these Witnesses, as you have no Reason, I think, to the contrary; it is plainly proved these are the very Papers which were taken from the Bosom of *Ashton*, and taken up by him from under the Quarter Hatches in the Smack.

L. Preston. I beg your Lordship's Pardon for one thing.

L. C. J. Holt. My Lord, what say you, pray? Say what you will.

L. Preston. With humble Submission, there is one thing that I think the Jury ought to take Notice of, That when the Papers were sent from Mr. *Bridgman* to my Lord *Sidney*, they were sent by a Messenger.

L. C. J. Holt. My Lord, you are mistaken as to that Objection, for my Lord *Sidney* did not send them to Mr. *Bridgman* by a Messenger, but he delivered them with his own Hand, and after he had set his own Mark upon them; and Mr. *Bridgman* says they were never out of his Sight, he copied them all but two or three, the other Mr. *Paultney* copied in his Presence, and so he swears he re-delivered them to my Lord *Sidney*.

L. Preston. With humble Submission, my Lord, if I remember right, they were in a third Hand.

L. C. J. Holt. Never, never.

L. Preston. Did not my Lord *Sidney* say so, or Mr. *Bridgman*?

L. C. J. Holt. No, neither my Lord *Sidney*, nor Mr. *Bridgman* said so; I suppose the Jury are apprehensive of the Matter; I would not mislead them, I'll assure you, nor do your Lordship any Manner of Injury in the World.

L. Preston. No, my Lord, I see it well enough that your Lordship would not; I am for my Life, and beg your Lordship's Pardon for interrupting of you.

L. C. J. Holt. Gentlemen, the next thing is to consider, whether my Lord *Preston* be answerable for these Papers, or a Party in this Treason.

First, Gentlemen, I would have you to consider, that there was the Hiring of a Vessel for *France*: it is true, my Lord *Preston* was not present at the Bargain; but you observe that my Lord *Preston*, his Servant, *Ashton* and *Elliot* took Water at *Surrey-Stairs* on Purpose to go on Board that Smack.

Now, Gentlemen, whether or no you can intend any other ways than that my Lord *Preston* was privy in the Hiring of this Vessel though he was not present at the Hiring of it; for how should my Lord *Preston* be ready to take Water with them at *Surrey-Stairs*? Can you imagine my Lord came there by chance, and took a sudden Resolution? if you can imagine that he came only to go on Ship-board, without knowing the previous Design, truly you imagine a very great thing for my Lord's Advantage.

It is plain he went voluntarily, without Compulsion; truly, I think the Evidence is very strong to induce you to believe he was privy to this Design, and that he did know of hiring the Vessel.

L. Preston. I hope your Lordship will observe at the same time, that I was never seen before we took Boat.

L. C. J. Holt. My Lord, I have observed it, and I lay that Weight upon the Evidence that I think it will naturally bear, and no more; and leave it to the Jury to consider, whether your Lordship was privy to the Design or no, when they weigh the Circumstances of the Evidence together.

L. Preston. I hope I shall not be condemned upon Presumption and Argument.

L. C. J. Holt. What Weight the Evidence has they will consider.

And then, Gentlemen, there is another thing that I would observe; Why should my Lord *Preston*, a Noble Man, a Person of his Honour and Quality, put himself in such a Place as he was found in, and that twice? It must sure be out of an Apprehension of some Danger. As for the Seamen, they were secure enough; they were not frightened, because they thought they were protected, and my Lord *Preston* knew he was not liable to be prest; the Master of the Vessel tells you they were fearful, and therefore hid themselves in a Place they could not stand in, nor sit in, there was the Gravel and Ballast, it was uneasy to them, dangerous to their Health to be there.

Gentlemen, why do Men avoid the Light and put themselves under Covert, unless they have some Evil Design? Persons that are innocent seek not Obscurity.

The Seals were found there, and my Lord does not deny they were his Seals.

L. Preston. I do not deny that: I hope it is no Crime to have such Seals.

L. C. J. Holt. Ay but, says my Lord, that does not affect — because the Papers were not found about me, but were found about *Ashton*. Gentlemen, if you can imagine my Lord *Preston* had a different Design from the rest of the Company that were with him, then you may acquit my Lord, and find him Not Guilty. But it is left to you to consider whether he had not the same Design with them. Besides there's Mention made in one of the Letters, *my Lord*, and there was no other Lord but he; and here are Papers prov'd to be my Lord's own Hand, containing several of the Matters of which he stands indicted, and he would have had the Captain to have disposed of the Papers.

Now, Gentlemen, what Account does my Lord give you were he was going? it seems they did pretend at the Time they were taken, and they would have had the Master of the Vessel said, that their Design was for *Flanders*; but the Witnesses tell you positively, That the Vessel was hired for *France*.

Truly, Gentlemen, I must leave the Matter to your Consideration whether my Lord be guilty of this Design or Not Guilty.

There is another thing that my Lord has urged (for I would not willingly omit any thing material on the one Side or the other) he says his Indictment is laid in the County of *Middlesex*, but the Papers were not taken there, the Ship they went on Board lay at Anchor in *Surrey*; and when they were taken, it was in the County of *Kent*, and so there is no Proof of Treason in *Middlesex*.

Ay, but Gentlemen, give me leave to tell you, if you are satisfied upon this Evidence, that my Lord was privy to this Design, contained in these Papers, and was going with them into

France, there to excite an Invasion of this Kingdom, to depose the King and Queen, and make use of the Papers to that End, then every Step he took, in order to it, is High Treason, wherever he went; his taking Water at *Surrey-stairs* in the County of *Middlesex*, will be as much High Treason, as the going a Ship-board in *Surrey*, or being found on Ship-board in *Kent*, where the Papers were taken.

Gentlemen, I have failed of recollecting several of the Particulars of the Evidence, because they are many; and you will not depend upon my Recollection of Things so very incoherent as some Parts of the Evidence in the Papers are, but upon your own Notes and Observations.

If you do think, having heard this Evidence, That my Lord was not concerned in this Matter, that my Lord had no Design to go into *France* with these Papers, but that he was an utter Stranger to all these Things, then you are to Acquit my Lord. But if you believe my Lord was privy to, and knew of the Hiring of this Vessel, and that he went to carry on the Design contained in these Papers; and that he wrote some of these Letters, and with the others he was acquainted, then you are to find him Guilty.

L. C. J. Pollexfen. My Lord, if you please, I would observe one thing to the Jury.

L. C. J. Holt. Ay, by all means, my Lord.

L. C. J. Pollexfen. Gentlemen of the Jury, I shall say but a few Words to you, because indeed my Lord has summ'd up the Evidence very fully, for Matter of Law: I am fully of Opinion there never was a more black nor horrible Treason than is in this Plot that is now discovered; for I think *Englishmen* have no greater Enemies than the *French* and the *Papists*, and you see this is a Plot to bring in both; and therefore I think there was never any thing of greater Consequence to the Government and the Nation, than to have this Plot detected and punished; tho' perhaps never any thing was more improbable than this same Plot, that it should ever take Effect, whatsoever they promised to themselves, and their Desire of having it effected, might persuade them to the contrary.

But, Gentlemen, the thing that I would mention about the Matter before you now, is this; Here are three Papers, that by three several Witnesses, acquainted with my Lord's Hand-writing, are testified, as they believe, to be his Hand-writing; if so, then there is an End of all, for therein is a horrid deal of Treason contained. If these Instructions, these Memorandums, these Heads that were written down, were my Lord's, and he did intend to go with these in a Voyage towards *France*, that will be sufficient of it self, if there were nothing else in the Case, to maintain this Indictment.

But, Gentlemen, you have in the rest of the Papers that were taken, A great Character of the Bearer; that the Bearer had done great Things; that the Bearer could inform them fully of every thing; and there should be full and intire Confidence put in the Bearer, and a great many such Phrases.

But, says my Lord, I was not the Bearer, it was Mr. *Ashton* that the Papers were found about; it does not appear directly who the Bearer was; and they were not found about me.

Now, Gentlemen, pray let us look a little how this Evidence stands: Pray where was this

Bundle found? even upon the Gravel, where my Lord *Preston* and Mr. *Afston* lay; there was it found, and my Lord's own Seal with it.

How, in the Name of God, came my Lord's Seals to be found with other Peoples Papers, if they did belong to any body else? How came they together in that Place? It may be, he had a mind to leave his Seals behind him, because they would discover his Quality. But why should my Lord *Preston* have all this Fear upon him? Why should two Men go and take a Ship for themselves and two others; and when they came to take Boat, take in my Lord and his Man, if they were not the two others that were designed? and this to be done at Night in the Dark? Why should my Lord be under such terrible Apprehensions, as to creep into a Hole so unfit for one of his Quality?

Why do you not hear from my Lord some good Account upon what Occasion my Lord and his Man were going to *France*? Or whether else my Lord was really going? for some where or other it was plain he was going.

Gentlemen, no Man goes into an Enemy's Country without some Licence, unless he go upon some ill Design: Fear seldom is without some Guilt; and there appears, throughout the whole Management of the Story, that there was a great deal of Fear upon these Gentlemen.

Besides, afterwards, when he is taken, and the Letters taken with him in the same Company, you hear what Endeavours there were to suppress the Truth, even by my Lord's desiring to have the Pacquet disposed of; and my Lord's Man gave one of the Seamen half a Crown to say they were going to *Flanders*, not to *France*. I suppose the Man knew how unfit it was to be known that they were going to *France*: And my Lord's two Companions spared for no Pains to get the Pacquet thrown over-board; tho' all that my Lord said was what great Kindness he would do him when it lay in his Power, if he would dispose of the Pacquet; I suppose that is very easily intelligible.

Gentlemen, there is one thing which is mentioned in one of the particular Letters, that I desire particularly to observe to you, and that is all I shall say to you: Here is a Letter in my Hand that in divers Places has somewhat remarkable; it says, *Your Daughter and I must starve, if this Government can make us: That the Party did not repine at all for having lost all for your Sake, which your Favour had bestowed.* And in another Place this Letter doth say, *Your Daughter grows very tall, and very pretty, as I am told.* But that which I chiefly mention it for, is, it's twice mentioned, *My Lord will tell you all my Condition, how I have been used; and I have told my Lord my Condition: what I desire of you, he thinks very moderate.*

And pray consider and remember, that the first Article of my Lord's Paper, that is taken to be under my Lord's own Hand, there is Two thousand Pounds to the Lady D.

Now if any Body should put these together, do they lack any great Interpreter for? for my part I leave them to you.

Then in another Place, towards the End of the Letter, it is said, *Pray, Sir, ask my Lord how I have been used.*

Now this Letter being thus taken, and there is never a one of the rest that was a Lord, do

you think any of the rest was meant? I must leave it to you.

If my Lord *Preston* had produced any Testimony to prove his own good Carriage and Behaviour towards the present Government, it had been very much for his Advantage, and might have had great Weight with you; but when Things appear only in this manner as they do now, I must leave it to you.

Gentlemen, 'tis a great Matter, and of great Moment; if those that conspire against the Kingdom, against the Protestant Religion, and against the present Government, may do it with Impunity, it will be worth the Considering what the Consequence of that may be. Your own Consciences require you to do Right and Justice on both Sides; and if you are satisfied he is Not Guilty, you will find him so; if you are satisfied that he is Guilty, you will find him so.

L. Preston. My Lord, may I have the Liberty to say any thing before the Jury go out?

L. C. J. Holt. Your Lordship should have said what you had to say before: It is contrary to the Course of all Proceedings in such Cases to have any thing said to the Jury after the Court has summed up the Evidence; but we will dispense with it. What has your Lordship to say?

L. Preston. My Lord, I humbly thank your Lordship; I am not acquainted with such Proceedings.

L. C. J. Holt. My Lord, you know I permitted your Lordship to interrupt me as much as you would, which was never done before in any such Case.

L. C. J. Pollexfen. It is contrary to the Course of the Court: But yet if you have any thing to say to the Court or the Jury, for this once we permit it.

L. Preston. Gentlemen of the Jury —

L. C. J. Holt. My Lord, what you have to say, pray direct yourself to the Court, that we may hear what it is.

L. Preston. My Lord, I only desire the Jury may be informed, that I am a Protestant, that I was baptized in the Religion of the Church of *England*, and have always lived in it, and hope to die in it. My Lord, 'tis true, things have been urged with Severity against me that are a little hard, in making that, which I hope will amount to but a Presumption, to be a Proof; as in the Case of the Letters that are written in a Cant, and my Intention to go to *France*, and those Words in the Letter, where my Lord the Bearer is named. But your Lordship observes, That that Letter is not directed to any body, and that is full of Cant as well as all the rest; Why should I be supposed to be the Bearer any more than either of the others, and they were found about one of them? But, my Lord, for the Reason of my going beyond Sea, it was this; I designed to go to *Flanders*, or any Place I could be driven to, and that ought not to be wondered at; for really I who had lived quietly after the Loss of my Places, upon this Revolution, and suffered great Inconveniences in my Estate, and was retired to my own House, with a Design to live a retired Life, was imprisoned twice in the *Tower*, and proclaimed a Traitor in every Market Town, without any Indictment; and my Imprisonment tended greatly to the impairing my Health and my Fortune; all this made me very uneasy here: and, my Lord, I went under

under a fixed Resolution to go to *Flanders*, or any Place where I thought I could be quiet.

L. C. J. Holt. My Lord, your Lordship should have said all these Things before, for it is not the Course to reply upon the Court; if you had had any Thing to say, you know we heard you out of Course, and I let you interrupt me as much as you did think fit, though that has not been allowed at any time before. But, my Lord, pray let me say one Thing more: Suppose your Lordship did think yourself hardly used, though I know not any Reason you had to think so; yet your Lordship must remember, it was in a Time of Danger that your Lordship was taken up before, and you had shewed your Dissatisfaction with the present Government, and therefore they were not to be blamed if they secured themselves against you; but if you had a Mind to retire into the Country, or to go Abroad, was *France* the only Country you could choose? a known declared Enemy's Country, at open War with the Government?

L. Preston. My Lord, I beg your Lordship's Pardon, if I give any Offence.

L. C. J. Holt. No, my Lord, you give me no Offence at all; but your Lordship is not right in the Course of Proceedings; I acquaint you with it not by way of Reproof, but by way of Information.

L. Preston. Then I hope the Gentlemen of the Jury will consider, that all that is alledged against me is but Presumption; my Life and Fortune, my Posterity and Reputation, are all at Stake; I leave all to the Jury's Consideration, and the God of Heaven direct them.

L. C. J. Holt. If you go on thus to reflect upon the Court, you will make the Court to reflect upon you. The Jury hear how the Evidence has been stated: I think it has been done very impartially, and without any Severity to you: Why should you think we would press the Evidence further than it ought to go against you? You are a Stranger to most of us, and I am sure we do not desire your Life; but still we must take care that Justice be done to the Government and the Kingdom, as well as to any particular Person; and Evidence that is given must have its due Weight and Consideration: If any one can design innocently to go into *France*, at this time of Day, with such Papers, and in such a manner, that I leave to the Jury's Consideration.

Then the Jury withdrew, to consider of the Evidence, and the Court adjourned for a little while, and return'd in half an Hour; and the Jury came in, and were called over, and appeared.

Cl. of Ar. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. Our Fore-man.

Cl. of Ar. Sir *Richard Grabme*, hold up your Hand (*which he did*) Look upon the Prisoner. How say you? Is he guilty of the Felony and High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods and Chattels had he?

Foreman. None at all that we know of.

'Then the Verdict was recorded.

L. C. J. Pollexfen. I think, truly, Gentlemen, you have done according to your Evidence; and though it be a hard Case upon particular Men that have brought themselves into these Inconveniences, yet it is necessary Justice should have its due Course, or else there is no longer living for any Man in any Society or Government.

Then the Prisoner was carried back to Newgate, and the Court adjourned till Monday Morning following at Seven a Clock.

Die Lunæ, xix Januarii, 1690.

The Court being sate, the Jury was called over, and the Appearance of those who answered Recorded. Then Mr. Ashton and Mr. Elliot were brought to the Bar; but Mr. Elliot was ordered to be carried back to Newgate, the King's Council resolving to try Mr. Ashton by himself.

JOHAN ASHTON, hold up thy Hand (*Which he did*.) Those Men that you shall hear called, and Personally appear, are to pass between our Sovereign Lord and Lady our King and Queen, and you upon your Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to speak as they come to the Book to be Sworn, and before they be Sworn.

Mr. Ashton. Pray stay a little.

L. C. J. Holt. What say you, *Mr. Ashton*?

Mr. Ashton. My Lord, I humbly desire your Lordship will allow me the Benefit of Pen, Ink, and Paper.

L. C. J. Holt. Pray let him have Pen, Ink, and Paper.

Mr. Ashton. And likewise that you would give my Solicitor leave to be as near me as possibly he can, only to refresh my Memory, if I should forget any Thing.

L. C. J. Holt. That is a Thing you cannot of Right demand, the other of Pen, Ink, and Paper you may.

Mr. Ashton. My Lord, I shall acknowledge it as a very great Favour.

L. C. J. Holt. That is an Innovation that ought not to be; the Court cannot allow it.

Mr. Ashton. I acknowledge it a Favour, but if the Court thinks it not fit to allow it, whatsoever your Lordship shall order I readily submit to.

L. C. J. Holt. You shall have Pen, Ink, and Paper; and what is fit for the Court to do they will do it.

L. C. Baron. If the Witnesses say any thing that you do not hear, you must speak to the Court, and you shall have them say it over again.

Pen, Ink, and Paper was given to the Prisoner.

Cl. of Arraign. Sir *William Hedges*, Knight.
(*He appeared.*)

Mr. Ashton. My Lord, I would not trouble your Lordship and myself with unnecessary Challenges; I intend to put myself with an intire Dependance upon the first Twelve Men that appear, be they who they will.

L. C. J. Holt. What you please for that matter, you have your own Choice.

Mr. Ashton. Whoever they are, I submit to them; I know them not.

Cl. of Arr. Swear Sir *William Hedges.*

(Which was done.)

And so were the Eleven next succeeding in the Panel; and the Names of the Twelve sworn follow.

Sir *William Hedges*, Knight.

John Wolfenholm, Esq;

James Boddington, Esq;

Thomas Johnson, Esq;

Ralph Bucknall, Esq;

Lucy Knightly, Esq;

Thomas Cutburt, Esq;

John Herbert, Esq;

John Tully, Esq;

Thomas Smith, Esq;

William Withers, Esq; and

Daniel Thomas, Esq;

Then the Jury were numbered, and Proclamation made for Information and Evidence in the usual manner.

Mr. Asst. Gentlemen of the Jury, if you desire Pen, Ink, and Paper, I hope the Court will take care to provide them for you.

L. C. J. Holt. Ay, ay, let the Gentlemen of the Jury have Pen, Ink, and Paper.

(Which was done.)

Cl. of Arr. *John Ashton*, hold up thy Hand.

(Which he did.)

Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause: He stands indicted by the Name of *John Ashton*, late of the Parish of *St. Paul's Covent-Garden*, in the County of *Middlesex*, Gent. For that he, together with *Sir Richard Grabme*, late of the Parish of *St. Ann*, in the Liberty of *Westminster*, Baronet, who stands convicted of High-Treason, and *Edmund Elliot*, late of the Parish of *St. James*, in the said Liberty, Gent. For that they as false Traytors, &c. (Prout in the Indictment, *mutatis mutandis*) and against the Form of the Statute in that Case made and provided. Upon this Indictment he has been Arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are; your Charge is, to enquire whether he be Guilty of the Felony and High-Treason whereof he stands indicted, or not Guilty; if you find him Guilty, you are to enquire, what Goods or Chattels, Lands or Tenements he had at the Time of the Felony and High-Treason committed, or at any time since; if you find him Not Guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him Guilty; if you find him not Guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Knapp. May it please your Lordship, and you Gentlemen of the Jury; This is an Indictment of High-Treason against *John Ashton*, the Prisoner at the Bar, and the Indictment, Gentlemen, charges him, That he, as a false Traytor against their present Majesties King *William* and Queen *Mary*, his Supreme and Natural Lord and Lady, not weighing the Duty of his Allegiance, did, upon the Twenty-ninth of *December* last past, together with *Sir Richard Grabme*, who stands convicted, and one *Edmund Elliot*, and

divers other ill disposed Persons, unknown to the Jury, did conspire, imagine, and intend to depose and deprive the King and Queen, and to bring them to Death and Destruction, and to subvert and alter the Government; and to cause War and Rebellion within this Kingdom against their Majesties; and to bring these Intentions and Purposes to pass, the Prisoner, with the rest of them, did prepare divers Notes, Papers, Letters, and Memorandums in Writing, which were to instruct the *French* King, and other Enemies of the King and Queen, of the Number of their Majesties Men of War, how they were Mann'd, and the Names of the Commanders of several of them, and to inform them how the Castles and Forts of *Portsmouth*, *Southsea*, and *Gosport* were fortified, and how they might be surprized by the King's Enemies, and of the Times, Ways and Means how they might invade the Kingdom, in order to depose the King and Queen; and to procure and incite such an Invasion; and further to bring these Purposes to pass, the Prisoner and the other Traytors did secretly conceal, and detain in their Custody, several Bills of Exchange for the Payment of Money to the King's Enemies, and the several Letters, Notes, and Memorandums before mentioned, which were for the Purposes I before opened to you; and further, to bring these Purposes and treasonable Intentions to pass, they did for One hundred Pounds hire and prepare a Ship, which was to carry them secretly out of this Kingdom into *France*, with an Intent there to deliver these Instructions, and Memorandums, and Bills of Exchange into the Hands of their Majesties Enemies; and did hire a Boat to carry them to the Ship, and did enter into it at *St. Clement Danes*, within your County, and rowed to the Ship, and went on Board the Ship, and there, with the Bills of Exchange, Notes, and Memorandums, they set sail to go to *France*, in order to deliver them to the *French* King, and other Enemies of the King and Queen; and the Indictment doth further set forth, that there hath, and still is a War between the *French* King, and our King and Queen, and that he and his Subjects are Enemies to the King and Queen and their Subjects; and that during this War, the Prisoner, together with the rest that were before named, were adhering to the King and Queen's Enemies in this War; and in pursuance thereof, did prepare such Letters and Instructions before opened, and had, and concealed in their Custody, and hired a Ship and a Boat, and went into the Ship, and set sail in order to go for *France*, to aid and assist the King's Enemies there with Money, Intelligence, and Counsel; and this is laid to be against the Duty of his Allegiance, against the Peace of the King and Queen, their Crown and Dignity, and against the Form of the Statute in that Case made and provided. To this he hath pleaded Not Guilty; if we prove him Guilty, you are to find him Guilty.

Mr. Serj. Thompson. May it please your Lordship, and you Gentlemen of the Jury, The Prisoner at the Bar stands indicted of a very heinous Offence, no less than High-Treason, the greatest Offence that can be committed against any Human Law. You have heard the Particulars in the Indictment read. I will not trouble you with any Repetition, but go to open the Evidence according to the Steps that are obvious in the Case.

You have heard in general, the Design was to depose this King and Queen, which the Law expounds to be to bring them to Death and Destruction: You have heard it was to alter the Government, and cause a Rebellion in the Kingdom, and to bring in foreign Power; and these are laid to be the Heads of the Offences that the Prisoner stands charged with.

Gentlemen, the first Step that was made in this Matter was by the Prisoner at the Bar; for there was one Mr. *Burdett*, which it seems had been one of his Acquaintance, and had undertaken to bring him acquainted with a Person that could furnish him with a Ship; and in order to that, one Mrs. *Pratt*, that had the Management of the Smack which belonged to her Husband, she, by *Burdett's* Means was brought to *Burdett's* House, where she met Mr. *Ashton*, the Prisoner at the Bar, and they had some Treaties about the Hiring of a Ship; the Purpose declared by the Prisoner then, was to hire a Ship to go to any Part of *France*, and he would give a considerable Reward for it; he said it was for himself and Three more. They did not come to any Conclusion about the Ship, but there was an Appointment made to have the Master of the Ship to meet with them at the *Wonder Tavern* in *Ludgate-Street*; and in order to that, *Paseley*, that is the Master, and the Woman came there, and met with Mr. *Ashton*; but because Mr. *Burdett* was not there, they came only to this Proposal, One hundred and fifty Pounds was demanded for the Hire of this Vessel; but there being no Conclusion then made, they thought it better to do it at *Burdett's* House, and about a Day after they came to Mr. *Burdett's*, and then it hapned that *Elliot*, one of the Persons that is indicted, but not one before you, came thither too; and at that Time it was agreed to give One hundred Pounds for the Hire of the Ship. Ninety-three Guineas were deposited in Mrs. *Burdett's* Hands; and there was a Token past betwixt them by the breaking of a Six-pence, one part whereof was to lie with Mr. *Ashton*, and the other with Mrs. *Burdett*; and whenever the Master of the Vessel brought back the broken Piece of Six-pence that Mr. *Ashton* had, then she was to pay the Money, that being the Sign that they had attained their Ends, and were safely landed in *France*.

The next Step they take is this, they appoint to meet at the *Seven-Stars* in *Covent-Garden*, thither the Master of the Vessel and the Woman were to come, and that was near the Time, that very Day that they designed to go down; and there was Mr. *Ashton* and Mr. *Elliot*, but the other Person did not appear as yet; there the Seamen were ordered to go along with them, and thence they went down to the Water-side, to *Surrey Stairs*, and the Waterman was called, and in the mean time came my Lord *Preston* and his Man to them, and they four did go in that Boat, by the Direction of the Master, and were carried on Board his Smack.

After they came on Board (for I would note the particular Circumstances) they were very apprehensive of Danger, for they knew what they went about, their own Guilt gave them Reason of Fear, and when they came near a Man of War, which lay at Anchor in *Long-Reach* in the River, they desired the Master to hide them, that they might be safe from any Search, and they were hid and put close under the Hatches for some time; afterwards when they came to another Place of Danger, it was by the *Block-*

Houses at *Gravesend* (as they apprehended) there they desired to be hid again, and so they were put in that Place, where they were in very difficult Circumstances under the Hatches, and there they remained till a Pinnace, that had been sent to inquire after them, came and boarded this same Vessel.

Upon its boarding of them, the Captain made a Search, and found these Gentlemen, my Lord *Preston*, Mr. *Ashton*, and Mr. *Elliot*, and I suppose his Man also, all hid under the Hatches.

Then the next Thing which is observable, Gentlemen, and the great Matter that will shew where the Treason was, is this, There was a Bundle of Papers that was on Board, ready prepared, if they had not been surprized, but could have had an Opportunity for it, to have been cast over-board, and there was Lead fixt to it, to have sunk it, and Mr. *Ashton*, the Prisoner at the Bar, was the Person that concealed this Bundle of Papers, betwixt his Body and his Coat, and from thence it was taken by the Captain that took them.

When they were so taken, the Captain, according to his Duty, was bringing the Prisoners to *Whitehall*, they desired to go on Shore at *Gravesend*, but the Captain did not think that so fit, but carried them on Board the *George Frigate*, and then you will hear these Gentlemen did fall into a Treaty with the Captain to suppress these Papers; and one Instance I remember they did tell him, that since there were a Parcel of Papers that he had taken out of my Lord *Preston's* Pocket, he might take off the Lead and fix it to those Papers, and sink the others; and what should he have for it? they promised him great Rewards, they told him he might be a great Man, he had an Opportunity of making his Fortune; and when that would not do, they used many Threatnings to him, all which will appear in the several Circumstances that the Witnesses will tell you of.

I come, Gentlemen, in the last Place to shew you, That all the whole Conspiracy, all this Treason, did lie hid under this Bundle of Papers that were taken from Mr. *Ashton*, and so he might well be afraid of having them opened, for there you will find a formed Design to alter this Government by a *French* Power and Assistance; and they contain so many Particulars, that in regard I would not do the King's Evidence Injury on the one hand, nor the Prisoner on the other, I will forbear repeating the particular Instances.

Gentlemen, You will have all the Letters and Papers read; but in the General, I must needs say, you will find it manifest, that there is a black and wicked Conspiracy to introduce a foreign Power to establish the Protestant Religion, and that by a Popish Interest, and to settle our Laws, Liberties, and Properties, by a *French* Army. And let them pretend what they will for the Protestant Religion, when you hear these Papers read, no-body will imagine it was to any other Purpose (if the Plot had taken Effect) but to have what Religion, what Laws the *French* King had pleased to impose upon us.

If the Prisoner be Guilty, Gentlemen, of these Matters, I know you will do your Duty; but if he be not Guilty, God forbid that you should find him Guilty.

L. C. J. *Holt*. Call your Witnesses, Brother.
Mr. Serj. *Thompson*. We begin with Mrs. *Pratt*
She was Sworn.

Sir *W. Wil.* Look you, Mrs. *Pratt*, here is another Gentleman at the Bar to be tried, against whom you are called as a Witness.

Mrs. *Pratt.* Yes, my Lord.

Sir *W. Wil.* Pray hear what we ask you. Pray do you give the Court and the Jury an Account, what Treaty you have had with that Gentleman, about a Vessel to go to *France*, and what was done in it.

Mrs. *Pratt.* If it please you, my Lord, I was sent for to Mr. *Burdett's* House in *Queen-Street* by *Cheapside*, to know whether he could have a Smack to go for *France*; I told him yes, I could help him to one; he told me, there were two or three Gentlemen bound for *France*, as Merchants to fetch Silk, and I was at Mr. *Burdett's* two or three times, and at last Mr. *Ashton* met me there.

L. C. J. *Holt.* Look upon the Gentleman, is that he?

Mrs. *Pratt.* Yes, that is the Gentleman, and he met me there, and meeting with Mr. *Ashton*, he hired the Vessel; but first of all, he desired us to meet at the *Dog Tavern* upon *Ludgate-Hill*, to make the Bargain, and we did meet there, and were there about an Hour, or an Hour and a half, and Mr. *Burdett* did not come; and the next Morning, Mr. *Ashton* desired me to meet him at Mr. *Burdett's* again; and the next Morning I met at Mr. *Burdett's*, and there we made the Bargain for 100 *l.* and there was Six-pence broke in two pieces.

Mr. Serj. *Tremain.* Was the Hundred Pound paid?

Mrs. *Pratt.* Yes, but we agreed on the *Tuesday* Morning, and there was a Six-pence broken in two, and Mr. *Ashton* had both the Six-pences in his Hand, and the *Tuesday* Night the Hundred Pound was paid at Mrs. *Burdett's*.

Mr. *Sol. Gen.* Who was by?

Mrs. *Pratt.* There was one Mr. *Elliot*, and the Master of the Smack, and Mrs. *Burdett*.

Mr. Serj. *Tremain.* Did they pay the Money in Gold or Silver?

Mrs. *Pratt.* This Gentleman, Mr. *Ashton*, told the Money, there was 93 Guineas and a Six-pence, and Mr. *Ashton* gave one half of the broken Six-pence with the 93 Guineas to Mrs. *Burdett*; and when the Master of the Vessel brought the other half of the Six-pence, or I, either of us, we were to have the 100 *l.*

Sir *W. Wil.* Pray to what Place did they hire the Ship to go?

Mrs. *Pratt.* To *France*.

Sir *W. Wil.* Who hired the Ship?

Mrs. *Pratt.* That Gentleman.

Sir *W. Wil.* Who paid the Money?

Mrs. *Pratt.* That Gentleman, Mr. *Ashton*.

Sir *W. Wil.* To what Hand was the Money paid?

Mrs. *Pratt.* It was paid in Mrs. *Burdett's* Bed-Chamber, into her Hand.

Sir *W. Wil.* Who broke the Six-pence?

Mrs. *Pratt.* Mr. *Ashton*, that Day the Bargain was made.

Sir *W. Wil.* Who carried it away?

Mrs. *Pratt.* When the Money was paid, Mr. *Ashton* had one, Mrs. *Burdett* had the other Part.

Mr. Serj. *Tremain.* To which Part of *France* were you hired to go?

Mrs. *Pratt.* To any Part where they could touch.

Mr. Serj. *Tremain.* Pray did they give you any Note about any Thing?

Mrs. *Pratt.* Yes, they gave me one Note to meet at the *Dog Tavern*, and another to meet at the *Seven-Stars* in *Covent-Garden*.

Mr. Serj. *Tremain.* Who gave you the Notes?

Mrs. *Pratt.* Mr. *Ashton* and Mr. *Elliot*.

Mr. Serj. *Tremain.* Look upon that Note.

(Which she did.)

Mrs. *Pratt.* This to my best remembrance Mr. *Ashton* wrote, I cannot well remember the Hand.

Mr. Serj. *Tremain.* Did Mr. *Ashton* desire to meet at the *Dog Tavern*?

Mrs. *Pratt.* Yes, and he did meet at the *Dog Tavern*, but *Burdett* did not.

L. C. J. *Holt.* When did you meet at the *Dog Tavern*?

Mrs. *Pratt.* On the *Monday* Night before *New Year's* Day.

L. C. J. *Holt.* When was the Money paid?

Mrs. *Pratt.* On *Tuesday* Night, at Mrs. *Burdett's*.

Mr. Serj. *Tremain.* After the Money was paid, what did you do the next Day?

Mrs. *Pratt.* Mr. *Ashton* ordered a Note to be written, to meet at the *Seven-Stars* in *Covent-Garden*, at one Mr. *Rigby's*.

L. C. J. *Holt.* At what Time were you to go to *Rigby's*?

Mrs. *Pratt.* A *Wednesday* Night.

L. C. J. *Holt.* But at what Time?

Mrs. *Pratt.* Some time about Ten a Clock, and we came there accordingly.

Mr. *Sol. Gen.* Who was with you at *Rigby's*?

Mrs. *Pratt.* There was the Master of the Vessel, Mr. *Ashton* and Mr. *Elliot*, and two Gentlemen more, that I never saw before nor since.

Sir *W. Wil.* I ask you again, who first treated with you about hiring this Vessel?

Mrs. *Pratt.* Mr. *Burdett* first treated with me about it?

Sir *W. Wil.* Who next?

Mrs. *Pratt.* Mr. *Ashton*.

Sir *W. Wil.* Who made the Bargain with you?

Mrs. *Pratt.* Mr. *Ashton*.

Sir *W. Wil.* Who paid the Money?

Mrs. *Pratt.* Mr. *Ashton*.

Sir *W. Wil.* What can you say more?

Mr. Serj. *Tremain.* Pray let me ask you, when you came to Mr. *Rigby's*, in what manner did you go away from his House, and what was said at parting?

Mrs. *Pratt.* Mr. *Ashton* was not there himself at first, but he and Mr. *Elliot*, and two other Gentlemen were there afterwards, and Mr. *Ashton's* Wife said something about Papers hove in a Hat at Court, and about some Bodies being chosen; and one of the Gentlemen said there was nothing in that, I was one that was chosen last Year.

Mr. Serj. *Tremain.* Did *Ashton* and *Elliot* go out together from Mr. *Rigby's*?

Mrs. *Pratt.* I did not see them go.

Mr. *Trevor.* Had you any Directions from Mr. *Ashton* to send for a Hamper or a Trunk?

Mrs. *Pratt.* Yes, that was at Mr. *Burdett's* House.

Mr. *Trevor.* When was that Hamper and Trunk to be sent for?

Mrs. *Pratt.* On the *Wednesday* Night before we went to *Rigby's* House.

Sir *W. Wil.* Do you know one *William Pafeseley*?

Mrs. *Pratt.* Yes.

Sir *W. Wil.* Was he with them?

Mrs. *Pratt.* Yes, he was with them.

Sir *W. Will.* What Occasion brought him thither?

Mrs. *Pratt.* I carried him to Mrs. *Burdett's* Houfe.

Mr. *Trevor.* Pray did the Prisoner desire to see the Master of the Vessel, or speak with him?

Mrs. *Pratt.* Yes, and when I brought him, he said he liked him very well.

Mr. *Trevor.* What is the Master's Name?

Mrs. *Pratt.* *William Pafeley.*

Mr. Serj. *Tremain.* Had you any Discourse with Mr. *Ashton's* Wife after they went away?

Mrs. *Pratt.* We had little Discourse, only she gave me some Victuals and Drink; and she said she hoped I would not tell of her Husband.

Mr. Serj. *Tremain.* What else did she say?

Mrs. *Pratt.* She hoped God would deliver them out of the Lyon's Mouth.

Mr. Serj. *Tremain.* Did she say any Thing about Cock-crowing?

Mrs. *Pratt.* Yes, she said she thought she should have no good Luck, for the Cock crowed.

Mr. Serj. *Tremain.* Who was by in the Chamber when the Money was paid?

Mrs. *Pratt.* There was the Master of the Vessel by, and Mrs. *Burdett.*

Juryman. My Lord, I heard her say somewhat of some Papers, which I do not very well understand. Does she know of any Papers that the Prisoner had?

Mr. Serj. *Tremain.* That was only about the Two Notes.

L. C. J. Holt. She talks of Papers being shaken in a Hat, but nothing can be made of it.

L. C. J. Pollexfen. If you would ask her any Questions before she goes, now is your time to do it.

Mr. *Ashton.* My Lord, I desire she may stand up again. Mrs. I ask a Question, not so much in Kindness to myself, as Justice to another Gentleman. You say Mr. *Elliot* writ one of the Notes.

Mr. *Pratt.* Yes, as I remember, it was that to meet at Mr. *Rigby's.*

Mr. *Ashton.* I do it to justify that Gentleman, I take that Note upon myself, and you say I hired the Ship, and Mr. *Elliot* was by.

L. C. J. Holt. Look you, Mr. *Ashton*, Mr. *Elliot* is not now upon his Trial, it concerns you only to ask such Questions as relate to yourself. What is said now concerning Mr. *Elliot*, goes for nothing against him.

Mr. *Ashton.* My Lord, I do it only to do him Justice.

L. C. J. Holt. But you are to ask Questions only for yourself.

Mr. *Ashton.* Remember, good Woman, you are upon your Oath; and have a Care of forswearing yourself; my Blood is at Stake.

Mrs. *Pratt.* I am sure I say nothing but the Truth.

Mr. *Ashton.* Did I ever speak to you of going to France?

Mrs. *Pratt.* Yes, you did.

Mr. *Ashton.* As I hope for Salvation I did not.

Mrs. *Pratt.* And another Thing you told me more, if I helped this well away, you would help me to the Earning of 1000*l.* before *Lady-Day.*

Mr. *Ashton.* Gentlemen, as to what was said of that kind, of helping her to 1000*l.* is no great Matter to the Thing in Hand; for if I was minded to go out of the Kingdom, it was necessary to use all Arguments I could, to persuade her to help me to go away.

L. C. J. Holt. Mr. *Ashton*, you must stay your time before you speak to the Jury; make your Observations upon the Evidence to yourself, you shall be heard at large all that you can say in your proper Time.

Mr. *Ashton.* I do assure myself, my Lord, of all the Favour that can be shewn to a Man in my Circumstances.

L. C. J. Holt. You shall have all that is just, I do assure you.

Mr. *Ashton.* My Lord, I am glad in the Circumstances I am in, that I am to be tried before your Lordship. But, good Woman, by Virtue of the Oath that you have taken, did I ever speak to you directly or indirectly of going to France?

Mrs. *Pratt.* Yes, and you asked for a Hole to hide what you might have occasion to keep secret.

Mr. *Ashton.* But I ask you about going to France; did I speak to you about going to France?

Mrs. *Pratt.* Yes, you did.

Mr. *Ashton.* Then, as I hope to be saved, I never spoke directly or indirectly of going to France to her.

Mrs. *Pratt.* You were not to go for *Holland* or *Flanders*, I am sure.

Mr. *Ashton.* Nay, I did take it for granted, that you did know before I met you, that we were to go to France; but I never spoke to you of it in my Life, that I am sure of; but I only urge this to let your Lordship know, that Woman has forgotten herself.

L. C. J. Pollexfen. Mr. *Ashton*, You will have all lawful Favour; but your Time for arguing upon the Evidence is not come.

Mr. Serj. *Tompson.* You must ask your Questions now, and make your Observations afterwards; you must reserve yourself for that, till after we have done.

Mr. *Ashton.* But then, my Lord, I shall have too many Things for my Memory to retain; and therefore I beg leave, as they occur to my Memory now, and as the Witnesses go along, to make my Observations.

Mr. Serj. *Tremain.* Mrs. *Pratt*, Pray, when the Vessel was hired, and you were told it was to go to France, what Persons did Mr. *Ashton* say were to go with him?

Mrs. *Pratt.* Three Persons he said were to go, but he did not name them.

Mr. Serj. *Tremain.* Then set up *William Pafeley.*
(Which was done.)

Sir *W. Williams.* What can you say of any for the hiring of a Vessel?

Pafeley. I did not know the Vessel was hired before I came thither.

Mr. Serj. *Tompson.* Prithee tell us what thou dost know.

Pafeley. The Woman came to me when I was at *Billinggate*, and said I must go a little Way along with her; and as we were going, she told me it was to go to Mr. *Burdett's* in *Queen-Street*; and when we came there, *Elliot* and *Ashton* were not within: But by that time we had been there a little while, in came Mr. *Ashton*, and presently after him Mr. *Elliot*; and Mr. *Ashton* bid the Woman give him the Money out of the Place where it was.

Juryman. My Lord, we do not hear him.

Sir *W. Williams.* Pray begin again, and speak out.

Pafeley. I met with this Woman at *Billinggate*, and

and she told me I must go a little away along with her.

L. C. J. Holt. That Woman, name her.

Pafeley. Mrs. Pratt; and I went along with her, and askt her where she was going; she said up into *Queen-Street*: And coming to *Queen-Street*, we went to Mr. *Burdett's* House, I was never there in my Life before. When I came there, *Ashton* nor *Elliot* were either of them there; after a little while in came *Ashton*, and presently after in came *Elliot*, and he went up Stairs into the Bed-chamber; and being in the Bed-chamber, they brought the Money out, rolled up in a half Sheet of Paper, set up an Edge, and told it out at the Window.

L. C. J. Holt. Who told it?

Pafeley. *Ashton* told the Money out; and after the Money was told, he pulled out two pieces of a Six-pence, and when he had pulled out the two pieces of a Six-pence, he gives one half to this Mrs. *Burdett*, and the other half he kept himself; and he bid her pay this same Money, when the other half Six-pence that *Ashton* kept, came to this Woman, to match that which she had; and after the Money was told, we staid but a small while there, and came down Stairs; and when we came down Stairs we went down to *Billinggate*. I think *John Fisher* was there, and we carried away with us a Trunk and a Hamper; *John Fisher* carried the Trunk, and another Man the Hamper; and after that we had carried the Things on Board, I came up to the House again; and after I came up to the House, they directed us to go to the *Seven-Stars* in the little *Piazza*, there was a Note written to direct us, which ordered us to go thither betwixt 10 and 11 at Night. When we came there, I think there was neither of them there present, but by that time we had been there a small Space, in they both came and sat down; and a Gentleman came in and said the Cock crowed, and therefore they should have no good Luck. And then they talked about Papers being tossed in a Hat, I don't know what, and in came two Gentlemen more, just before we went away, to see them; and after those Gentlemen had seen them, they staid but a little while. Says *Elliot* to me, Master, come along with me; so I went along with him, and we came to *Surrey* Stairs, and on the Corner on the Left-Hand, there was an Alehouse. He called the Waterman out of the Alehouse, and he bid me go before, and I went down; and by the Time that I had gotten down, the Waterman came and halled his Wherry to, and I went in, and by that time I was gotten to the Stern, down came *Asby* and *Elliot*, and my Lord, and his Man.

L. C. J. Holt. You mean *Ashton*, not *Asby*?

Pafeley. Yes, my Lord, that is the Man. And after they had got into the Wherry, and were seated, they bid the Waterman put off from Land, and so we went through Bridge; and after we were through Bridge, we got on Board the Smack, and they got into the Cabbin; and when they were got into the Cabbin, I called my Men, and bid them hale up the Anchor, and they did so; it proved to be but little Wind, but that Tide we got below half-way Tree, and were forced there to drop our Anchor, and stay till the next Morning: The next Morning we weighed Anchor, and by that time it was Nine a Clock, we got to *Long-Reach*,

where lay the *George* Man of War, and there they hid.

Mr. *Sol. Gen.* And how was the hiding pray?

Mr. *Pafeley.* It was down in the Quarters under the Hatches.

Mr. *Sol. Gen.* Why did they hide?

Pafeley. We reckoned they would come on Board a Pressing, and they bid me shew my Protection.

Mr. *Serj. Tremain.* Did they desire to be hid?

Pafeley. Yes, and after we came by the *George* Man of War, they came up again, and remained afterwards in the Cabbin, till we came almost to *Gravesend*: A little before we came to *Gravesend*, they all hid again; and when they were hid, remained hid all, I think, but only *Elliot*, I think, he popt up; and they were resolved to go eat their Victuals; but then I told them there was a Barge a coming, and so he went down again, and there they remained till they were taken, for the Barge was on Board presently, and found them there.

Mr. *Serj. Tremain.* What kind of Place was it that they were hid in?

Pafeley. They could not sit, nor stand upright in it, but lay all along, or leaned on their Elbows.

L. C. J. Holt. What did they lie upon there, pray?

Pafeley. There was Ballast, and slit Deal a-top of the Ballast.

Mr. *Serj. Thompson.* Well, what happened when the Captain came on Board?

Pafeley. When Captain *Billop* came on Board, Master, says he, you have got a Couple of stout young Men, I must press them, or to that Effect. I hope not so, Captain, said I. Why what have you to shew, says he? I told him, I had a Protection. Let me see it, says he: So I shews him my Protection, and he looks in it. Well, says he, Master, I must look farther; and went to rights to the Place where they lay, and found them lying all together. After they were taken, and were come out, Captain *Billop* commanded them into his Boat, and commanded me and my two Men, to go into the Barge; afterwards he set his Man on shoar at *Hungerford* Stairs; and when we came to *Whiteball* Bridge, the Gate was not opened, and we staid a little while at *Whiteball* Bridge; and when we came a Shoar, *Elliot* gave me half a Crown, and bid me say, when I came upon my Examination, that we were bound for *Flanders*, and not for *France*.

Mr. *Serj. Tremain.* Where were you bound for, pray?

Pafeley. They examined me in the Chamber, when they paid the Money, if I knew they went to *France*; and I told them, Yes, very well.

Mr. *Serj. Thompson.* Did they desire you to go to any particular Port in *France*?

Pafeley. No, we were to touch at any Place we could.

Sir *W. Williams.* Did they mention any thing of *Flanders* to you?

Pafeley. No, they did not.

L. C. J. Holt. Did any body mention going to *France* to you?

Pafeley. Yes, they did. They askt me, whether I could carry them to *France* safe.

L. C. J. Holt.

L. C. J. Holt. Who did ask you that?

Pafeley. Elliot or Astton, one of the two, I cannot directly say which; but if I be not mistaken, it was Astton.

Mr. Serj. Tremain. When came you from Rigby's at the Seven-Stars? Who came away with you?

Pafeley. Astton and Elliot.

Mr. Serj. Tremain. Did Elliot and Astton both come out with you?

Pafeley. Yes, they did.

Mr. Serj. Tremain. And did they part after they were come out?

Pafeley. Yes, Astton did go away from us presently after we were come out.

Mr. Serj. Thompson. When you came on Board, had you any Discourse with Astton about going to France?

Pafeley. No, not that I remember.

L. C. J. Holt. Did you go on Foot from the Seven-Stars?

Pafeley. Yes.

L. C. J. Holt. And did they part after you came out?

Pafeley. Yes, they did.

L. C. J. Holt. And who went with you, did you say?

Pafeley. Elliot came with me.

L. C. J. Holt. Whither went Mr. Astton then?

Pafeley. I cannot tell, my Lord.

Mr. Sol. Gen. What did he say to you when he went from you?

Pafeley. He bid me go along with Elliot.

L. C. J. Holt. Was Mr. Astton there as soon as you?

Pafeley. Not quite; but by that time the Waterman had got the Boat to the Shore, and I in the Stern, they were all come down.

L. C. J. Holt. When Astton came, who came along with him?

Pafeley. I saw them all upon the Stair-head; I was in the Boat when they came. I never saw my Lord, till he was upon the Stairs.

Juryman. My Lord, I desire to ask him, What the Sum of Money was, that was paid at Burdett's?

Pafeley. It was 93 Guineas and Six-pence.

L. C. J. Holt. Who brought it?

Pafeley. It was laid down in the Window.

L. C. J. Holt. But I ask you, who brought it?

Pafeley. I did see Astton bring it, and lay it down in the Window, and he told it out, and put it up again, and gave it to Mrs. Burdett.

Juryman. My Lord, I desire to know what is the usual Rate to go to Flanders; what may a Smack and three Men deserve?

Pafeley. Truly I cannot tell, I never went upon my own account in my Life.

L. C. J. Holt. Mrs. Pratt, what say you, what is the usual Rate to go for Flanders or Holland?

Mrs. Pratt. I believe they may go for a matter of 20*l.* or 30*l.*

L. C. J. Holt. You hear them, Gentlemen, what they say?

Juryman. Yes; but, my Lord, he says, he gave them Notice the Barge was a coming: I desire to ask him, Did he know there was a Design to search him or no?

Pafeley. Sir, I knew that there was a Search for Seamen.

L. C. J. Holt. But did you know there was to

be a Search, in order to the taking these Gentlemen on Board you? For that is the Question, I believe, the Jury would ask you.

Pafeley. No, I did not know of it.

Mr. Sol. Gen. But you say, these Gentlemen desired to be hid?

Pafeley. Yes.

Mr. Sol. Gen. And you hid them according to their Desire?

Pafeley. Yes.

Mr. Serj. Tremain. Before you went on Board, had you any Discourse of hiding? Did they ask you for a Place to hide in?

Pafeley. Yes, they did.

Mr. Serj. Tremain. Who did?

Pafeley. Astton and Elliot both ask'd if there were a Place in the Ship to hide them, and I told them, yes, there was.

L. C. J. Pollexfen. Mr. Astton, will you ask him any Questions?

Mr. Astton. My Lord, I desire to ask him this Question: Did we desire you to come and hide us, or did you desire us to go down?

Pafeley. You desired this of us, that if we saw any Man of War's Boat we would tell you, that you might be hid.

Mr. Serj. Tremain. Pray repeat that over again, did they desire you to give them Information when any Boat was coming, that they might hide, or did you desire them to hide yourself?

Pafeley. They desired it of me.

Mr. Serj. Thompson. Then set up Charles Betfworth.

Mr. Serj. Tremain. Before Betfworth is examined, I would ask Pafeley one Question? Was there any Coat left on Board you?

Pafeley. Yes, there were two Coats of the Waterman's left on Board, and I took them and lock'd them up.

Mr. Serj. Tremain. Is that the Man that own'd the Coats?

Pafeley. Yes, it is.

Sir W. Williams. Then, Betfworth, will you give an Account of what you know against the Prisoner at the Bar?

Betfworth. I cannot tell, my Lord, I never saw the Gentleman in my Life before, that I know of.

Sir W. Williams, Prithee hear, Friend, tell what you know of carrying any Gentlemen on Board the Smack.

Betfworth. If it please your Lordship, I was going Home from our Stairs about 7 or 8 a Clock in the Evening; that is, from Surrey Stairs, and a Gentleman called, Sculler. Said I to him, Sir, where do you go? Says he, As far as the Tower; said I, 'Tis against Tide, I cannot go; it will be Ten a Clock before it be high Water. Says he, Will you go with us at that Time? Said I, What will you give me? Will you give me half a Crown? then I'll carry you down, for I cannot stay out so late for nothing. Yes, says he, I will give it you. Then I came and brought my Boat to the Shore; he asked me then, What my Name was; I told him Charles Betfworth. Says he, Will you be sure to stay till we come? Yes, said I, if you will be sure to come; and if I be not here, I will be at such a House, an Ale-house, that was there by; the Sign of the Swan: So I staid, and carried a Fare or two over the Water; and about 11 a Clock comes a Gentleman down, and calls Charles, and I went out a

Doors down towards my Boat, and there comes one Gentleman down, and a kind of a Seaman, as I thought; and the Seaman went into the Stern, and the Gentleman sat down at the Back-board, and there was three Gentlemen more came down the Stairs into the Boat; one had a whitish Cloak, and the other a loose Coat; and they brought a Leather Bag that would hold about a Peck; so I put off with them, and rowed down the River, and all that I heard them say, was, when we came under the *Temple*, says one of the Gentlemen, When do you hear the King goes away? Says another of them, He goes away a *Tuesday*; and when we got through Bridge, one of the Gentlemen ask'd where the Vessel lay, and a Man in the Stern said, On *Soutbward* Side, over-against the *Tower*; and when we came a little below *Battlebridge*, near *Pickle-Herring* Stairs, the Master said, There lies the Vessel, and it had a long Pendant and a Top Sail loose; so they paid me before they came on Board, and when they were got a Board, away rowed I; and when I came to Land to take out my Sculls and Things, there I mist my Cloaths; and I rowed after them, thinking they could not be got far; but when I came to the Place where they went on Board, the Vessel was gone, and I rowed down as low as *Lime-house Reach*, and in *Blackwall Reach* I overtook a Vessel, which I thought was the Vessel. I ask'd them who they belonged to, and they said they came from *Horseleydown*, and I made answer, I brought two Fares on Board a Vessel at *Pickle-berring* Stairs, and had forgot to take my Cloaths that they had; they made Answer, I brought no Fare on Board them; so I rowed on farther beyond *Barkinsbeelf*, and because there was no Wind, I thought none could have gone beyond that Place, and therefore resolv'd to row back again when it was Flood; and I rowed up to *Greenwich*, but could not meet with the Vessel; and I heard nothing of my Cloaths, till last *Friday* was Seven-night I had my Cloaths brought to me.

Sir *W. Williams*. Can you say this Gentleman, Mr. *Ashton*, the Prisoner at the Bar, was one of them that you carried on Board the Smack?

Betsworth. No, I know never a one of them.

Mr. Serj. *Tremain*. But you say the Persons that you took in at *Surrey* Stairs carried away your Cloaths with them?

Betsworth. Yes, Sir.

Mr. Serj. *Tremain*. Then I ask you, *Paseley*, is that one of the Persons that he brought on Board your Smack?

Paseley. Yes, he was.

Mr. Serj. *Tremain*. How many came on Board the Smack?

Paseley. Four; my Lord *Preston*, Mr. *Ashton*, Mr. *Elliot*, and my Lord *Preston's* Man.

Mr. Serj. *Tremain*. Did you take in your Pendant?

Paseley. Yes, I did.

Mr. Serj. *Tremain*. When did you take it in?

Paseley. As soon as we weigh'd Anchor.

Mr. Serj. *Tremain*. How came you to take it in?

Paseley. *Elliot* spoke to me to take it in.

L. C. J. *Holt*. Did they mention how many were to go in the Smack?

Paseley. He said, there were three of them, not four, as I remember, that were to go.

Sir *W. Williams*. Will you ask him any thing, Mr. *Ashton*?

Mr. *Ashton*. No, Sir: But I desire the Woman may not go out of Court.

L. C. J. *Holt*. No, no; She shall stay.

Mr. Serj. *Thompson*. Then call *John Fisher*, and *James Amonds*. (Either stood up.)

Sir *W. Williams*. Pray do you acquaint the Court and the Jury what you know of this Matter, whether you carried any Things on Board the Smack, and what, and who came on Board, and what hapned.

Fisher. My Lord, a matter of six Hours before they came on Board, my Master carried me a Shore, and brought me to Mr. *Burdett's* House, and gave me a Trunk, and I went with it, and another Man with a Hamper, and brought them on Board; and about 11 or 12 a Clock, my Master comes and brings Mr. *Ashton* and the other aboard; and he bid me go forward, and leave up the Anchor, and so I did, and we went down the River; but we could go but a little way because there was no Wind; and when we came to *Halfway-tree*, the Tide turning, we were forced to cast Anchor again, and stay till the Morning; and in the Morning we weigh'd Anchor again about 8 a Clock, and about 9 we came into *Long Reach*, where lay the *George* Man of War, and then Mr. *Ashton* and they hid; and when we came below them again, they came up again till we came almost near the *Block-Houses* at *Gravesend*, and there they hid again; and Mr. *Ashton*, I think, came up afterwards, and bid me go down to the Hamper, and fetch them up some Victuals for their Dinner, and I went down and fetched up some Beef, and Mr. *Ashton* took hold of it; and I took a Bottle of Wine or two out; and just before I brought all the Victuals up, the Barge was spied a coming to us; and then he went down again, and there they hid, and the Piece of Beef was a Top of them. Captain *Billop*, when he came near, waved his Hat, to bid us lie by; and we did lie by till he came up to us; and when he came up to us, says he, Master, you have gotten a Couple of good likely Men, worth the coming on Board for. Says the Master, I hope, Captain, you won't press them. What have you to keep you clear? Says he, I have a Protection. Have you, says the Captain? Let me see it. So he shewed him the Protection, and he read both our Names in it. Then, says he, Master, I must look farther; and he went down to the Quarter-Hatches, and took them up just where they lay. First my Lord came out; and he searched them all, as they came out. Mr. *Elliot* came out next, and Mr. *Ashton* staid within, being the last Man. And after he had searched them, and done what he pleased, he got all the Papers and Writings; then he commanded us all to go into the Barge, and they came on Board the *George* Frigate in *Long Reach*. And at the Ship, Mr. *Elliot* came to us, and bid us say, we were going to *Flanders*. And after we came to *Whitehall*, Mr. *Ashton* gave me a half Crown Piece, and bid me say, we were bound for *Flanders*, and not for *France*.

L. C. J. *Holt*. Was that after they were taken, or before?

L. C. J. *Pollexfen*. When was the first time, that they would have you say, they were bound for *Flanders*?

Fisher. It was on Board the *George* Frigate in *Long Reach*.

L. C. J. *Holt*. Who was it that bid you say so?
Fisher.

Fisher. Mr. Elliot and Mr. Ashton both, in the Ship's Steerage, where they came to us.

L. C. J. Pollexfen. Where was the next Place, that they bid you say so?

Fisher. At *Whitehall* Bridge Ashton gave me a half Crown Piece, and bid me say so.

Juryman. Did he speak that aloud, or softly at *Whitehall*?

Fisher. He whisper'd it in my Ear.

L. C. J. Holt. Did they ever say they were bound for *Flanders*, till after they were taken?

Fisher. No.

Mr. Serj. *Tremain.* What manner of Place was this that they hid in?

Fisher. An ugly Hole, where a Man has no Room to lie along at Ease; he can neither stand upright, nor sit upright.

Mr. Serj. *Tremain.* Did you see the Waterman that brought them on Board?

Fisher. No.

Mr. Serj. *Tremain.* Was there any Waterman's Coat left?

Fisher. Yes, there was two.

L. C. J. Holt. But didst thou see the Boat?

Fisher. We were asleep when they came on Board, and the Boat was put off as soon as ever they came on Board.

Mr. Serj. *Tremain.* Then as soon as ever they were on Board, you got up the Anchor, and pulled in the Pendant?

Fisher. Yes We immediately hove up the Anchor, and took in the Pendant.

Mr. Serj. *Tremain.* Did any Sculler hale you afterwards, as you were going down?

Fisher. Yes, as we were going down there did.

Mr. Serj. *Tremain.* What did you say to him?

Fisher. I was not steering then; but this other Man made Answer.

L. C. J. Holt. Mr. Ashton, Will you ask him any Thing?

Mr. Ashton. When I gave you the half Crown that you speak of, what did I say to you?

Fisher. You bid me when I came to be examined, say we were going to *Flanders*, and not to *France*.

Mr. Ashton. What did I say else?

Fisher. You bid me take that half Crown for to Night, to help to bear my Charges, and Tomorrow you would take farther Care of us.

Mr. Ashton. I told you, you were Prisoners now, and I gave you that, and told you I would take farther Care of you.

Fisher. You did not say we were Prisoners, but you said you gave me that to help bear Charges for that Night, and on the Morrow you would take farther Care of us.

Mr. Serj. *Thompson.* Then set up James Amonds.

Sir W. Williams. Are you sworn, Friend?

Amonds. Yes, Sir.

Sir W. Williams. Then let the Court and the Jury know what you can say in this Matter.

Amonds. My Lord, they came on Board about 11 or 12 a Clock at Night; I was asleep in the Cabbin, and heard a Boat coming aboard, and I turned out, and before I could get out of the Cabbin, they were got aboard, and I see no Boat, nor nothing. So says the Master, Go forward and heave up the Anchor; and after we had heaved up the Anchor, I goes into the Ship to tow the Vessel down, because there was no Wind, and we would not let the Vessel go foul on the Ships that were in the River, and a

little after we came on Board again; and when I came on Board again, they were all on Board, all Four. After that comes a Waterman, and I was at the Helm steering, and he called out to us! Oh hoe, says he; did not I bring a Parcel of Gentlemen on Board this Smack? Not as I know of, said I. Says he, I carried a Parcel of Gentlemen on Board some Smack that had a Pendant out, and I know not where it is; they carried my Cloaths on Board with them. Said I, I know nothing of it, nor I did not; for I saw neither Waterman nor Boat; so away the Waterman goes, and we went down the River, and when we came to *Halfway Tree*, we came to Anchor, and my Master went and laid himself down, the Tide being almost done, and there being no Wind, and Mr. Ashton and they lay in the Cabbin; and says Mr. Ashton to me, Take Care of us now, and we will take Care of you hereafter; says he, we shall help you to many a Freight, and many a Pound. Ay, ay, said I, you will be taken Care of to be sure at Day-break, or when the Day comes on: About 8 a Clock, we hove up the Anchor again, and fell down as low as *Long Reach*, where the *George* Frigate lay; and when we came there, they went down to hide in the Quarter-Hatches. I steered it down still; and when we were got past that Man of War, the Hatches were taken up, and they came up again out of the Quarters, and fate in the Cabbin again, and we had a fresh Gale of Wind, and run down to *Gravesend* quickly, and when we came near the Block-Houses, said I, We are almost at the Block-Houses; then said they, We will go down and hide a little; and so they did till they were past there, then resolving to go to Dinner.

L. C. J. Holt. What time a Day was this?

Amonds. About 11 a Clock, as near as I can guess.

Mr. Sol. Gen. Well, they did go down to hide then, did they?

Amonds. Yes, they did go down and hide, and came up again, I am sure some of them; I heard some of them in the Cabbin?

Mr. Sol. Gen. Well, what followed?

Amonds. After they were gotten up, and past *Gravesend*, this Man was sent for Victuals for them, and so he fetch'd them some Roast Beef, and some other Things; and just as the Roast Beef was going into the Cabbin, said I, *Here comes a Barge off to press.* So when I cried, the Barge was a coming, they took the Victuals down into the Quarters, and there lay they, and the Victuals a-top of them. And when the Barge came near us, the Captain waved his Hat to command us to lie by. Said I, *We must lie by, for the Barge is coming up to us.* And we clapp'd the Helm-a-lee, and lay by; and after we were laid by, the Barge came on Board us. Says the Captain of the Barge, *You have got a Couple of likely, good Men, Master,* said he. *Ay,* says the Master, *but I hope you won't press them.* Says the Captain, *Have you got any thing to keep you clear? Yes, if it please you, noble Captain, I have got a Protection.* I am sorry for that, says he, and comes on Board, for he staid all this time in the Barge; and smiling upon him, he comes on Board, and says he, *Come, let's see your Protection.* And the Master shew'd it him, and he read it. Says the Captain, *I must look a little farther.* And he goes into the Cabbin, and took up the Hatches, and there

there lay all these Gentlemen. They were something longer a coming up than he would have them; so says the Captain to his Men in the Barge, *Come on Board, and see who is here.* And so some of his Men did come on Board; and, to the best of my Remembrance, my Lord was the first Man that came up: And when my Lord came up, the Captain run his Hands into his Coat Pockets, to feel for Papers, as I suppose; and my Lord desired the Captain to be kind, and take nothing away. Says he, *I'll take nothing but Papers; 'tis Papers I look for:* And he pull'd out a Watch, and gave it him again. After that, *Elliot* came out; and whether he found any thing upon Mr. *Elliot*, or no, I cannot tell. Mr. *Ashton* was the last that came up; and when he came up, a Waterman of the Captain's calls to him, and says, *That Gentleman that came up left has put something in his Bosom, but what I can't tell.* So the Captain took Mr. *Ashton* by the Arm, and turn'd him about; and, says he, *What did you put in your Bosom?* Says Mr. *Ashton*, *Nothing but my Handkerchief;* and pull'd out his Handkerchief, and shew'd him. Then the Captain put his Hand in, and pull'd out Papers, with a piece of Lead tied to them. And that is all that I saw.

Mr. Serj. *Tremain.* But tell us what happen'd afterwards.

Amonds. When that was done, the Captain commanded us all into his Barge; and I rowed, and some of the rest row'd, it being cold Weather, till we came up to *London.* After we came up to *London*, they did not say any thing to me, because I was a rowing till then. It seems they did give them some Money, but they gave me none, not till I came into *Whitehall;* and then my Lord's Man came to me, and call'd me a one Side; says he, *Here's half a Crown, will serve you to Night; and be sure, when you come to be examined, that you say, you were bound for Flanders, and not for France, and you will be taken farther Care of To-morrow.*

Mr. Serj. *Tremain.* What manner of Place is that Quarter-Hatches?

Amonds. They could neither sit, nor stand upright in it.

Mr. Serj. *Thompson.* What did they lie upon?

Amonds. There were three or four slit Deals that were laid over the Ballast, but it seems they had shuffl'd 'em on the one Side when they were taken, for the Ballast lay open.

Mr. Serj. *Tremain.* Did the Waterman that brought these Men on Board you, leave his Coat there?

Amonds. I did not see the Boat, nor the Waterman; and therefore I am not able to say any thing about it.

Mr. *Sol. Gen.* How came the Pendant to be taken down?

Amonds. I can't tell that, I was in the Skiff when it was taken down.

Juryman. My Lord, I do not well understand how the Papers came to be taken away from Mr. *Ashton.*

L. C. J. Holt. He tells you, Mr. *Ashton* was seen to put his Hand with something into his Bosom; and being tax'd with it, he said it was his Handkerchief; and the Captain put in his Hand, and pull'd out a Bundle of Papers.

Juryman. Did he see *Ashton* take away the Papers from any other Place?

Amonds. No, an't please your Honour, I did

not see them till they were taken out of his Bosom.

L. C. J. Holt. Did you see Captain *Billop* take the Papers from out Mr. *Ashton's* Coat?

Amonds. Yes, I did.

L. C. J. Holt. Where were they before they spy'd the Barge a coming?

Amonds. If it please your Honour, I heard 'em talk; I thought they had been up, but it seems there was but one of 'em up when they said, the Barge was coming aboard: I was at the Helm, and heard 'em talk.

L. C. J. Holt. Then you knew nothing of these Papers, but when you saw 'em taken out of *Ashton's* Bosom?

Amonds. No, my Lord.

Sir *W. Williams.* If you will ask him any thing, Mr. *Ashton*, now you may.

Mr. *Ashton.* Pray, Friend, had not I been up first, and search'd before the Papers were taken?

Amonds. Not as I know of.

Mr. *Ashton.* Did not I go down into the Hold to take my Hat, and call to you, and desired that I might go down for my Hat?

Amonds. I can't tell; for when I saw the Papers taken from you, I was in the Stern; I was not down.

Mr. *Ashton.* Had not I been searched first?

Amonds. Not that I know of, till you were in the Stern.

Mr. Serj. *Thompson.* Then swear Captain *Billop.*

Which was done, he standing up by the Sheriff.

Mr. Serj. *Tremain.* Captain, I suppose you may be heard from that Place.

Mr. *Ashton.* My Lord, I desire the Witnesses may come down, else I shall not be able to distinguish what he says: It is the proper Place for him I think.

L. C. J. Holt. Let him come down.

Mr. *Ashton.* I humbly desire, my Lord, that the Witnesses may all be obliged to stay in Court.

L. C. J. Holt. Let them all stay.

Sir *W. Williams.* You are sworn, Sir: Are you not?

Capt. *Billop.* Yes, I am.

Sir *W. Williams.* Then, pray, will you give an Account where you took these Persons, how you took 'em, what you found, and how you disposed of it.

Capt. *Billop.* Must I begin from the Beginning?

Sir *W. Williams.* Yes; Tell your whole Knowledge, in Order of Time, as it fell out.

Capt. *Billop.* What, from the Time I went out?

Mr. Serj. *Thompson.* Make it as short as you can.

Sir *W. Williams.* Yes, you must tell all; for you speak now to a new Jury, and here is another Prisoner at the Bar to be tried.

Capt. *Billop.* The last of *December*, about Two a Clock, or between One and Two, my Lord of *Danby* came to me at one of the Doors of the House of Lords, and told me, his Father must speak with me; and he carried me up to my Lord *Lindsey's* Chamber; and in a little time my Lord President came there, and told me, he heard there were divers Persons that had Papers of dangerous Consequence, and were going to *France*, and desired me to use my Skill for my seizing

feizing and securing of the Papers. I began then to talk of what was proper for such an Undertaking; and I told my Lord, I thought the best way was to go to *Woolwich* or *Deptford*, and to take a Man of War's Pinnace with us: Upon that, my Lord of *Danby* being by, said, he knew of a Boat that he could have, which was my Lord Duke of *Grafton's*; and my Lady Dutchess had lent it him, and he would go and get it ready: Upon this my Lord President said, he would give me a Note of the Name of the Vessel, and where she went out; and likewise a Letter to another Person, that would instruct me farther, and shew me the Vessel; accordingly my Lord President gave me the Letter, and I went away to look for the Person, but could not find him. My Lord *Danby* came to *Tower-Wharf* himself with the Boat; and I left a Man there to bring me Word when the Boat came up at the Place where I was; and Captain *Stringer*, and Sir *Thomas Taylor* came there to me. After my Lord of *Danby* had told me what I had in the Boat, I told him, I thought there were not Arms enough; and therefore it were best to go to the *Tower*, to borrow some Arms from thence: When we came to the *Tower*, my Lord *Lucas* was not come in; and when I had staid a little time, he did come in: And when I had acquainted him with my Business, he sent for an Officer of the Guard, and there we borrowed some Arms, a Blunderbuss of his, and a Carbine, and the like; and about a Eleven a Clock, or somewhat past, we put off from *Tower-Wharf*. It was Calm, and we rowed down towards *Gravesend*; and we went aboard a Vessel or two, but I was not willing to lose much time, because I was resolv'd to take them before they were gotten too far: So we rowed away for *Gravesend*, where I refreshed my Men, and afterwards went down into the *Hope*; and I did judge that no Vessel that came from *London* that Tide could be a head of me. I went on Board several Vessels that lay in the River, in order unto the pressing of Men; and I went on Board all Sorts of Vessels, because I would give no Suspicion of what I was about; and having been on Board several, I pressed two or three *Barkin* Men; and one particularly, that knew all the Vessels upon the River; and I made him to row very near to me, that I might talk to him; I had got the Names of a great many Smacks, and gave it out that I would press a Smack to carry for a Tender to my Ship, when the Fleet went out; and naming this Smack that I was to go search, I told him, *I heard such a Smack sailed well, and I had Thoughts of pressing her*; he told me, *She was old*; but said I, *She will serve a Summer well enough; and that is it I intend to press, if I can find her*. Says he, *I'll shew you her, I know her when I see her*; so we went on Board several Vessels as we went along. And as we were rowing along, before we came to the *Nest Point* by *Tilbury-Fort*, we saw several Smacks coming down the River; and when we came about the Point, the headmost Smack of all, the Fellow lookt out, and said, *Tonder is the Thomas and Elizabeth*. Then I called to one of my Men to wave, and bring them to lie by, which they did, and they lay by till I came on Board. When I came on Board, I saw two lusty Men stand by the Master; said I, *Master, you have got two good lusty Fellows that would serve the King; but I'll be kind and civil to you,*

I'll take but one. Says the Master, *I hope not so; for I have a Protection*; with that, I came on Board, and took his Protection in my Hand, and read it. As soon as I had read it, I ask'd him, *If he had no more Men upon Deck than what I saw?* He said, *No*. Then, said I, *I must look a little farther*. And I went into the Quarters, and took up the Scuttle, and the Hatches, and I saw some Gentlemen lie. Oh, said I, *What a pretty Posture is this? Where are we going?* Gentlemen, *you must turn out*. The first that came to hand was my Lord *Preston*; but I did not know him then, nor some time after I was in the Boat with him: So I took hold of him, and help'd him up; and when he was up, said I, *Sir, I must search you*. Says he, *I hope you will take nothing from me*. Nothing, said I, *but Papers*: So I searched all his Pockets; and as I found any Papers, I put them into my own Coat Pocket. And I took his Watch, and pull'd it out, and gave it him again: After that I had search'd him, came up Mr. *Elliot* the first Man, and the next was Mr. *Astton*, who crowd'd up while *Elliot* came up, in his Night-Cap. *I think, Mr. Astton, you had your Night-Cap on*. So Mr. *Astton* goes down again, and puts on a Perrwig, I think; but coming up again, one of my Seamen sees him take something, and put it into his Bosom: He follows Mr. *Astton* quick, and pulls me by the Coat; and, says he, *That Gentleman has got something in his Bosom*: So I took hold of him, and turned him round; said I, *Mr. Astton, what have you got in your Bosom?* Nothing, says he, *but a Handkerchief*; and immediately he put his Hand into his Bosom, and pluck'd out the Handkerchief, and shew'd me. As soon as he had pulled out the Handkerchief, I put my Hand into his Bosom, and there I met with the Pacquet that had the Lead affixed to't; and pulling it out, I clapp'd it into my own Pocket; for I thought that was the Matter of Moment that I was to secure. So I order'd them to go into the Boat, and the Master of the Vessel to let go his Anchor; and two Men I left in the Vessel, whom I order'd to search, and to secure what they found till farther Order; and I left two Musquets with them. And after we were in the Boat, they desired to have something handed in, which I gave Order for, a Hamper, and a Night Bag; and away we put off from the Vessel, and rowed up; it was against Tide, and very cold Weather. In a little time Mr. *Elliot* called one of the Gentlemen, my Lord; then I whisper'd him, and ask'd him who that Lord was, and he told me, *It was my Lord Preston*. Then I saluted my Lord; and my Lord was pleas'd to say, he was very well satisfisd they were fallen into the Hands of a Civil Gentleman. So rowing up against Tide, and it being a Westerly Wind, which blow'd very fresh, my Lord desired that I would let them stop at *Gravesend*, till the Tide turned, that they might refresh themselves. I begged his Pardon, and said, there was a Ship in *Long-Reach*, the *George* Frigate, and we would stop there; and I did not doubt, but I could command the great Cabbin for his Accommodation; and there he might have any thing that he wanted. My Lord seem'd contented with it; but before we came on Board the Man of War, there happen'd a great deal of Discourse betwixt us of several Things.

Sir *W. Williams*. Pray repeat it, as well as you can remember; what Discourse happened?

Capt. *Billop*. Truly, my Lord *Preston* being cold, and the Hamper standing by, says he, *Captain Billop, we have not eaten, we will eat, if you will.* And there was a piece of Beef at the Top of the Hamper, and Bottles of Wine; and I opened the Hamper, sitting fairest for it, and handed out the Beef, the Bread, and the Bottles; and after we had eaten what we would, my Lord ordered the rest to be given to the Men that were the Boat's Crew, and after we had done this, and taken out a Bottle or two, and shut up the Hamper again, my Lord *Preston* drank to me once or twice, and seem'd very well satisfied and pleas'd with his Usage. He told me, he was sensible of my Civilities; and if ever it lay in his Power, he would not forget me. So we drank again, and talk'd again; but before we came to the Ship, my Lord *Preston* told me, that if ever it lay in his Power, he would be sure to make an Acknowledgment of the Civility I had shew'd him. And, to the best of my Memory, he had this Expression, *If there ever was anything he could serve me in, he would do it with all his Heart, if I would but dispose of the Pacquet.*

Mr. Serj. *Thompson*. What would Mr. *Ashton* have had you done? What did he say to you?

Captain *Billop*. Mr. *Ashton* said, it would do me no good to injure so many Gentlemen; and desired me that I would throw the Pacquet over-board.

Mr. Serj. *Tremain*. What did he mean by so many Gentlemen?

Captain *Billop*. My Lord, I cannot tell, but that was his Expression.

Mr. Serj. *Tremain*. Who desired you to throw the Pacquet over-board?

Captain *Billop*. Mr. *Ashton* did several times.

Mr. Serj. *Tremain*. What did he say to you? What Arguments did he use?

Capt. *Billop*. My Lord, it was so many times over, and so much mixture of Discourse we had, that I am not able to tell the Particulars.

L. C. *J. Holt*. But what Arguments did he use?

Captain *Billop*. I don't know that he used any more great Arguments, more than what I have told you already.

L. C. *J. Holt*. Say that again that you said before.

Captain *Billop*. He said, 'twould do me no good to injure so many Gentlemen. *Pritbee*, *Captain Billop*, says he, *throw it over-board.*

Mr. Serj. *Tremain*. What did he say farther?

Captain *Billop*. I'll tell you, if you'll give me leave. Mr. *Ashton* did say, a little after this, with a great deal of Insinuation, *Captain Billop, What if you should turn about, and go along with us? No, Mr. Ashton*, said I, *that I cannot do.* Says Mr. *Elliot*, *Pritbee*, *throw the Pacquet over-board.* This they did as we came up the River; and 'tis the most that I can remember, 'till we came on Board the *George*; and when we came on Board the *George*, *Elliot* called me into the Steerage, and desired me, of all Love, that I would dispose of the Pacquet: And he said, that now I had an Opportunity to make myself as Rich, and as Great as I would, and nobody could see it, if I did throw it away. While I was in the Ship, Mr. *Ashton*, my Lord, and Mr. *Elliot*, were with me in the Steerage. Said I, *I shall be taken notice of, to be whispering; pray forbear.* *Ashton* then spoke to me again, to desire me to throw the Pacquet over-board; by this time the Victuals was

handed in, and there we eat and drank, and my Lord smooked a Pipe of Tobacco before the Tide turn'd; and when the Tide made, we went into the Boat again, and rowed up towards *London*, and they were using these Sorts of Arguments over and over again. And once Mr. *Elliot*, I think 'twas, to the best of my remembrance, told me, *Now you have it in your Power to make your Fortune, and may be as great a Man, and as rich a Man as you can desire.* And Mr. *Ashton* said some Words something to the same Purpose; *Pritbee*, said he, *throw it over-board: What good will it do you?* So I refusing of it, as I did many times, Mr. *Elliot* told me, that I might take the Letters that were taken in my Lord *Preston's* Pocket, and tie the Lead to them, and throw the Pacquet over-board. No, said I, Mr. *Elliot*, *Sure you would take the King's Council to be a very odd Sort of Men, that they cannot find out such a thing as this.* *Pritbee*, dear *Billop*, said he, *throw it over-board;* many times whispering me in the Ear; and so did Mr. *Ashton* many times, saying, *You may do us a great Kindness in it.* And we drank, and had several Intermissions; and they at me again, and I denied them, and they desisted; and then they at it again: And Mr. *Elliot* then told me, *Pritbee*, dear *Billop*, *throw it over-board.* Said I, Mr. *Elliot*, *If I should be so great a Villian to do such a thing, if ever it was your Day would you trust me again? Put it to be your own Case.* Says he, *You have Gentlemen to deal withal.* But, said I, *I will never put it into your Power.* Mr. *Elliot* seem'd to be angry at this, and said, *Every Dog had his Day.* Said I, *I hope never to see it your Day: But I pray, forbear this Discourse; let me beg that of you; for I do not desire to be provoked to use you otherwise than as Gentlemen.* And after that, they never urged me more to throw the Pacquet over-board: But Mr. *Elliot* was angry, and very much disturbed, and wish'd a Thunderbolt might strike the Boat, and sink it. So I brought them up, through *London-Bridge*, and they said no more about the Pacquet; but *Elliot* wish'd, that *London-Bridge* might have fallen on our Heads. At length I brought them to *Whitehall*; and I put my Man ashore at *Hungerford Stairs*, that he might get before, and give the Porter notice at *Whitehall-Bridge*, that he might open the Gate. I brought my Lord *Preston*, and the rest to the Bridge; and while I was arming my Men, to guard them up to my Lord *Nottingham's* Office, I suppose they then took the Opportunity to give the Men Money, getting near to them; I know nothing of that: But I carried them up to my Lord *Nottingham's*, and there I delivered them, and the Pacquet to my Lord. After some time, the Pacquet lay upon the Table, and my Lord *Nottingham* sends me for my Lord *Preston*. When my Lord *Preston* came in, I withdrew without bidding, and the Pacquet lay upon the Table unopen'd: And when my Lord *Preston* came out, I went in on myself, and the Pacquet lay in the same Place and Posture, and not open'd. And I stay'd while Mr. *Ashton* was called in, and my Lord *Nottingham* asked him a great many Questions.

Mr. *Ashton*. Pray repeat those Questions, *Captain Billop*; and what Answers I made.

Captain *Billop*. Truly, my Memory does not serve me to remember all of them, and I was in a very uneasy Condition at that time, and would much

much rather have been in my Bed, than any where else: For the Night before I went down, I had a Plaister of *Spanish Flies* put to my Back, and they had rais'd a great Blister, and it had not been dress'd so long, that the Napkin that was applied stuck so to it, that the Flesh was jagged, and I was in a great deal of Pain, so that I did not mind so much as I should have done at another time, what was said.

Mr. *Ashton*. But pray, Captain, remember as much as you can what pass'd.

Captain *Billop*. But I'll tell you what I remember; I remember my Lord *Nottingham* ask'd, who I took the Packet from? And you owned, I took it from you.

Sir *Will. Williams*. Pray, Mr. *Ashton*, give us leave to have done with him, and then you shall ask him what you please. Pray go on, Captain *Billop*.

Captain *Billop*. Then my Lord *Nottingham* sent for Mr. *Elliot* in, and ask'd him whither he was going? And he said for *Flanders*. My Lord asked him, what he was going there for? He said, He was going to seek his Bread; he was turned out of all at Home, and he had rather go Abroad to seek his Bread, than stay at Home to starve.

Mr. Serj. *Tremain*. Was this the Lead that you took fixed to the Packet?

Captain *Billop*. Yes, Sir; that is the Lead.

Mr. Serj. *Tremain*. Did you take that Lead, with the Packet, out of Mr. *Ashton's* Bosom?

Captain *Billop*. This was tied fast to the Packet that was taken out of Mr. *Ashton's* Bosom. These honest Men saw me take it.

Sir *Will. Williams*. Now, if you have a Mind to ask him any Questions, you may.

Mr. *Ashton*. Pray, Captain *Billop*, did not you search me before you took the Packet upon me?

Captain *Billop*. No, not that I remember.

Mr. *Ashton*. Had not you taken some other Papers from me before?

Captain *Billop*. No, Sir; I took none from you but the Packet.

Mr. *Ashton*. Pray recollect yourself, for, perhaps, my Life may turn upon it: You are as much a Witness for me, as for the King; you are to swear the Truth, and the whole Truth.

Captain *Billop*. And I will do you all the Justice I can, I will assure you.

L. C. *J. Holt*. Answer his Question, Captain *Billop*.

Mr. *Ashton*. Was not I the first Man that spoke to you after we came up?

Captain *Billop*. No, Mr. *Elliot* was the first Man that spoke to me, that I knew.

Mr. *Ashton*. Did not I ask you to give me leave to go down for my Hat?

Captain *Billop*. Truly, I don't remember that.

Mr. *Ashton*. Did not you reply, That the Man should go down and fetch my Hat?

Captain *Billop*. 'Tis likely I might, but I don't remember it.

Mr. *Ashton*. Had not you searched me then, and taken my Papers from me?

Captain *Billop*. No, Mr. *Ashton*; for, upon the Oath that I have taken, I took no Papers that I remember, but the Papers that I took out of my Lord *Preston's* Pocket, and the Packet that I took out of your Bosom; for my Lord *Nottingham* ask'd me, if that Packet was all the Letters I

took? I told him no; and shewed him the Papers took out of my Lord *Preston's* Pocket, and they prov'd to be of no Consequence, and my Lord *Nottingham* gave them me again, and I carried them to my Lord *Preston*.

Mr. *Ashton*. Did not I go down into the Hole for my Hat?

Captain *Billop*. I believe you might.

Mr. *Ashton*. And was it not after that, that you took the Papers out of my Breast?

Captain *Billop*. Yes, I believe it was.

Mr. *Ashton*. Where is your Man that called to you, and said, I put something in my Breast?

Captain *Billop*. Here he is, by me, if you would ask him any thing.

Mr. *Ashton*. You say, I spoke to you about disposing of these Papers: Pray, from the Time that we came into your Boat, before we came on Board the *George* Man of War, did I speak to you?

Captain *Billop*. Yes, of the Packet you did: You said, *What Good would it do me to injure so many Gentlemen?*

Mr. *Ashton*. There pass'd no more than general Discourse before we came on Board.

Captain *Billop*. Yes, Mr. *Ashton*, I'll tell you another Thing you put me in mind of. When you saw that, though you were so eager with me, nothing would prevail, you said, *I know Captain Billop, and have known him many Years; and nothing will prevail on him, if he have no mind to it: And I know, if he will serve us, he will serve us generously, and like a Gentleman.*

Sir *W. Williams*. Speak that again.

Captain *Billop*. He said, *I know Capt. Billop; if he will serve us, he will do it generously, and like a Gentleman.*

L. C. *J. Holt*. Who said so?

Captain *Billop*. Mr. *Ashton*.

Mr. *Ashton*. Did I speak to you to dispose of the Papers after we came from on Board the Ship? I suppose you remember it was cold, and the Tilt was call'd for, to be laid over us, and I fell asleep; and you know I never wak'd, nor spoke, till I came to *London-Bridge*.

Captain *Billop*. Yes, yes; we had the Tilt over us.

L. C. *J. Holt*. Pray speak your Questions out, that we may hear 'em, Mr. *Ashton*.

Captain *Billop*. Mr. *Ashton* did go to Sleep a while, but he had many times urg'd me, and spoke to me to throw the Papers over-board.

L. C. *J. Holt*. Who was it that told you, *Every Dog had his Day?*

Captain *Billop*. That was *Elliot*.

Sir *W. Williams*. Was there any Discourse about turning of the Tide?

Captain *Billop*. Mr. *Elliot* said, *You have now an Opportunity to make your own Fortune, and you may be as Great, and as Rich as you please; for 'tis impossible the Tide can run long this way.*

Mr. Serj. *Tremain*. Did Mr. *Ashton* say any thing about going along with them?

Captain *Billop*. Yes: You may remember, Mr. *Ashton*, that you said, *Come, go along with us, you may do as well there, or better than you do here.*

Mr. Serj. *Tremain*. Did he tell you where you were to go with 'em?

Captain *Billop*. No, Sir; nor I did not ask him the Question.

Mr. *Ashton*. Pray, When did you give my Lord *Nottingham* these Papers?

Captain *Billop*. Do you mean that Bundle that I took out of your Bosom?

Mr. *Ashton*. Yes.

Captain *Billop*. As soon as ever I follow'd my Lord *Nottingham* into his Room, I pull'd 'em out, and gave 'em him.

Mr. *Ashton*. Did not you go out of my Lord *Nottingham's* Room, and give my Lord *Nottingham* some loose Papers?

Captain *Billop*. Yes.

Mr. *Ashton*. After this, was not my Lord *Preston* call'd in to be examin'd?

Capt. *Billop*. Yes.

Mr. *Ashton*. How long was my Lord *Preston* in the Room while you were out?

Capt. *Billop*. I can't tell very well.

Mr. *Ashton*. Pray, Sir, answer that Question.

Capt. *Billop*. I believe it might be half a quarter of an Hour: I do not think it was much more.

Mr. *Ashton*. I believe you must remember some sort of Discourse that was betwixt you and Captain *Elliot*, even to a Quarrel almost. And did you not speak to my Lord *Nottingham's* Servants, to fetch your Hat out of my Lord *Nottingham's* Room.

Captain *Billop*. Yes, I do remember that.

Mr. *Ashton*. This must be a good considerable Time: It was all the Time that my Lord *Preston* was within with my Lord *Nottingham*, that you were out?

Captain *Billop*. Yes, it was.

Mr. *Ashton*. And all that while was not the Bundle of Papers out of your Sight?

Captain *Billop*. It lay upon the Table.

Mr. *Ashton*. Pray, answer my Question: Was it not out of your Sight?

Captain *Billop*. Yes, it was.

L. C. *J. Holt*. Yes, yes; it must be, for he was out of the Room.

Mr. Serj. *Tremain*. When you came into the Room, did you find the Papers in the same Condition?

Captain *Billop*. Yes, they were unopened, except that my Lord had taken off the Lead, and a little Paper fell loose from the rest.

Mr. *Ashton*. Pray, take Notice of that, Gentlemen.

L. C. *J. Holt*. But pray don't infer more from thence than it will bear.

Mr. *Ashton*. It seems some of the Papers were taken out.

L. C. *J. Holt*. He does not say any such Thing, that some of the Papers were taken out.

Mr. *Ashton*. He says, something was cut, and some Papers fell out.

Captain *Billop*. There was a little Paper or two tied to the great Pacquet.

L. C. *J. Holt*. What became of them?

Captain *Billop*. They were cut loose, but not opened.

Mr. *Ashton*. How can you tell they were not opened?

Captain *Billop*. Because I stood by when they were cut.

Mr. *Ashton*. But how can you tell that; for you see the little Papers taken, and they were loose from the others?

Captain *Billop*. They were taken from the great Bundle before I went out.

Mr. *Ashton*. Had not my Lord opened those Papers before you came in?

Captain *Billop*. No.

Mr. *Ashton*. How can you tell that?

Captain *Billop*. I tell you, as near as I can judge, they lay in the same Posture that I left them in.

Mr. *Ashton*. Was the Pacquet sealed when you took it?

Captain *Billop*. No; but it was tied. There were several Letters in it that were sealed; it was tied up very hard.

Mr. *Ashton*. I do not question but my Lord *Nottingham* will do me the Justice to say how long he was in the Room.

L. C. *J. Holt*. You must not comment, nor make your Observations till your proper time.

Juryman. Pray, my Lord, I desire he may be asked who was with my Lord *Nottingham* when my Lord *Preston* was there?

Captain *Billop*. There was nobody else then.

Juryman. Then 'tis not probable they were altered before Captain *Billop* came in.

Mr. *Ashton*. But I hope Probabilities shall not be Evidence to condemn any Man.

Juryman. Those two little Papers you speak of, were they severed from the Pacquet?

Captain *Billop*. I cannot tell whether they were or no; they seemed loose upon untying the Bundle.

L. C. *J. Holt*. Were they cut in your Presence?

Captain *Billop*. Indeed, my Lord, I cannot say that I did see them cut.

Mr. *Ashton*. Pray take Notice of that, Gentlemen of the Jury.

L. C. *J. Holt*. They are twelve honest Gentlemen, they will do you right.

L. C. *J. Pollexfen*. Observe what the Witness says; he says, That he does not remember that they were cut in his Presence, but he does not say, they were not.

Mr. *Ashton*. If he does not swear they were, it is reasonable to conclude they were not cut in his Presence,

L. C. *J. Holt*. He says, the great Pacquet was not opened, the two little Papers were loose from the rest of the great Bundle.

Captain *Billop*. There might be two or three of them, less or more, I cannot tell.

Mr. Serj. *Tompson*. You will be farther satisfied in this Matter upon my Lord *Nottingham's* Evidence, I suppose.

Mr. Serj. *Tremain*. We have done with Capt. *Billop* for the present. Pray call *Johnson*.

(Who was sworn.)

Sir *W. Williams*. Were you at the taking of that Gentleman, and the other in the Smack?

Johnson. Yes, I was.

Sir *W. Williams*. Then pray give an Account of the Matter how it was.

Johnson. We went down in a Pleasure Boat, and went to the Tower, we set through Bridge against Tide, my Lord of *Danby* was with us; and when we came to *Tower Wharf*, there they went to the Tower for Arms, and we stayed till Ebbing Water, and rowed to *Gravesend*; and when we came to *Gravesend*, we went on Board several Ships, and I thought we were going a Pressing; and we stayed at *Gravesend* the Time of the Writing of a Letter, and then we went both into the Boat again, and rowed after a Smack that had gained of us, but that not being the Smack, we turned back again, and then it was

High

high Water: And when we came to the upper-end of the *Hope* we saw several Smacks coming, and there was a Fisher-man on board that said, That was the Smack the Captain enquired after, that was coming down there; and when they came on board, the Captain said, there were two or three brave Men, and he hoped he could spare one of them: and the Master said, he hoped he would take none of them, because they had a Protection, which he shewed to the Captain. Then the Captain went in and bid me take some small Arms, and go on board with him, and told the Master he must look a little further; and the Boards were taken up, and I saw a great Piece of Roast-Beef, and under that, my Lord *Preston*, and Mr. *Elliot*, and this Gentleman, Mr. *Ashton*: My Lord *Preston* came up first, and Mr. *Elliot* next to him; and I see this Gentleman take up something and put it into his Bosom, and I told the Captain of it, and he asked him what it was, and he said, Nothing but his Handkerchief, and plucked out the Handkerchief; but the Captain put his Hand into his Bosom, and pulled out something else.

L. C. J. Holt. What was it?

Johnson. It was a Parcel of Papers tied up, with a Piece of Lead tied to it, for I came up close after him, and see him take it up.

Sir W. Williams. What else were there found with the Papers? was not there some Seals?

Johnson. That was afterwards; but when the Captain asked him what he had gotten in his Bosom, he pulled out his Handkerchief, and said, Nothing but his Handkerchief; but the Captain took the other Papers out of his Bosom, and so I went down, and there were the two Seals, and I took them up; and when I came up, *Elliot* had a pair of black Whiskers on, and he borrowed a Pair of Scissars and cut them off, and said, he should remember me again if ever he lived, he should know me by my Tooth being out. And coming up into *Long-reach*, *Elliot* was a cold, and got to the Oar and Rowed, and said, You row as if you were rowing to Prison; and he wished that a Thunder-bolt might drop into the Boat, and that *London-Bridge* might drop down upon his Head. And when we came up to *Whitehall* I stood a Guard over them.

Jury-man. Did you see Captain *Billop* take the Packet of Letters from that Gentleman's Breast?

Johnson. Yes, I did.

Jury-man. Did you belong to Captain *Billop*?

Johnson. Yes, I was one of the Boat's Crew.

Mr. Ashton. Had not I been up and searched before?

Johnson. Yes, I think you had been up before.

Mr. Ashton. And then you saw me take up the Packet off from the Ballast?

Johnson. Yes, I saw you take it out of the Ballast and put it into your Bosom.

Mr. Ashton. Gentlemen, I hope you will be pleased to take notice of that.

L. C. J. Holt. No doubt of it they will.

Mr. Ashton. Did not that Bundle of Papers that was taken out of my Breast, did not they lie near to the Place where the Seals lay?

Johnson. Yes, it lay just by them.

Mr. Serj. Thompson. Pray set up Captain *Billop* again.

(which was done)

When you brought these Papers to *Whitehall*, Captain *Billop*, who did you deliver them to?

Captain Billop. To my Lord *Nottingham*.

Mr. Serj. Thompson. After he received them, what did he with them?

Captain Billop. After he had examined all these Gentlemen, he went to opening of the Papers, and he desired me to stay in the Room till they were opened, which I did; and my Lord looking on some of the Papers said, If this Pacquet had gone, we had quickly been visited by the *French*. With that I took them up, and look'd into them. My Lord said, I might look into as many Papers as I pleased; but I was very uneasy, and full of Pain, and had more mind to be gone, and be a Bed, than looking into Papers; but several of the Papers I did look into, and several I put my Mark upon; and the next Day at the Council, what of them I did know, I did put my Mark upon.

Mr. Serj. Thompson. After my Lord *Nottingham* had perused them, what did he do with them?

Captain Billop. My Lord put them up in a Cover, and tied them with a Piece of Twine, and put his Seal upon them, and gave them me, and desired me to carry them to my Lord President; which I immediately did, and, without stopping, carried them to my Lord President.

Mr. Ashton. When was this, Sir? Was it that very Night that we were brought to *Whitehall*?

Captain Billop. Yes.

Mr. Serj. Tremain. Then we must desire my Lord *Nottingham* to be sworn.

The Earl of Nottingham Sworn.

Mr. Serj. Thompson. Will your Lordship please to give the Court an Account how these Papers came to your Lordship, and how your Lordship disposed of them.

Earl of Nottingham. Captain *Billop* came to my Office——

Mr. Ashton. I humbly desire your Lordship would please to speak louder; for I cannot hear your Lordship, and I fear the Jury cannot.

Earl of Nottingham. I speak as loud as ever I can, but I have a great Cold.

L. C. J. Holt. You may hear my Lord very well, if the Court be but silent.

E. Nottingham. Captain *Billop* brought to me a Pacquet tied about with a Packthread, to which there was a Piece of a Leaden Pipe fixed, in which Pacquet there was stuck in another Paper; I think there was but that one besides the Cover, but what it was particularly I do not remember: this Pacquet was laid upon the Table while he was by; and I called in my Lord *Preston*, not being willing to make him stay, and after I had some Discourse with my Lord, to examine him what Account he could give of these Proceedings; then I called in yourself, Mr. *Ashton*, and Captain *Billop* was by also, but the Pacquet so tied with the Packthread, I cut open in *Billop's* Presence with a Pair of Scissars; the same Papers that were in that Pacquet, together with the little Paper that was stuck in, I tied up; I am sure I sealed them in a Sheet of Paper, and gave them back again to Captain *Billop* to carry them to my Lord President.

Sir W. Williams. Captain *Billop*, you have already declared, that all you received from my Lord *Nottingham*, you carried to my Lord President.

Captain Billop. All the Papers that I received from my Lord *Nottingham*, just as I received them, sealed with my Lord's Seal, I went directly to my Lord President's, and gave them him.

Sir W. Williams. Pray, my Lord, did your Lordship deliver to Captain *Billop* all the Papers that you received from him?

Earl of Nottingham. My Lord, all the Papers that Captain *Billop* brought to me, that were in the Pacquet (for he brought some Letters that he took out of my Lord *Preston's* Pocket, that were of no Consequence) but all the Papers that were in the Pacquet, I delivered back to Captain *Billop*, sealed as I received from him, and no more, and no others; for the other Letters, they being from my Lord *Preston's* Children, and not relating to the Publick, I gave them to him to give my Lord *Preston* again.

Mr. Ashton. My Lord, I humbly beseech your Lordship to tell the Court how long my Lord *Preston* was with your Lordship in the Room.

E. Not. Truly I am not able to tell you particularly how long it was, I believe it might be about a quarter of an Hour, or scarce so much.

Juryman. Was there no body with your Lordship, when Capt. *Billop* was out, but only my Lord *Preston*?

E. Not. No, not that I know of.

Mr. Ashton. My Lord, I have one Favour more to beg your Lordship, I humbly pray your Lordship will please to tell the Court and Jury what Answer I gave to your Lordship, when you asked me how I came by those Papers.

E. Not. As near as I remember, the Account that you gave of them was, That you went down again after you were come up, as you said, to fetch your Hat; and that when you did go down into the little Hole to fetch your Hat, you brought up these Papers with you.

Mr. Ashton. My Lord, this was the Account I did give. Now this very well corresponds with that Man's Evidence, that says he saw me take up the Papers and put them into my Breast.

L. C. J. Holt. He does say so, and this does all very well agree.

Mr. Sol. Gen. Now we desire my Lord President would be pleased to be sworn.

The Lord President sworn.

Mr. Serj. Thompson. Pray, my Lord, will your Lordship please to declare to the Court what Papers Capt. *Billop* brought to your Lordship, and how your Lordship disposed of them?

L. President. Captain *Billop* did bring me a Pacquet tied with a Packthread, and that was sealed with my Lord *Nottingham's* Seal, I knew it to be his Seal; and he told me, that my Lord *Nottingham* commanded him to bring the Pacquet to me. I opened the Pacquet, and perused all the Papers; it was very late, and I locked them up till Morning, and I then carried those very Papers to the King, and in the King's Closet, at *Kenington*, the King read some of them, and in my Sight, for I never parted from the King, but was by all the while: The King put up all the Papers again, and commanded me to call a Cabinet Council, and to let them be delivered there to the Council; accordingly I did deliver them Paper by Paper, and they were all marked there by my Lord *Sydney*, who is here present; and they were then delivered into the Hands of my Lord *Sydney*.

L. C. J. Pollexfen. Will you please to ask my Lord any Questions, *Mr. Ashton*?

Mr. Ashton. My Lord, if your Lordship will be pleased to pardon me, I would ask your Lordship, Did any of your Lordship's Servants, or Family read any of these Letters?

L. President. No, not one.

Mr. Ashton. Were they locked up where any of your Lordship's Secretaries, or Servants could come to them?

L. President. No, I lock'd them up in a strong Box in my Closet.

Mr. Ashton. My Lord, I only desire this Favour further of your Lordship: Your Lordship, at the Committee of the Council was pleased to ask me, how I came by those Papers; I presume you may remember, and I pray your Lordship to declare, what Answer I gave.

L. President. Truly, *Mr. Ashton*, to tell you Truth, I do not remember the Particulars; I remember you denied every Thing; I can only say that, in the general; but what you said in particular I cannot remember.

L. C. J. Pollexfen. Do you put my Lord in mind if you can; See whether he does remember it.

Mr. Ashton. My Lord, I only desire to ask my Lord President, whether I did not tell him I went down, after I had been search'd, into the Hold, and there I see the Papers lie, and brought them up, and put them into my Breast; they were no sooner in my Hands but Capt. *Billop* had them in his; for the Man called and said, This Gentleman has something in his Breast, and the Captain put in his Hand and pulled it out.

L. President. Truly, *Mr. Ashton*, I do not remember the Words that you used, but remember you said something to which I made answer, What makes it matter, They were found upon you, and taken out of your Bosom, do you look to it how you came by them. I do not remember what you said, for I cannot remember particular Words, but I believe you might say some such thing.

Mr. Sol. Gen. Then, pray, my Lord *Sydney*, will you be pleased to be sworn.

The Lord Sydney sworn.

Mr. Sol. Gen. Will your Lordship be pleased to declare what Papers you received from my Lord President?

L. Sydney. At the Cabinet Council my Lord President delivered a Pacquet of Papers, I received them every one there, and mark'd them, and put them into my Pocket.

Mr. Serj. Tremain. Did your Lordship deliver them to any Person afterwards?

L. Sydney. The next Day, or the Day after, I gave them to *Mr. Bridgman* to copy out, and he delivered them back to me again.

Mr. Sol. Gen. Pray, my Lord, give me leave to ask this Question——

Mr. Serj. Thompson. Your Lordship had mark'd them before you delivered them to *Mr. Bridgman* to copy?

L. Sydney. Yes, I mark'd them at the Council Table, at my Lord *Nottingham's* Office.

Mr. Sol. Gen. My Lord, those Papers that you mark'd, were the same Papers that my Lord President brought, and delivered in at the Council?

L. Sydney. Yes, the very same.

Juryman. My Lord, shall we have Leave to ask my Lord *Sydney* a Question?

L. C. J. Holt. Ay; what is it?

Juryman. Pray, my Lord, did the Pacquet come to you sealed? That which was taken from this Gentleman, was it sealed when it came to you?

Mr. Sol. Gen. No, it had been opened by my Lord *Nottingham*, and my Lord President.

L. C. J. Holt. Sir, you are under a Misapprehension of the Matter. My Lord *Nottingham*, after he had opened them, sealed them up again, and delivered them to Capt. *Billop*; Capt. *Billop* carried them sealed to my Lord President; my Lord President opens them, and lays them up; they were never out of his Possession; he carries them to the King; the King read some of them in his Lordship's Presence; he delivers them at the Cabinet Council to my Lord *Sydney*; and my Lord *Sydney* swears he read them there, mark'd them, and when he had done, put them in his Pocket.

Mr. Sol. Gen. My Lord *Sydney*, will your Lordship be pleased to look upon these Papers, and see if these be part of them.

L. Sydney. I know them very well, I have read them ten times, I mark'd them at the Council, and that is my Mark.

Mr. Sol. Gen. Pray, my Lord, are those two Papers that you have in your Hand, Two of those Papers that my Lord President delivered at the Cabinet?

L. Sydney. Yes, that they are.

Mr. Sol. Gen. My Lord President, will you please to look upon them.

(which his Lordship did.)

L. President. These are two of the same Papers that Capt. *Billop* brought me.

Mr. Sol. Gen. Now we shall desire to have them read; but give me leave to observe to you, That one of them is a Copy of the other; only in the one some Words are written short, that are written out at length in the other.

Juryman. Pray, my Lord, I desire to ask, are they of the same Hand?

Mr. Sol. Gen. No, they are of different Hands.

Mr. Serj. Thompson. Pray, Gentlemen of the Jury, take notice, and observe these Papers, for there is a great deal of Matter of great Moment in them; for you cannot expect the King's Council should repeat every thing that is in so many Papers as we shall read; it is impossible we should take notice of all.

L. C. J. Holt. Or I either, therefore pray, Gentlemen, observe what is read, for I shall be able only just to state the Evidence to you.

Mr. Ashton. My Lord, I hear them say, one of those Papers is a Copy of the other; I desire the Original may be read, and not the Copy.

Mr. Serj. Thompson. Who knows which is the Original?

L. C. J. Holt. Look you, Mr. *Ashton*, we don't know which is the Original, or which is the Copy, they are both found together, they contain the same Matter, and the same Words: It may be you can tell which is the Original.

Mr. Serj. Thompson. You may look upon them your self, and tell us which is the Original, if you please.

Mr. Ashton. That is very well observed, Sir. That is throwing Water upon a dead Mouse. Then I desire both of them may be read.

Mr. Sol. Gen. Indeed, Mr. *Ashton*, I think there is a particular Reason why you should not desire to have the Copy read, because left it should prove to be your own Hand writing.

Mr. Ashton. Pray, let both be read.

Cl. of Peace Reads. The Result of a Conference—

Mr. Serj. Tremain. Pray attend, for this is the Scheme of the whole Work.

Cl. of Peace Reads. The Result of a Conference, &c.

And the other was likewise read as before.

L. C. J. Pollexfen. Pray let Mr. *Ashton* see that Paper.

The Paper was handed to Mr. *Ashton*, being one of the Papers before read.

L. C. J. Pollexfen. Mr. *Ashton*, look upon that same Paper a little, satisfy your own Mind a little whose Hand that Paper is in. Look upon it well, I would have you be satisfied about it. Look particularly upon the latter Part of it.

Mr. Ashton. My Lord, I have look'd upon it, I have seen it all.

L. C. J. Pollexfen. Come then, give it me back again, and think of it a little in your own Heart.

Mr. Sol. Gen. My Lord *Sydney*, pray, will your Lordship look upon this Paper.

L. Sydney. This is one of the Papers that was, among the rest, delivered by my Lord President; at the Cabinet.

Mr. Sol. Gen. Pray shew it my Lord President; What says your Lordship to it?

L. President. This was one of the Papers I gave my Lord *Sydney*, and was brought to me in the Pacquet by Captain *Billop*.

Cl. of Peace reads. That the King would return with a Design of making an entire Conquest of his People—

Mr. Serj. Thompson. Pray, my Lord, give me leave, before it be read, to acquaint the Jury what this is, that they may make the better Observations upon it. This, Gentlemen, is the Heads of a Declaration that was intended to be Published when the *French* came; and you will see what it is when it is read. Pray observe it.

Cl. of Peace reads. That the King will return, &c. As before.

Mr. Serj. Tremain. The next Paper is an Account which they had taken with them of the Force of the Kingdom, of the Ships, particularly how many in Number, what Rates, what were in Repair, what out of Repair, and what a Building. Pray shew it my Lord *Sydney*.

L. Sydney. This is another of the Papers that I received from my Lord President, and mark'd at the Cabinet.

Mr. Serj. Thompson. Then shew it my Lord President.

L. President. This is one of the Papers that were in the Pacquet that Captain *Billop* brought me.

Clerk of the Peace reads.

Mr. Sol. Gen. Pray, my Lord *Sydney*, look upon these Papers, and tell where your Lordship had them.

The Papers were shewn both to the Lord President and the Lord *Sydney*.

L. C. J. Holt. My Lord President says he received them from Captain *Billop*, and gave them to my Lord *Sydney*; and my Lord *Sydney* says they are the same he received from my Lord President.

Juryman. Are those the Papers that have been read, my Lord?

Mr. J. Eyres. No, but they both say the same as to those that have been read.

Juryman. Then pray, my Lord, What are those Papers that are going to be read?

Mr. Serj. Tremain. These are two Letters, Gentlemen, that are written, giving an Account how the Affairs in *England* stood with reference

to the Persons Concerns that they are written to ; and there is a particular Passage in one of them, How their young Master prevailed in his Interest, and got Ground of his Adversaries. If you observe them, you will easily understand what is meant by them.

Clerk of the Peace reads. This is directed for Mr. Redding, New-years Eve, Though the Bearer of this, &c. *As before.*

Clerk of the Peace reads. This is directed for Mrs. Redding. As it is impossible for me to express, &c. *As before.*

Mr. Sol. Gen. Now we desire my Lord Sydney, and my Lord President, would look upon these Papers. *Juryman.* My Lord, I desire the former Part of that last Letter may be read again.

Which was done.

L. Sydney. These I had from my Lord President. L. President. And I had them out of the Packet that Capt. Billop brought me.

Mr. Serj. Tremain. If your Lordship please I will open them to the Jury. Here are two Letters, in one of them there is an Account given, that they were heartily sorry they were disappointed, and that they had not been here already, but hoped they will be here as fast as they can ; that the Match was concluded, the Settlement prepared, and no doubt but the Daughter's Portion would be well Secured, if they would come quickly.

Clerk of the Peace reads. Dec. 31. 1690. 'Tis directed for Mrs. Charlton. I must not let this Bearer depart, Madam, &c. *As before.*

Mr. Serj. Tremain. That Letter tells you that the Daughter's Portion would be well Secured ; this that we now produce will tell you, how it shall be Raised. It says, The old Tenants are weary of their Master, and a little Matter, if he would but appear in *Westminster-Hall*, would redeem the Estate ; and the Cause might be brought to a final Hearing before the End of *Easter Term*, if they made haste, and it were well Solicited.

Clerk of the Peace reads. This is directed for Mr. Jackson, Dec. 31. 1690. The Bearer hereof will give you, &c. *As before.*

Mr. Sol. Gen. We must desire my Lord President, and my Lord Sydney, would be pleased to look upon these Papers.

L. President. I received these from Capt. Billop in the Packet, and gave it to my Lord Sydney.

L. Sydney. These are some of the Papers I had from my Lord President.

Mr. Serj. Tremain. The Letters we now produce to be read, seem to be written by a Man that was involved in a great Trade, that had great Projects in his Head, and drawn many Schemes in his own Brain how to carry on the Trade ; he directs what sort of Wares he would have sent, what was proper for their Markets, that he had got many a new Customer, and hoped they should not be disoblged ; that all must be sent before the First of *March*, at least before the Tenth, or the whole Summer Profits would be lost.

Ch. of the Peace reads. 31. Dec. ———

L. C. J. Holt. Read the Supercription first.

Ch. of the Peace. There is no Supercription, my Lord, at all.

L. C. J. Holt, Well, read on.

Clerk of the Peace reads. Dec. 31. The Interruption of the former Correspondence had a very ill Effect many ways, &c. *As before.*

Mr. Serj. Tremain. Gentlemen, doubting that that Letter might not be pressing enough, here is another to the same Effect.

Ch. of the Peace reads. Dec. 31. It is a Presumption incident to those that are any ways upon the Spot, &c. *As before.*

Mr. Serj. Tremain. One would imagine this Letter were written by some Person that used to talk Cant, that he is so ready at it.

Mr. Sol. Gen. Pray, my Lord President, what says your Lordship to these Papers?

L. President. These Two Letters were in the Bundle that Capt. Billop delivered to me, and I delivered them to my Lord Sydney.

L. Sydney. These are some of the Papers I had from my Lord President, at the Cabinet.

Mr. Serj. Tremain. That first of these Papers is a Letter wherein the Party gives an Account of his own Condition here, and how he would venture to bring about what was desired.

Ch. of the Peace reads. 31. Dec. 1690. Was my Condition more desperate and uneasy than it is, &c. *As before.*

Mr. Serj. Tremain. This little Paper was included in the other.

Ch. of the Peace reads. I beg, &c. *As before.*

Mr. Serj. Tremain. Now shew this Paper to my Lord President, and my Lord Sydney.

Which was done.

L. C. J. Holt. My Lord President, and my Lord Sydney, swear the same for this Paper, as for the rest.

Mr. Serj. Tremain. This Paper shews they were going about a Deed that they did not desire to have known ; 'tis a Key how to explain their Meaning.

Ch. of the Peace reads. For Mrs. Anne Ruffel, &c. *As before.*

Then three other Papers were shewn to, and sworn by the Lord President, and the Lord Sydney, to be Part of the same Papers.

Mr. Serj. Tremain. The Papers that we are going to read are these. Gentlemen, here is a Letter of Recommendation in behalf of one Mr. Orbinet, which is a Name, they pretended of some Person that was at *Paris*, or to go there, and 'tis written by one Mr. Dellivere to his Correspondent there ; and he tells him, the Bearer had something to disclose to him, and that he might have an entire Confidence in him : but the Letter of Recommendation alone, without a Sum of Money, they reckoned would meet with a bad Welcome in *France*, and therefore they take 500 *l.* with them, and here are Two Bills to pay it.

Then Mr. Humphrey Levermere was sworn to interpret them, being in French, (which he did) and read them as in the former Trial.

Juryman. Were these Bills found in that Packet?

Mr. Serj. Tremain. Yes, Yes ; they are sworn to by both those Lords.

Mr. Sol. Gen. Now, pray, my Lord, will you please to look upon these Papers. *The Lord President, and Lord Sydney both testified, That those were part of the Papers.*

Mr. Serj. Thompson. This next Paper that we give in Evidence is very short. It seems to be a Table for the Memory of the Person that was to carry it? They are short Heads for the Memory, consisting of a great many Particulars ; You will make your Observations upon them, and what Judgment you think fit of them.

Mr. Serj. Tremain.

Mr. Serj. *Tremain*. My Lord, I desire to take Notice of these Papers that we are now going to read; you will observe these Things in them, which are worth your remarking, Gentlemen; because these Papers that we now read to you, are of themselves sufficient to prove every Article in the Indictment: For these Papers give an Account of the Ships, their Number and Force, the Forts of the Kingdom, how they are Manned, how they may be Surprized, where the *French* Fleet should Fight, where they should Assault us, how they should hinder the *Dutch* and *English* Fleets from joining, what Number of Soldiers would be sufficient, and what Number of Ships in *Newcastle* to plague the City of *London*, how to manage this whole Affair: and it gives Characters of the Clergy of *England*, and particularly of the City of *London*, and says, they are the worst of Men.

Mr. Serj. *Thompson*. No, Brother, 'tis the worst of all the Clergy.

L. C. J. *Holt*. Come read them.

Clerk of the Peace reads. Lady D. 2000l. &c. As before.

The Jury desired to see the last Papers, and had them delivered to them.

Mr. Sol. Gen. Then we rest it here, to see what the Prisoner will say to it.

L. C. J. *Holt*. Mr. *Ashton*, the King's Council have done their Evidence for the King, what have you to say for yourself?

Mr. *Ashton*. My Lord, I humbly desire to know of your Lordship, whether all the Letters are read, that were read at the Trial of my Lord *Preston*?

L. C. J. *Holt*. What is that material to you, whether they be or not?

Mr. *Ashton*. My Lord, I am informed that there were several Letters, that particularly name my Lord, implying him to be the Bearer, and I desire those Letters may be read.

Mr. Serj. *Thompson*. With all my Heart, if you do desire it, it shall be read, we do not think it material.

Mr. *Ashton*. I do desire it; it will be plain, I believe, from hence, that I could know nothing at all of this Matter; and if your Lordship please, my Lord, to observe it, three or four of these last Papers, as Mr. Serj. *Tremain* observed, were the Ground-Work of all this Business, which refers to *Portsmouth* and *South-Sea*, and some other Papers; these I think, with Submission, were proved to be the Hand of another Gentleman, and I desire it may be proved again to the Jury, by which I think it will be plain, that they do not affect me.

L. C. J. *Holt*. Look you, Mr. *Ashton*, it is not proved to be your Hand, nor pretended to be so.

Mr. *Ashton*. But positively proved to be another's Hand, as I am informed, and 'tis that which Mr. Serj. *Tremain* observed, was the Ground-Work for carrying on the whole Design. I presume the Witnesses are in Court that proved it then, and I hope your Lordship will be so kind as to let it be proved now; they did prove it to be another Person's Hand upon a Trial not long ago.

L. C. J. *Holt*. If you have a Mind to call any Witnesses to prove the Papers to be another's Hand, you may call them.

Mr. *Ashton*. I hope the King's Witnesses are now in Court that did prove them to be his

Hand-writing, and they'll prove it now I suppose.

L. C. J. *Holt*. If you have a Mind, you may call them, they have not a Mind to produce them for the King.

Mr. *Ashton*. I know not where they are, my Lord. Pray Mr. *Aaron Smith*, be you so kind as to call them.

L. C. J. *Pollexfen*. You should have sent and Subpœna'd them to be here.

Mr. *Ashton*. Mr. *Warr* is there, my Lord, I desire he may be ask'd the Question; and I believe Mr. *Blane* is in the Court, pray let him be ask'd.

L. C. J. *Holt*. Mr. *Warr*, you are called by the Prisoner, as a Witness, to prove my Lord *Preston*'s Hand.

Mr. *Ashton*. Mr. *Warr*, Mr. *Townsend*, and Mr. *Blane*, I desire may be all ask'd.

L. C. J. *Holt*. Mr. *Ashton*, you have insisted upon it, that these Papers were my Lord *Preston*'s own Writing.

Mr. *Ashton*. My Lord, I do insist upon it, to know whether they were not proved to be his Hand.

Mr. Serj. *Tremain*. Yes, they were so, 'tis agreed.

Mr. Serj. *Thompson*. We do grant the King's Witnesses proved, that they did believe them to be my Lord *Preston*'s Hand.

L. C. J. *Holt*. The King's Council do admit, that these three last Papers were not your Hand, but they admit them to be my Lord *Preston*'s Hand, and 'tis very well done of them to admit it; so that now 'tis to be taken for granted, that those three last Papers were my Lord *Preston*'s Hand.

Mr. *Ashton*. Then, my Lord, I desire the Substance of those Papers may be the more press'd upon the Jury, because Mr. Serj. *Tremain* observed that the whole Design in the Scheme of it lay in those Papers, and they are not my Hand, but another's; and for what is in them, I know nothing, nor am concern'd.

L. C. J. *Holt*. What have you farther to say, Sir?

Mr. Sol. Gen. You mentioned another Letter which you did desire should be read.

Mr. *Ashton*. Ay; two or three where my Lord is nam'd.

Mr. Sol. Gen. This is the Letter I suppose you mean, the Clerk shall read it.

Clerk of the Peace reads. Sir, I vow to you, I do not repine at having lost all for your Sake, &c.

(As before.)

Mr. *Ashton*. Gentlemen, I hope you will observe, in that Letter my Lord is call'd the Bearer; and it tells that he brings Papers with him, by which it is plain, that you cannot imagine I could know any thing of these Papers. And, Gentlemen, it has not appeared by any Evidence that has been given, that I knew any thing more, than that they were unfortunately found upon me: But with Submission, I believe there is another Letter, if I am informed right, wherein my Lord is named, and called, my Lord the Bearer.

Mr. Sol. Gen. Sir, I do assure you now, we have to my Observation, read every Letter, and every Paper, that was read on *Saturday*.

Mr. *Ashton*. Mr. Solicitor, I am satisfied, for I am confident you would not affirm it if it were otherwise.

L. C. J. Pollexfen. There is not any Letter that says my Lord the Bearer, but my Lord will give you an Account, so and so; the Bearer will tell you these and these Things; will you have it read again? You shall if you will.

Mr. Ashton. I am unwilling to take up your Lordship's time, unless the Jury desire to have it read again.

Juryman. Pray, my Lord, when that Letter was read on *Saturday*, how was it construed by the Court? How did they take it then?

L. C. J. Holt. We did take it then, because my Lord was mentioned, that he might possibly be the Bearer.

L. C. J. Pollexfen. It is very probable, and so it was understood then, that the Lord mentioned in the Letters was my Lord *Preston*, and so that my Lord was the Bearer that could give an Account of the Countess's Condition; and in the Beginning of those Papers that are of my Lord's Hand, there is mentioned so much Money for the Lady *D—*, which is my Lady *Dorset*, I suppose, that is there meant, and that writ that Letter.

Mr. Ashton. No, my Lady *Dorchester*.

L. C. J. Pollexfen. *Dorchester*, I cry your Mercy; and it is probable the same Reason is a Reason still to make it believed that my Lord *Preston* was meant.

Mr. Ashton. I think my Lord Chief Justice was pleased to observe, as I have been informed, in giving his Charge to the Jury, that these Papers, some of them naming my Lord, must be meant of my Lord *Preston*, there being no other Lord but he; and he likewise gave another Reason; says he, They lay by my Lord's Seals that were produced, and therefore it was plain, they could not be *Ashton's* nor *Elliot's*.

L. C. J. Holt. No not so, but my Lord might be concern'd, because my Lord's Seals were there where the Papers were found.

Mr. Ashton. I am wrong inform'd, if those were not the Words my Lord Chief Justice *Pollexfen* used.

L. C. J. Pollexfen. What do you say were the Words? If you will repeat them, I'll tell you as near as I can.

Mr. Ashton. Your Lordship seem'd to infer, That my Lord being nam'd, and the Bearer in the same Paper, that of Consequence that must be my Lord *Preston*, and the Papers must be his; and you did give another Reason for it, to enforce it, that the same Man that saw me take them up, saw them lie by the Seals, which were proved to be my Lord *Preston's*, from whence your Lordship did say, it is plain they were my Lord *Preston's*, and that *Ashton* or *Elliot* could not be concerned in them.

L. C. J. Holt. You mistake that Matter, sure there was not any such Word said, for that Evidence that tended to convict my Lord *Preston*, did by no means tend to acquit you; the Question then was, How far my Lord *Preston* was concerned; my Lord insisted upon it, says he, They were not taken from me, but from *Mr. Ashton*; there the Question was not about you.

Mr. Ashton. I humbly hope, my Lord, you will forgive me for insisting upon these Matters, because I am for Life.

L. C. J. Pollexfen. I would do you all the Right I can, I assure you, *Mr. Ashton*; but certainly there was no such Thing said as you have mentioned.

Mr. Ashton. My Lord, I do not question but you will do me Right, and I thought so, when I chose the Jury out of the first that appeared, without challenging any.

L. C. J. Holt. Well, Sir, pray go on to your Defence.

Mr. Ashton. My Lord, my own Defence will be very weak upon the Whole, for I am very illiterate and unskill'd in the Laws, but where I do fail of taking Advantage, to observe what may be for my Advantage, I hope your Lordships will be so kind to me, as well as just (I may call it) to yourselves, being upon your Oaths, as to take notice of it. My Lord, in the first Place —

Mr. Serj. Tremain. Before *Mr. Ashton* proceeds, I would observe one Word in a Letter that has been read, which is one of these Papers; it says, *I say nothing of another Gentleman that takes Opportunity to see those Parts, but he has shewn a Zeal and Sincerity in the Affair equal to most.*

Mr. Serj. Thompson. You hear, Gentlemen, that there is notice taken of another Person besides the Bearer.

Mr. Ashton. Pray, my Lord, is it any Consequence that I must be the Person that must be meant, or that I must know what the Contents of the Letter was? There was another besides me, and so it is not plain who was meant; or if I were the Man meant in this Letter, it must not therefore follow that I must know of it.

Mr. Serj. Tremain. I did not mention it as a Proof that you were the Person meant, but only to shew that there was another Person besides my Lord taken notice of in them.

L. C. J. Holt. I must confess, I think *Mr. Ashton* observes right, it does not concern him, for as well as he was there, there was another, and it is uncertain whether it relates to him or the other, and so it signifies nothing at all; that's my Mind. Pray go on, *Mr. Ashton*.

Mr. Ashton. My Lord, upon the Whole I have this to observe; first as to my Business of going into *France*, I must ingenuously own it, though I protest to you I never own'd it or named it to the Woman, though she had sworn it, but yet I do now. My Design was to go to *France*, and I had very great and good Reason for it, I think; I had endeavour'd all Ways I could in the World to procure a Pass to go to *France*; 'tis very well known, I did Business under Lieutenant-General *Worden*, that died half a Year ago; his Accounts are now depending, and such Accounts as may be prejudicial in some Points to his Family, to whom I have always own'd, and must, a great Obligation, and would be very glad upon all Occasions to serve it, and all the Branches of it: This was not the Whole nor the only Design I had in going thither, but I had likewise some Business of my own, I have a considerable Sum of Money owing me, if it be necessary to prove it, I can prove it by a Bond from a Person that is there; a great Sum it is, a very considerable one to me at least. And, my Lord, I did think if I did not go myself, it was impossible for me to do any thing in that Affair, and that was the true and only Reason of my Design in going to *France*, having been out of Hopes of getting any other Convenience otherways; this was not a Design just now formed, as if I were just now upon some Plot concerning the Publick, but it has been my Design ever since Lieutenant-General *Worden*

Worden died, and he upon his Death-bed engaged me to do it; and I once went down, hoping to have gone from *Dover*, and there I was apprehended and taken. And, my Lord, I have used all manner of Endeavours to go other ways, but they have always failed me, and this way I hoped would have taken: My Lord, I do own I did hire the Boat, and I did pay the Money; but with Submission, I think that is not any manner of Treasonable Act, my Lord; perhaps it is an ill Act, but it does not amount in the least to Treason going to the King's Enemies, suppose I went upon that account, that is no manner of Treason in the World; carrying Papers to the King's Enemies, except it be proved that I was privy to them, and knew the Contents of them, if Lawyers inform me right, is not Treason; then what remains? 'Tis true, I must own the Papers were found upon me, and I believe there is nobody that has heard the Evidence that has been given, but must readily conclude, that I found them in the Place where the Seaman says I took them up; and besides, my Lord, there is not any manner of Proof so much as aim'd at by the King's Council in all their Evidence, that I was privy to any one of these Papers; so that, my Lord, I think there is very little proved upon me at all: I had the Misfortune to be taken in this Company that was going where these Papers were taken, it's true, but they have not attempted to prove that I was privy to, or knew any thing of them at all, nor that I was more concerned than that they were taken in my Stomach; this is all I have to observe upon the Whole: As to the Business of the Indictment, there are great and grievous Aggravations in it, and such as I am not able to comprehend the Meaning of, the Words confound me; and therefore I humbly desire your Lordship to tell me upon what Statute I am indicted.

L. C. J. Holt. I'll tell you, *Mr. Ashton*, you are indicted upon the 25th of *Edward* the Third, for conspiring, compassing and imagining the Death of the King and Queen, and for that Purpose going to *France*, and endeavouring to incite the *French* King to invade the Kingdom, and telling him how he should do it, and letting him know in what State and Condition the Kingdom was, and how fit to be invaded.

Mr. Ashton. Pray, my Lord, is that at all proved upon me?

L. C. J. Holt. That is the Question that the Jury are to judge of upon the Evidence that has been given.

Mr. Ashton. As to that of Compassing the Death of the King and Queen, I am ignorant of Dealings in Law; but I conceive there are several Species of Treason mentioned in that Act of the 25th of *Edward* III. and as to the imagining the Death of the King, that's only to be proved by some Overt-Act: Now I think nothing at all has been proved of any open Act conducing to prove the Imagination or Compassing the Death of the King or Queen, no manner of Consultation or Treasonable Act at all; and therefore, my Lord, I do not see that there is any great Matter that is proved upon me, and I hope you are of that Opinion too.

L. C. J. Holt. *Mr. Ashton*, that you may not go away with a Mistake, any that design'd the Deposition of the King and Queen, and the Invasion of the Kingdom, which is proved by any Overt-Act, is sufficient to prove that they compass and imagine the Death of the King and Queen.

Mr. Ashton. I presume it may be so, I believe that may be the Construction of the Law.

L. C. J. Holt. And I make no question but those that you have consulted with have told you as much.

Mr. Ashton. Truly as to Council, my Trial has been as hard as ever Man met withal.

L. C. J. Holt. Why do you say so, *Mr. Ashton*? the Court has not been hard upon you.

Mr. Ashton. My Lord, I do not complain of the Court, but as to the matter of Time, I had Notice by that Gentleman, *Mr. Bale*, to prepare for my Trial, and that was on *Friday*, and not before.

L. C. J. Pollexfen. *Friday* was Sevensnight, you mean, I suppose.

Mr. Ashton. Yes, I do mean *Friday* was Sevensnight, I was then a close Prisoner, I had not the Opportunity or Liberty of seeing any Christian Soul; I spake to him then, and told him, *Mr. Bale*, this is very short Notice, pray be so kind as to move my Lord that I may have Council; truly he was civil enough, and said, he would do all he could; says he, Will you give me the Names of your Council? So I gave him the Names of four, and of a Solicitor; but I never heard more of him in the Matter: I did with all my Industry and Skill give my Friends notice, but I was under great Difficulty, for I had not the Liberty of Pen, Ink, nor Paper, nor a Man to send upon a Message, on *Saturday*; I gave my Friends notice of it upon *Sunday*, which was no very good Day for Business, they applied themselves to my Lord *Sydney*, whose Favour and Kindness I shall always own as long as I live; he gave me all the Dispatch possible, and got me an Order to see my Wife that Day, though it was *Sunday*; the next Day I made Application to have my Council come to me, that was *Monday*; he with the same Readiness procured that: but it was *Tuesday* in the Afternoon before I could see any living Soul but my Wife; and some of the Council that I desired, would not readily come to me, and it was *Wednesday* before I did see any Body of them, and so I had but *Wednesday* and *Thursday* to consult with them in. On *Friday* I was brought here, and I endeavour'd to procure a Copy of the Pannel, that I might inform myself of the Characters of the Men that were to be my Jury; and, my Lord, I would desire you to give me leave to clear one Point, which through Inadvertency slip't from me about the Time that I desir'd to send to enquire about the Jury. I did not mean, as was apprehended, to send to them to take them off, but I only meant to enquire after their Characters; this was done upon *Friday*; I had not a Copy of the Pannel till last *Friday*, when we were Arraigned in Court, it was Two of the Clock before the Pannel was given us, it was between Three and Four when we came to *Newgate*; we were to come upon our Trial the next Morning by Eight of the Clock; so that before the Copies could be transcribed for us, there were left but six Hours for us to enquire into the Morals of so many Men, of whom some lived eight, some ten, some fifteen Miles out of Town; for my Part I was not able to enquire after any one, and that your Lordship may think, by my taking the first Twelve that appear'd, and believing myself innocent of this Matter, I resolv'd to put myself upon my Trial by any twelve indifferent *English* Men; I only beg,

if I have omitted any Thing in reference to myself, or misbehaved myself with respect to the Bench, that you would please to set me right, and consider that I stand here for my Life; and to grant me your Pardon for any thing wherein I have offended your Lordships, to whom, and to the Jury, I refer my Cause; only I beg leave to call two or three Witnesses, I know it hath been allowed before in such Cases, to give some short Account of my Life and Conversation, because it hath been reflected upon me that I was a Papist, because I designed to go into *France*; but I believe there is not any Man, whose Devotion to the Protestant Religion establish'd by Law, is greater than mine hath been, or to whom that Religion is dearer than to myself.

L. C. J. Holt. You are not accused of any such thing; nobody pretends you are a Papist: but call whom you will.

Mr. Ashton. Pray call *Dr. Bursb,* *Dr. Lake,* *Dr. Fitz-Williams,* and *Dr. Davenant.* There is *Dr. Fitz-Williams*; I beg the Favour of you, *Dr. Fitz-Williams,* to give the Court an Account of your Acquaintance with me, and particularly about my Religion.

Dr. Fitz-Williams. Will your Lordship give me leave, my Lord?

L. C. J. Holt. Ay; Come, what do you know of *Mr. Ashton*?

Dr. Fitz-Williams. I suppose, my Lord, that he calls me in as a Witness to his Religion, and to his Morality, I think so; with my Lord's Permission I will give the truest Testimony I can: I have known him for some time, he used to be frequently at the Service of the Church in the Protestant Part of the Family at *St. James's*, where I was Chaplain; during the Time I was there, I observed him to be a frequent Receiver of the Holy Communion; and, as far as I could observe, lived answerable to what he professed to be, a sincere Member of the Church of *England*, and a serious Christian. For his Sincerity and Zeal for the Protestant Religion, I can give this Instance, he had an Aunt that had a Relation to that Family, one *Mrs. Du-pee*, who he thought did warp a little towards Popery, and he desired me, about five Years ago, to have recourse to her, and desired to know if she were dissatisfied with any Point of Religion in the Church of *England*, in Communion with which she lived visibly, and I would do my Endeavour to satisfy her; as I do not doubt but I could. She was desirous to know who was the Person that sent me: I told her I came of my own Head in the greatest Part; but I suppress'd the Interposition of *Mr. Ashton* for several Reasons, and told her, I had great Suspicion of her inclining the other Way; and I had great Reason for it, because of her Husband, who was a Papist, and the great Resort of Popish Priests to their Lodgings. She told me then, She was satisfied in every thing, and if she had any Dissatisfaction she would send for me to give me an Account. Some Months after I came to *St. James's* to wait, and observing her to be more than usually before from Prayers in the Chapel, I went to her, and asked her the Reason: She told me, it was because she was making some Linnen for her Master *King James*, which was to be made in haste: But she then designed to go for *Flanders* quickly; and *Mr. Ashton* about that Time, or two or three Days after, told me his Aunt was gone to *France*, and spoke it with very

great Concern, and that he believed, under the Pretence of calling over her younger Son, she was gone to declare herself a Papist, and he was very much troubled at it. This I know for his Zeal for the Protestant Religion.

L. C. J. Holt. When was this, Doctor?

Dr. Fitz-Williams. This was, my Lord, about five Years ago.

Mr. Ashton. That is, as to the Business of my Aunt I suppose; I know not how he comes to mention it, but as to my Life and Morals, you can give a later Account.

Dr. Fitz-Williams. My Lord, I have Admistr'd the Sacrament to him.

L. C. J. Holt. What Questions do you farther ask him, *Mr. Ashton*? or can you say any more, Doctor?

Dr. Fitz-Williams. No, my Lord, I can say no more, but that he received the Sacrament about half a Year ago.

Mr. Serj. Thompson. We have not objected any thing, as to his Religion, at all.

Mr. Ashton. But I know it has been a Reflection that has gone about of me, that I am a Papist, therefore I beg leave to prove my Religion and Conversation.

L. C. J. Holt. Nay, call whom you will, you shall not be hindered, take what Course you please.

Mr. Serj. Tremain. Pray, Doctor, you say he has received the Sacrament lately; when was that, and where?

Dr. Fitz-Williams. It was at *Ely Chapel*, within this six or seven Months.

L. C. J. Pollexfen. Have you been lately conversant with him?

Dr. Fitz-Williams. Truly, my Lord, I have not been very lately.

L. C. J. Pollexfen. Pray what have you heard him say concerning his Affection to *King William* and *Queen Mary*?

Dr. Fitz-Williams. I do not remember any thing at all of that.

L. C. J. Pollexfen. Have you heard him say any thing to the contrary?

Dr. Fitz-Williams. No, I cannot remember that.

Mr. Serj. Tremain. What have you heard him say about his Affection to *K. James*?

L. C. J. Holt. Do not ask him that; there may be a Snare in that Question.

Juryman. You say, Doctor, that he received the Sacrament six Months ago in *Ely Chapel*; Did you deliver the Sacrament to him there?

Dr. Fitz-Williams. No, I did not.

Juryman. Pray, Doctor, were the Prayers that were used at that Time altered, as they are now in the Common-Prayer-Book?

Dr. Fitz-Williams. I cannot say they were.

L. C. J. Pollexfen. Did you ever see him drink *King James's* Health?

Dr. Fitz-Williams. I do not use to drink Healths, I came here only to do an Office of Justice and Kindness to *Mr. Ashton*, to testify about his Religion and Conversation.

Mr. Serj. Tremain. But answer the Question, Did you ever see him drink *King James's* Health?

Dr. Fitz-Williams. I cannot remember I ever did.

Juryman. Was *King William* and *Queen Mary* pray'd for in those Prayers?

Dr. Fitz-

Dr. *Fitz Williams*. I cannot say they were.

Mr. *Just. Eyres*. But the *Juryman's* Question was, Whether King *William* and Queen *Mary* were pray'd for? And whether the Prayers were as they are now altered?

Dr. *Fitz Williams*. My Lord, I say, I don't remember there was any Names mentioned, as the Prayers are now altered?

Mr. Serj. *Tremain*. That's very well.

Dr. *Fitz Williams*. I did neither read the Prayers, Sir, nor administer the Communion at that Time.

L. C. *J. Pollexfen*. But you were not at the Prayers, as they are now altered, I perceive.

Dr. *Fitz Williams*. Yes, I have several times.

Mr. Serj. *Thompson*. Not with that Gentleman, Mr. *Ashton*.

Dr. *Fitz Williams*. But I have been an hundred times at the Prayers, as they are now altered.

Mr. *Ashton*. I desire Dr. *Lake*, who is there upon the Bench, that he may be asked what he knows of me.

Mr. Serj. *Tremain*. But I have one Question to ask of Dr. *Fitz Williams* before he goes.

L. C. *J. Holt*. What will you ask him?

Mr. Serj. *Tremain*. I would ask you, Sir, one Question. Have you taken the Oaths to this King and Queen?

Dr. *Fitz Williams*. No, I have not, Sir, that's my Unhappines; but I know how to submit, and live peaceably under them.

Mr. *Ashton*. But there is one Dr. *Lake* that has taken them, he'll give you an Account what he knows of me.

Dr. *Fitz Williams*. If any one can say I have done or acted any thing against the Government, I will readily submit to be punished for it.

L. C. *J. Holt*. Well, Dr. *Lake*, what say you?

Dr. *Lake*. My Lord, I have known Mr. *Ashton* above these sixteen Years, we liv'd together in the same Family several of them; I always observed him to be a Person of exemplary Piety, and singular Devotion; he duly came to the Prayers of the Church twice a Day, and to the Sacrament once a Month; he has taken Occasion, that I know, several times, both at St. *James's* and at *Edinburgh*, to testify his Zeal against Popery: and I am apt to think, that he has suffered sometimes for doing so.

Mr. *Ashton*. Dr. *Bursh*, Pray, as to my Religion, I beg you to give an Account what you know of me; particularly something you may remember of me, of my perhaps Over-heat against Popery.

Dr. *Bursh*. My Lord, I have long known Mr. *Ashton*, the Prisoner at the Bar, and, till within these two Years, frequently conversed with him; and while I did so, I believed him a good Protestant, and I have so many Instances of it, and particularly before some upon whom his Fortune depended; but as to any thing of late, I can say nothing, because our Conversation has ceased.

Mr. Serj. *Thompson*. Dr. *Bursh*, have you known any thing of Mr. *Ashton's* Conversation for two Years past?

Dr. *Bursh*. No, Sir.

L. C. *J. Holt*. Have you any thing more, Mr. *Ashton*?

Mr. *Ashton*. No, my Lord, I have nothing more, unless your Lordship desire any thing more of this Nature.

L. C. *J. Holt*. Call whom you will.

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Mr. *Ashton*. Here is one Mr. *Tomlinson*.

L. C. *J. Holt*. Come, what say you, Sir?

Mr. *Tomlinson*. My Lord, I waited upon Major General *Worden* when he was sick, and there read the Prayers of the Church, and Mr. *Ashton* was a constant Attender upon the Publick Prayers at the Visitation of the Sick, and was very devout; that's all I can say.

L. C. *J. Holt*. When was this?

Mr. *Tomlinson*. It was in the Sickness of Major Gen. *Worden*.

L. C. *J. Holt*. How long ago was that?

Mr. *Tomlinson*. It was about half a Year ago.

L. C. *J. Pollexfen*. Were those Prayers as they are altered now, or not?

Mr. *Tomlinson*. It was only the Visitation of the Sick, and the Collect for the Morning, and Collect for the Evening, because the General's Sickness was such, that he could not bear long Prayers.

L. C. *J. Holt*. Sir, have you been acquainted with the Prisoner any time?

Mr. *Tomlinson*. About eight Months.

L. C. *J. Holt*. Have you any more Witneses, Mr. *Ashton*?

Mr. *Ashton*. No, my Lord.

L. C. *J. Holt*. Then I would have you to answer me this one thing; Why were you so desirous, and used such Importunity, that the Papers should be thrown overboard?

Mr. *Ashton*. My Lord, that is a Point I ought to have spoke to, to clear my self.

L. C. *J. Holt*. It seems material, and I would not have it forgot, if you can answer it.

Mr. *Ashton*. I humbly thank your Lordship, and whatsoever my Fate is, I cannot but own I have had a Fair Trial for my Life, and I thank your Lordship for putting me in mind.

L. C. *J. Holt*. And take this other thing with it, Why did you desire Captain *Billog* to go along with you where you were going?

Mr. *Ashton*. He has sworn it, my Lord, that I did so, but as I hope for Salvation, if I were to die immediately, I do not know that I spoke to him of any such thing; How was it possible that I should prevail with him? or how was it likely that I should force him to go along with us, when he had about twelve or fourteen Men with him armed, and we unarmed?

L. C. *J. Holt*. Nay, it was not forcing, it was but persuading him to go.

Mr. *Ashton*. My Lord, I do not know any thing of it, I'll assure you? but as for endeavouring to persuade him to throw the Packet overboard, I must own I did endeavour to persuade him to it; and, I do presume, there is no body in Court, that had been engaged with a Person so unfortunate, that would not have done the same thing for any common Friend, not knowing what the Contents of those Papers were, seeing them in that Posture, especially when I saw some body else so near me, so uneasy and concern'd to have them seen.

L. C. *J. Holt*. Then, Mr. *Ashton*, there's another thing which you open'd, which I would have you prove; you say you were to go into France upon the Affairs of Col. *Worden's* Family; first you say Col. *Worden* had a great Account to make up; how will you make that out?

Mr. *Ashton*. My Lord, if your Lordship please, I will prove here in Court, though it is a sort of Surprize upon me, that there is a great Account

count depending; I believe I may appeal to Mr. *Solicitor* himself, who knows that there is a Petition in the House of Commons, now depending, from the Queen's Tradesmen and Debtors, whom she owed 68000*l.* She did assign the Arrears of some growing Rents for the Satisfaction of this Debt; but the King and Government have not thought fit to let it be applied to her Use, or to the paying of those Debts she assign'd it to. Nay, it has gone farther, I can appeal to several Persons, there is one Man by Chance in the Court, that I believe does know that I promised and engaged, and actually have paid a great Part of this Debt; for believing that the Money was good upon the Assignment, I have actually paid some of these Men out of my own Pocket, and perhaps more than became me to venture; I think it may very well call my Discretion into Question.

L. C. J. Holt. Who will you have called, Mr. *Ashton*?

Mr. *Ashton.* My Lord, here is Mr. *Spalding*.

L. C. J. Holt. That the late Queen does owe People Money, that I believe is true.

Mr. *Ashton.* Pray, Mr. *Spalding*, will you give the Court an Account, whether there is any Money due from the Queen to you?

Mr. *Spalding.* My Lords, and you Gentlemen of the Jury, I have a Debt due to me from the late Queen, as her Coach Harness-maker; it is 470*l.* or something thereabouts, and Mr. *Ashton* has paid me Part of this Debt; this I do own.

Mr. Serj. *Tremain.* Pray, how long have you been acquainted with Mr. *Ashton*, Sir?

Mr. *Spalding.* A dozen Years, Sir.

Mr. Serj. *Tremain.* Have you any Intimacy with him?

Mr. *Spalding.* He and I have been very well acquainted.

Mr. Serj. *Tremain.* Have you seen Mr. *Ashton* write at any time?

Mr. *Spalding.* Yes, I have.

Mr. Serj. *Tremain.* Do you know his Hand?

Mr. *Spalding.* Yes, I think I do.

L. C. J. Pollexfen. Pray how came Mr. *Ashton* to pay you that Part of your Money?

Mr. *Spalding.* I press'd Mr. *Ashton*, and told him my Necessities, and he did advance me this Money.

L. C. J. Holt. How much did he advance?

Mr. *Spalding.* Almost 400*l.*

L. C. J. Pollexfen. When was it he paid it you?

Mr. *Spalding.* Almost a Year ago.

L. C. J. Holt. Did he pay it out of his own Pocket?

Mr. *Spalding.* I believe so.

L. C. J. Holt. I believe so; or was it Money that he had returned to him?

Mr. *Spalding.* I believe it was out of his own Pocket, my Lord.

L. C. J. Holt. Why do you believe so?

Mr. *Spalding.* Truly I believe it was out of his own Pocket.

L. C. J. Pollexfen. Pray who was to repay him?

Mr. *Spalding.* About that very Time we were petitioning the House of Commons, that we might have our Debts secured, and our Money out of the Arrears of Rents due to the late Queen, according to her Assignment; and we so press'd the Matter, that there was a Clause inserted into the Bill for the securing of our Debt; but upon the next Day, or the Day following, the Parliament was Prorogued.

L. C. J. Pollexfen. Which way did he expect to be repaid?

Mr. *Spalding.* I'll tell you which way, I suppose, my Lord.

L. C. J. Pollexfen. Did he not tell you which way?

Mr. *Spalding.* No, he never told me.

L. C. J. Pollexfen. Mr. *Ashton*, did you never tell him how you should be repaid?

Mr. *Ashton.* My Lord, I hoped to be repaid, and concluded I should, out of the Arrears of Rent in the Tenants Hands.

L. C. J. Holt. But you were very kind to pay Money out of your own Pocket upon such Hopes.

Mr. Serj. *Tremain.* Pray, Sir, will you look upon that Paper; do you know the Hand?

Mr. *Spalding.* No, Sir, I do not.

L. C. J. Holt. I suppose he did compound with you.

L. C. J. Pollexfen. This does shew an extraordinary Kindness towards some sort of People.

Mr. *Ashton.* If he discounted the Interest to the Time that we reckoned it would be paid, you know that Prejudice would be to him, and not to me; it may, indeed, prove a Prejudice at last, if the Debt be not paid, because the Receipt is Conditional: if it be not allowed him, she shall discount to me again.

L. C. J. Pollexfen. Was there no Money return'd over from the Queen, K. *James's* Queen that was?

Mr. *Ashton.* No, my Lord, directly nor indirectly, not one Penny. I believe they are not in a Condition to return Money.

L. C. J. Holt. Well, Mr. *Ashton*, what have you more?

Mr. *Ashton.* I have nothing more to say, I submit my Cause to your Lordship.

L. C. J. Pollexfen. Look you, Mr. *Ashton*, as to some Things that you have mentioned, First, there's nobody questions but you are a Protestant; nay, as far as I discern, so they are all that are concern'd in this Matter. The whole Design shews, that they are all so careful of the Protestant Religion, that they Design to restore and establish it by the King of *France*; so that it appears they are all Protestants concern'd in this Project.

Mr. *Ashton.* Pray, my Lord, who is it that proposes that?

L. C. J. Pollexfen. The Papers that were carrying to *France*, Mr. *Ashton*, you have heard them read.

Mr. *Ashton.* I hope, my Lord, that no doubtful Insinuations or Suggestions are to affect me?

Mr. Serj. *Tremain.* There is a Gentleman that was called to by the Prisoner, it may be, he knows his Hand; pray, Dr. *Fitz Williams*, look upon that Paper, you have been acquainted with him many Years, do you know his Hand?

Dr. *F. Williams.* No, Sir, I do not know his Hand, I never did see him write; I cannot say I ever received a Letter from him.

Mr. *Ashton.* I entirely submit my Cause to your Lordship and the Jury.

L. C. J. Holt. Then you have done, Mr. *Ashton*?

Mr. *Ashton.* Yes.

Mr. Just. *Eyres.* Mr. *Ashton*, because you cannot reply again upon my Lord Chief Justice, after he has summed up the Evidence; there's another

another thing that I would put you in mind of, that you may give an Answer to it. Captain *Billop* swears, before the Papers were found upon you (and it seems to stick upon you) when he was informed by the Sea-men, that you had put something in your Bosom, and he ask'd you what it was, you said nothing but your Handkerchief: Now, if you knew not what was in the Papers, how came you to deny you had any thing in your Bosom?

Mr. *Ashton*. For the same Reason that I would have endeavour'd to have had them thrown over-board; out of Kindness to the Person with whom I happened to be taken.

L. C. J. *Pollexfen*. Consider, Mr. *Ashton*, what a strange many Things you run upon: First, you would have it believed, that you had a mind to go into *France* upon your own Account.

Mr. *Ashton*. I do own that.

L. C. J. *Pollexfen*. Next then, that you hired a Vessel for you and *Elliot*. Why would you have *Elliot* to go with you into *France*?

Mr. *Ashton*. I would not have him, he desired the Favour of going.

L. C. J. *Holt*. Who desired my Lord *Preston* to go, or did he desire to go with you?

Mr. *Ashton*. I had not seen Mr. *Elliot* of three Months before I went into the City to hire the Boat.

L. C. J. *Pollexfen*. Why would you have my Lord *Preston* go with you?

Mr. *Ashton*. Why would I have my Lord *Preston* go with me? My Lord, I hop'd to have got my Passage free with a Person of my Lord's Quality.

L. C. J. *Holt*. Then you hired this Vessel for my Lord *Preston*?

Mr. *Ashton*. No, my Lord.

L. C. J. *Holt*. Was it my Lord's Money, or your own that you paid?

Mr. *Ashton*. The Money I paid; but how I should be repaid I cannot tell.

L. C. J. *Holt*. Would you, for your own Convenience, pay a Hundred Pounds for a Boat to go to *France*, and yet hope to get your Passage free by taking in my Lord *Preston*?

Mr. *Ashton*. Truly, my Lord, I cannot tell how it would have been; at the utmost, we could but have paid our Share of it.

L. C. J. *Holt*. But you can tell me if you will; I ask you, how it was agreed among you?

Mr. *Ashton*. Truly, my Lord, as I hope to be saved, I cannot tell.

L. C. J. *Holt*. Then there is another thing, Why did you desire one of the Sea-men to say, That you were to go to *Flanders*, and not to *France*, and give him half a Crown to say so?

Mr. *Ashton*. I presume your Lordship knows that it is a Fault, though it be not a Treasonable Fault, to go into *France*.

L. C. J. *Pollexfen*. But, Mr. *Ashton*, Truth is the thing that we are enquiring after; and, that is the Thing we would have prevail, and I hope shall in all Cases: If you are not Guilty, we hope it will prevail of your Side? if you are Guilty, we hope it will prevail on the other Side. Now how likely is it that you should get into this same Company by chance, without a previous Agreement? you sent something from *Burdet's*, a Hamper, and a Trunk, and afterwards some other Things went from *Rigby's*, who is your Father-in-Law.

Mr. *Ashton*. No, There was nothing at all carried from Mr. *Rigby's*.

L. C. J. *Holt*. Yes, the Leather Bag, I believe. But another thing is this, That, if it be possible, you will do well to give an Answer to, Why did you enquire for a hiding Place? Why did you ask the Master of the Ship, whether there was a convenient Place to hide in?

Mr. *Ashton*. As to that Matter, my Lord, I had heard of divers People, that actually had Passes, and were going to *Flanders*, yet were stopp'd and brought to Town again. I believe my Lord *Nottingham* has bail'd many a One, and your Lordship knows it to be so, and has bail'd many your self; and therefore I had great Reason, upon that Account, to endeavour Secrecy as much as I could.

L. C. J. *Pollexfen*. Mr. *Ashton*, as I remember, you said your self, you were once before a going over, and had the Misfortune to be stop't: now to venture a Second time without a Pass, was something strange. Why had you not gone and applied your self to the Secretary for a Pass?

Mr. *Ashton*. I had made all the Application I could to my Lord *Nottingham*, I cannot say in my own Name, because I was sure before-hand, I should be denied; but I did by other Hands endeavour to have got a Pass to have gone into *Flanders*, because it was of extraordinary Consequence to me, as I tell your Lordship, to go quickly.

L. C. J. *Holt*. If you had such an Occasion to go, and had made it out to the Secretary, and given Security, you might have got it sure.

L. C. J. *Pollexfen*. One Word further, Why should you be so much concerned to have these Papers thrown Over-board?

Mr. *Ashton*. Perfectly out of Friendship, and had I been travelling with your Lordship, or any Man else, that had been so unfortunate, I would have done the same.

L. C. J. *Pollexfen*. Well, have you any more to say for your self?

Mr. Serj. *Thompson*. Mr. *Ashton*, call what Witnesses you will, and speak as long as you will for your self, you shall be heard at large.

Mr. *Ashton*. Mr. Serjeant, I thank you heartily, I have no more at present.

L. C. J. *Holt*. Then the King's Council desire to speak a Word to the Jury.

Mr. Serj. *Thompf*. May it please your Lordship; and you Gentlemen of the Jury: It falls out to be my Duty to sum up the Evidence that has been given. I opened the Cause at the Beginning to you, and I opened it at large, and many Particulars there were mentioned, and truly, I do not think we have failed in the Proof of any one; I know you are Men of that Observation, that I need not, nor shall take upon me to repeat all the particular Circumstances; but as near as I can, I shall touch upon the Heads of the Evidence, and do it with as equal Regard to my Duty, and as much Tenderness to the Prisoner as any one can do.

Gentlemen, In the first Place, you see what the Indictment is for; 'tis for a High Treason of a very Great Nature, no less than the Depositing the King and Queen, and Subverting this Government, and that by a *French* Power and Interest: if inviting an Invasion, and giving an Account of the Weakness, and where the Strength of the Government lay, carrying Papers to sollicit the *French* to come, and to incite this Nation into Rebellion, that so they might

depose

depose this King, and set up the late King *James* again: If these be High-Treason, as doubtless they are, then Gentlemen, how far forth the Prisoner at the Bar had a Share in it, I must refer to you from what we have proved.

He is the Man, it seems, that made the first Step, for you may remember it was proved, that he met this Woman at *Burdet's*, in the City, for the Hiring of this Ship, and after two or three Meetings more, they come to a Conclusion, and 93 Guineas and Six Pence are deposited to make up 100 *l.* which was the Price agreed upon, and that was actually paid by Mr. *Ashton*; this is sworn to be so.

The next thing is, to what Purpose this Money was paid, and the Ship hired, that is directly sworn, it was to carry Mr. *Ashton*, and two or three more of his Friends, not naming of them, and they were to go for *France*, one of the Witnesses says, to any Port in *France*, it was not directly declared to what Part. This, I say, was the Purpose for which the Money was paid, and the Vessel hired, and this was to carry you, Mr. *Ashton*, and two or three more Friends of his into *France*.

It is true, Mr. *Elliot* afterwards did meet Mr. *Ashton*, and I think was by the Bargain making, or at least wise, when the Money was paid; I will not be positive in that, because I would do him no Wrong, he being to make his Defence hereafter.

Mr. *Ashton*. No, he was not by, I made the Bargain my self.

Mr. Serj. *Thompson*. Then afterwards I remember one Circumstance; when he hired this Ship, he was to hire a Ship that had a Place to hide in, and so he must needs know upon what Design, I say, by that he must needs know, that there was a Matter of great Moment which he was to transact, for he was to have such a Ship as he might hide in.

After this Ship was hired, then they met in *Covent-Garden*, and there they take Order with the Man to go down with them to the Stairs, where the Waterman was called; indeed Mr. *Ashton* did part from them in the Way, but presently after came to them at the Stairs, and there came my Lord *Preston* and his Man, who, together with *Elliot*, that was there before, I think before, all Embark'd in the Boat, and were carried to the Ship, and made all the Haste away they could for *France*.

When they were there, and came to a Place of Danger, near a Ship of War, there was Care taken, according as they had enquired of the Master of the Ship before, that they should be hid, and hid they were.

Afterwards, when they were past that Danger, when they came to the Block-House at *GraveSEND*, there they thought fit to hide again, and did so, and there they concealed themselves, till they were surprized in that Place by Captain *Billop*.

My Lord, after such time as Captain *Billop* had surprized them, he tells you, how he came down after this Smack, you see what happened; my Lord *Preston* first came up, and after he had search'd my Lord *Preston*, *Elliot* came up, and he was search'd, and after Mr. *Ashton* was once come up, he went down to fetch his Hat, and there was seen to take up this Bundle of Papers, and

there the Papers, upon Search, were found in Mr. *Ashton's* Breast.

This being so found in his Breast, you have heard what Applications were made by this Gentleman, to get these Papers cast over-board, and what Promises were made to the Captain, and what Likelihood there was of making his Fortune, if he would go along with them, or throw away the Packet.

You hear, Gentlemen, that after they came to *White-Hall*, one of the Men swear, that this Gentleman gave them Money, that they should say, they were not hired for *France*, but for *Flanders*.

These, Gentlemen, are the several Circumstances, that do appear in this Case, which shew the mighty Care and Diligence that was used to get these Papers suppressed that had been thus taken, or to get them again into their own Custody, and that is a Matter that shews how far this Gentleman was concerned in this Design; and taking all these Things together, I think there can no greater Evidence be given, that Mr. *Ashton* was in this Contrivance, that he was concerned in the Message, that he was to be sent, and all this Business that was to be done, was as much Guilty, as my Lord *Preston*, who now stands convicted for it.

And the Court will tell you, Gentlemen, there are no Accessories, in Treason, all are Principals; though it be not actually proved, that this Gentleman did know all these Papers what they were, yet in Case he hired a Ship for himself and the Lord, whose Papers they were, to go in, and take such Notice of the Papers as to take care of them, to suppress and conceal them, that is an Evidence of his Knowledge of the Importance of them? and if so, he will be equally Guilty of the High-Treason.

L. C. J. *Holt*. I doubt that.

Mr. Serj. *Thompson*. My Lord, I would not willingly press any thing further, than the Nature of the Thing will bear.

L. C. J. *Holt*. Pray, go on, Brother, we are only talking among our selves.

Mr. Serj. *Thompson*. The next thing is this, that is to be considered, That after such time as these Papers came to be laid open, what is it that appears among them? Truly I shall not take upon me to repeat so much as the Substance, much less the Particulars of the several Papers; but, I must say, that there does appear to be a formed Design of Subverting the Government, of Depositing this King and Queen, and of bringing us all into War, Rebellion and Blood-shed, all this under a Pretence of Establishing the Protestant Religion, and our Legal Government again (tho' I can see no Means they had to depend upon for it) but by a Popish Interest, and a *French* Power; and how far that is possible, or probable, to promote such an End, by such Means, I leave to your Consideration.

Gentlemen, you have heard all the particular Papers read; here was the Resolution of a Consult and Conference, where this Project was designed; here were Heads of a Declaration, that was to be framed to make the Credulous believe, what mighty Things should be done upon their New Revolution: you see, what Letters have been produced, and cannot but easily apprehend what is the Import and Meaning of them. I resolve, as I said, not to mention the Particulars, but

but there is scarce one Line among them, but what is 'Treason, for it all tends to this Purpose and Design, to depose the King, and alter the present Government.

Now upon the whole Matter, Gentlemen, what this Gentleman has said, I confess to me seems strange; he said indeed at first, that he had no Defence at all, or that which was very weak, and so it should seem the Truth was, for you see what his Defence has been.

He says, That he went into *France*, that he owns that he was going thither; but what was it to do? it was to settle some Accounts with the Family of Colonel *Worden*, and to receive a Sum of Money that was owing to him by a Person there.

Gentlemen, if the Design had so much Innocency in it, certainly he might have had a Pass, at least, there was no need of hiring a Vessel at such an extravagant Rate; there was no Necessity of hiding in this secret manner, and no Necessity of impossible Suggestions, and proffering Great Rewards for the disposing of, and concealing these Papers.

Gentlemen, You will remember many Particulars more, which have not slipt your Observation; I shall not take upon me to repeat them, but leave them to your Consideration.

Only this I must say, That this is a Treason of a very high Nature, a Treason to depose a King that has ventured all he had, even his Life has been in Danger, and his Blood has been spilt to establish this Government, and our Religion, and our Laws, and yet it seems there are Men that think this may be better done by a Popish Interest and *French* Power, which I think nobody of either Wisdom or Honesty can imagine, or will ingage in, and therefore I leave it to your Determination.

L. C. J. Holt. Gentlemen of the Jury, you understand, that Mr. *Ashton* is now tried for High-Treason; it is mentioned in the Indictment, to be for conspiring the Death, and deposing of the King and Queen, and for that Purpose, he did endeavour to go into *France*, and to carry divers Proposals in Writing, and several Memorials to shew how this Kingdom might be invaded by the *French*.

To prove this, the Evidence that has been produced and given by the King's Council has been long, and consists of two Parts, Witnesses *Viva Voce*, they have told how Mr. *Ashton* designed a Voyage to *France*, and that he hired a Ship for that Purpose, and several Papers were taken out of his Bosom.

In the first Place, the Witnesses tell you, that about the latter End of *December* last, Mr. *Ashton* and Mr. *Elliot* came to *Burdett's* House, where they met with Mrs. *Pratt*, and *Burdett* having before that spoken to her about a Smack that she called the *Thomas* and *Elizabeth*.

Then there was a Meeting appointed between her and Mr. *Ashton* at the *Wonder* Tavern, where they did treat and debate about the Hire of it; afterwards they came back to *Burdett's* again, and there the Agreement was made betwixt the Woman and Mr. *Ashton*, the Prisoner at the Bar, to have a Hundred Pounds. Ninety-three Guineas and Six-pence was fetch'd down by Mr. *Ashton*, and told out, and deposited in the Hands of Mrs. *Burdett*; then there was a Six-pence broken, and one Part Mrs. *Burdett* had, and the other

Part Mr. *Ashton* had, and when either the Master, or Mrs. *Pratt*, should bring the Part of the Six-pence that Mr. *Ashton* kept, to Mrs. *Burdett*, the Hundred Pounds was to be paid.

And this Agreement being made, 'tis positively sworn, that they did ask, whether there was a hiding Place in that Vessel? an Answer was made, There was one, and thereupon a Note was given, that the Master and Mrs. *Pratt* should go to the *Seven-Stars* in *Covent-Garden*.

Upon *Wednesday* Night, they went there according to the Directions, where meets *Ashton* and *Elliot*, but before that, there was a Boat hired at *Surrey* Stairs to carry them down to the Ship through Bridge, over-against the *Tower*, but the Tide not serving till about Ten a Clock at Night, they had agreed with a Waterman for half a Crown to carry them, and he was to stay till the Tide served. And when they went out from *Rigby's* they parted, *Elliot* and the Master went together, Mr. *Ashton* did not go with them, but came near about the same time to *Surrey* Stairs, where they took Water.

Being aboard, it was observed that all these Gentlemen were very timorous, and seemed to be much frightened at the Sight of any Vessel, from which there was any Apprehension of their being taken notice of; and, therefore they went down under the Quarter-Hatches, which is a Place very inconvenient for such Persons, where none could stand or sit upright, but they were forced to lie upon the Boards, or upon the Ballast.

It seems some Intimation was given, that some Gentlemen had an Intention to go into *France* to prosecute some Treasonable Design: And Captain *Billop* being employed to pursue them, which he did in a Pinnace, when he came near the Vessel where they were, he called to the Vessel, and under pretence of pressing Seamen, he went on Board: The Master of the Vessel said he had a Protection from the Admiralty; so that there was no Cause for them to fear pressing, nor indeed was there any for Gentlemen to fear it, they being not liable to be pressed.

When the Captain came near the Ship, and declared his Intent of coming on Board, these Gentlemen were gone under the Quarter-Hatches again; Captain *Billop* coming on Board, and speaking about pressing of the Men, and saying, There was a Couple that would make good Seamen for the King; the Master shewed his Protection, and then the Captain said he would search further in the Ship, and so he did, and then he pulls up the Boards, and there he finds all these Gentlemen, who were called up one after another, and search'd by the Captain.

Gentlemen, There is one of the Witnesses tells you, that when they were come up, he saw a Packet that lay in this very Place under the Quarter-Hatches, unto which was tied a piece of Lead, which Mr. *Ashton* takes up, and puts in his Bosom, with which the Captain being acquainted, Enquiry is made by him, what Mr. *Ashton* had there? Mr. *Ashton* said it was his Handkerchief, and nothing but that which he pull'd out: But Captain *Billop* puts his Hand in his Bosom, between his Coat and his Body, and takes out the Packet, and carried these Gentlemen on Board the *George* Frigate, where they stayed till the Tide served to bring them to *Whitehall*.

But before they came on Board the Frigate, Mr. *Ashton* was very importunate with him to throw this Pacquet into the Water; when they were on Board the *George* Frigate, and in the Cabbin alone, they continue their Importunity.

Now, say they, we have you here, and you are alone, pray will you throw this Pacquet over-board; and particularly Mr. *Ashton* said it would do the Captain no good to injure so many Gentlemen, and Mr. *Elliot* would have persuaded the Captain to take the Lead that was tied to the Pacquet, and tie it to some Letters that were taken out of my Lord *Preston's* Pocket, and throw the Pacquet over-board; and then have informed the King and Council, that those Letters was the Pacquet taken out of Mr. *Ashton's* Bosom: But the Captain very honestly rejected all their Motions of that kind.

Truly, Gentlemen, my Memory will not serve me to repeat all the Particulars, but I question not your Notes will bring them to your Minds. Mr. *Elliot*, it seems, was so mightily concerned at their being taken with these Papers, that when they shot *London-Bridge*, he wish'd the Bridge might have fallen upon them and knock'd them on the Head; and, when they were got through, he wish'd a Thunder-bolt would fall down into the Boat and sink them: That, indeed was Mr. *Elliot*, and not Mr. *Ashton*; but Mr. *Ashton* was as much concerned about disposing of the Pacquet as Mr. *Elliot*.

At *Whiteball* this Pacquet is opened, and you have several Papers produced in Evidence, and read to you; you have heard what Evidence has been given, that these are the very Papers that were in the Pacquet thus taken.

First of all Captain *Billop* tells you he carried them to my Lord *Nottingham*, and that they lay there in his Office; he withdrew, indeed, while my Lord *Nottingham* examined my Lord *Preston*, but the Pacquet was not opened in the Interim, but there was only a Paper stuck on the Out-side, that my Lord had taken off before the Captain returned into the Room, and there the Pacquet remained intire. He says, my Lord *Nottingham* opened the Pacquet and put up all the Papers that were in the Pacquet in his Presence into a Cover again, and sealed them up with his Seal. My Lord *Nottingham* says positively, he did put up all the Papers that were in the Pacquet again, all and no more, except the Cover, and that he sealed up and delivered it to Captain *Billop*.

Captain *Billop* says, he took these very Papers from my Lord *Nottingham*, and as he received them, carried them without opening to my Lord President.

My Lord President says, he lock'd them up, unopen'd, in a close Cabinet in his Closet-Room, where nobody comes; there they were that Night, and the next Day he carried them intire to the King, and some of them were read by the King, in the Presence of my Lord President; and they were all taken away again by his Lordship, no more nor no less; and, my Lord President brought them all to the Cabinet Council, where they were read, and were delivered to my Lord *Sydney*.

My Lord *Sydney* swears, These Papers now produced, are the same Papers he had from my Lord President; and my Lord President swears, That they are the same he received by *Billop* from my Lord *Nottingham*, and my Lord *Sydney* mark'd them.

So that there can remain no Doubt of these being the same Papers, that were contained in the Pacquet, that was taken out of the Bosom of Mr. *Ashton*.

Then, as to the Matter of the Papers, I think it is plain, beyond all Contradiction, that the Import of them is Treasonable: They shew a Design of invading the Kingdom by a foreign Force, and of Deposing the King and Queen from the Government, and of setting the late King upon the Throne.

It is agreed, as it is mentioned at a Conference, between several Noblemen and Gentlemen, that were of the *Whig* and *Tory* Party, as they call them, that the late King was to be restored, though by a *French* Power.

It was impossible for them to effect it, by going plainly to Work, and saying in plain Words, the *French* should invade us. It was to be done in this manner.

The *French* King must pretend by all Means to be our Friend, and a Mediator betwixt the late King, and the People of *England*, and this was out of Design, plainly, to get a Party of the Kingdom to join with them; the most credulous and inconsiderate Sort of People; who when they shall be seduced into a Belief of the *French* King's great Kindness, it was not doubted but there would be a Conjunction between them and the *French* Forces, to restore the late King.

And to procure such a Persuasion in the People, the *French* King was to shew himself kind to the *English* Protestants, to appear and act another Part than he had formerly done; he was to permit them the Exercise of the Protestant Religion, thereby to persuade many, that his Persecution of his own Subjects, the Hugonots, was not out of any Aversion to the Protestant Religion, but only to their Antimonarchical and Resisting Principles.

Then an Inconvenience is to be removed; for they complain, that they are too full of Bigotry at *St. Germain's*, and too bare-fac'd: For they make an open Profession of Popery, and speak truly what they do intend; but say they, if they will have the Design take Effect, they must be more Close and Secret: For the Folly and Bigotry at *St. Germain's* was a very great Obstruction. Therefore, they propos'd, that some Persons might be substituted as Agents to correspond here, that understood the Temper of the Nation, and what would easiliest prevail with the People: And a Model was to be framed at *St. Germain's*; the Protestants are to be seemingly caressed, Seven or Nine to be of the late King's Council, that so we might believe, that he was ours in Interest again, and that we have a Relation to him.

And if Things were carried with such Cunning and Subtlety, they hoped to delude a great many People over into the Interest of the late King; but, if they went bare-faced, it would cause such great Jealousies, that they must totally despair of Success.

Yet they did not hope by these Artifices to obtain so many Friends here, as might have been sufficient to accomplish their Design; and therefore they must have recourse to a foreign Force, particularly a *French* Force. For says one of the Papers, *Use Foreigners to expel Foreigners*; that is, *Use French to expel Dutch* Foreigners, who are our Allies, and are falsely accused by them to have trampled upon the Rights and Liberties of the Nation.

There

There is one Argument used to encourage People to assist the *French* in the Invasion of their own Country, which I cannot omit; namely, *That as soon as the French, with a considerable Expence of Men and Money, had restored the Protestant Religion, the late King to the Crown, and the People to their Liberties, that he would withdraw all his Forces, and reap no Profit or Advantage by his Success.* I must confess, this carries but little of Persuasion in it, that it is ridiculous to think thereby to impose upon any Number of Men; but notwithstanding the Weakness of their Arguments, it is apparent they were in good earnest; the Papers give an Account to the *French*, in what State and Condition our Ports were, *Portsmouth not mann'd with above 500, and Gosport how weakly fortified.*

It was a happy Juncture between this and the first of *March*, when Advice is given to make use of the Opportunity: For Men cannot give, but Men may use Opportunities, and something was to be done forthwith, and the Goods must be got in Readiness, particularly Linen, and the Copper, are mentioned, which are mysterious and dark Expressions, and you may put a Construction upon them as well as I; for they are written in a Style of Trade, as if they were a Correspondence between two Tradefmen, and the Linen and the Copper are ordered to be brought before the 10th of *March*.

But however obscure some of these Expressions are, there are others that are more plain, *That the French Fleet must be out in April at farthest, and are to come before the Conjunction between the English and the Dutch, and Jennings, Strickland, or Trevannian are to come from St. Malo's in one Night, and to fight the English Fleet in the Chops of the Channel, and not to come so high as Beachy, where they came the last Year.*

And there is an Account given, in what Condition and State our Navy was, how many Ships, what Rates, how mann'd, and who the Officers; and then as the *French* were to be in Readiness to come in *April*, so they say our Fleet was not to be out till *June*.

Gentlemen, there are a great many other Particulars; but these are enough, nay half of them were enough to make any Man Guilty of Treason, that was concerned in them, or that had a Hand in carrying or making use of them.

Besides, there are other Letters which can import nothing, but the Writer was of the late King's Interest; one directed to Mr. *Redding*, the other to Mrs. *Redding*; and these were to go to *France*, to let them know how zealous he was in his Duty, and how the Interest of the young Master increased. The Letters have these Expressions; *That tho' the Family were decreased, yet our Interest is increased, which is yours, and I speak in the Plural Number, because I speak the Sentiments of my elder Brother, and the rest of our Relations, and desire them to believe they were zealous and cordial in their Duty to Mr. Redding.* Now what Interpretation you will make of this, I'll leave to you.

Then there is another Letter to Mrs. *Charlton*, and another to Mr. *Jackson*, and divers other Things that have been read, and among the rest, have been read the Heads of a Declaration at large, shewing what should be done, and what Methods should be taken in order to the restoring the late King, and deposing this.

And there is also mention made in a Paper, how divers Persons, who were to be pardoned,

as particularly, *all Justices of the Peace actually in Commission, are not to be excepted; Outlaws are to be pardoned; Chimney Money to be taken away; and all that come in within one and twenty Days, are to be forgiven.*

So that it is plain these Letters import a Design to depose the King and Queen, and the Kingdom to be invaded by Foreigners; only a little to colour the Matter, nor to lose the Pretence of a Protestant Interest altogether, there was to be 5 or 6000 *Svedes* to be made use of in the Invasion.

Gentlemen, if there was a Design of an Invasion, be it by Papists, or by Protestants, if any Act was done tending thereunto, it is High-Treason within the Statute of 25 *E. III.* For purposing and intending to depose the King and Queen, manifested by any Overt-Act, hath been always held to be High-Treason.

This, Gentlemen, is the Sum and Substance of the Evidence that has been giving against the Prisoner at the Bar.

Mr. *Ashton* says for himself, It is true, saith he, my Design was to go to *France*. I was so unfortunate as to have the Papers taken about me. I did take them up; but, says he, it is not at all proved that any one of the Papers that are now produced are my Hand: which is true: There is no such Proof.

The next thing is, that Mr. *Ashton* being ask'd, What Occasion he had to go to *France*? he says, He had formerly a Relation to Col. *Worden*, and did transact, and had the Management of his Affairs, which were very great. Col. *Worden* died half a Year ago, and he enjoyn'd him upon his Death-Bed to go into *France* about settling some Accompts of his, and he was desired by the Family of Col. *Worden* so to do.

This Mr. *Ashton* alledges; but he has not proved it. 'Tis very strange, that if Mr. *Ashton* was to go to *France* to negotiate that Affair for Col. *Worden's* Family, none of that Family should be produced to prove, that Col. *Worden* gave him such Directions, or that the Family desired him to go into *France* upon that Account.

Then Mr. *Ashton* hath endeavoured to give another Reason for his Voyage into *France*: he affirms, he had some Affairs of his own with relation to the late Queen; he was concerned for her, and she did owe Monies here, and he paid several Debts to Tradefmen, particularly 400 *l.* she owed to the Coach Harnes's Maker; and he having paid it, went over to reimburse himself: The Tradefman was produced, and he says, Mr. *Ashton* did pay the Money a Year ago; but whether Mr. *Ashton* had Effects from the late Queen, or paid it out of his own Pocket, does not appear; Mr. *Ashton* says, he paid it out of his own Pocket, which is very extraordinary, that he should be so kind to pay what he was not obliged to pay, and have no Security to reimburse himself.

So that, Gentlemen, you had best consider whether there be any thing at all said or proved, that can justify Mr. *Ashton's* going to *France*, or whether there be any good Reason offered for it.

Then *Ashton* has called Witnesse to prove, that he was always a Protestant, though he did live in a Popish Family, where they did encourage Papists and discountenance Protestants; for which he had the Ill-will of those he did depend upon.

Gentlemen, all that is agreed, and it is not a Question in this Case, whether Mr. *Ashton* be a Protestant, or a Papist; but the Question is, Whether he be guilty of High-Treason? from which the being a Protestant does not secure a Man.

But, Gentlemen, if Mr. *Ashton* had no Knowledge upon what Design the other Persons were to go into *France*, though he had actually gone into *France*, it had been a Crime in this Juncture of Affairs, yet not High-Treason; but to go into *France* and carry a Treasonable Scheme of a Design, and Project of an Invasion, that is Treason.

Now the Question is, Whether Mr. *Ashton* went with such a Purpose or not, you are to consider; I would not lead you into any Strain of the Evidence, but only state it how it stands. It is plain he was concern'd all along in hiring the Smack, and, as the King's Council observed to you, the Price was something extraordinary; they were to pay 100 *l.* for the Voyage, to which was added some Encouragement to the Woman, that if she performed this Voyage well, she might get 1000 *l.* before *Lady-Day*, and the Money was paid by Mr. *Ashton*, and he was taken aboard the Vessel.

Mr. *Ashton* was much concerned to secure the Papers, by taking them out of the Place where they lay upon the Ballast under the Quarter-Hatches; and after they were taken out of his Bosom, he was very importunate, and so often, with Captain *Billop* to throw them over-board.

And why should he be so earnest and concerned, unless he very well knew, and was acquainted, with the Contents of those Papers?

And he gave one of the Seamen 2 *s.* 6 *d.* to say, They were bound for *Flanders*: Unless it was a Matter of great Importance he went about, and that was not fit to be known, why should he deny it, or labour to have it concealed? An 100 *l.* to be paid for this Voyage, was, upon a joint Account, as well for my Lord *Preston*, as for Mr. *Ashton* and *Elliot*; Mr. *Ashton* did pay the Money, and he does not make it appear whose it was.

Gentlemen, it rests upon you to consider the Evidence you have heard, whether it is sufficient to induce you to believe Mr. *Ashton* was going into *France* with these Papers to carry on the Design of Depositing the King and Queen, and Invading the Kingdom: If you are not satisfied in your Consciences that he is Guilty, then find him not Guilty: On the other Side, if you are satisfied that he is Guilty, I do not question but you will find him so.

L. C. J. Pollexfen. Look you, Gentlemen of the Jury, My Lord has rightly repeated and stated the Evidence to you; I shall only say but a very few Words to it.

Mr. *Ashton*, as at first he did, so in his Defence has complained of a very speedy Trial, and would insinuate something of Favour that he might find for that Reason. It does appear he had Notice of his Trial sufficient, and had Time enough to prepare for it: But there is one Thing extraordinary has happened to his Advantage, which I would desire may be taken Notice of. If he had been tried on *Saturday*, perhaps he had had more Reason to complain than now he has; for he has now (and you see he uses it, and wisely enough too) the Advantage that happened to him upon my Lord *Preston's* Trial; and has had time since *Saturday* to prepare for this Day's

Work; so that there is no hard Point upon him as to that Matter, but he has had pretty good Fortune therein.

Next he does insinuate, that he is a Protestant; Gentlemen, the Law does not distinguish between a Protestant Traytor, and a Papist Traytor; if he has committed such an Offence, as by the Law is High Treason, the Law does not distinguish, nor may we. And Protestants may serve Papists Designs, though they do not directly intend it. Therefore the Evidence to prove him a Protestant, is nothing before you; for the Matter is only whether he be guilty of this Crime or not.

In the Trial of my Lord *Preston*, then the Labour was, that my Lord was not the Man that was concerned, as the Bearer of this Pacquet of Letters or Writings wherein the Treason is contained; but then it was Mr. *Ashton*, the Pacquets were found about him; but now it is not Mr. *Ashton*, but my Lord *Preston*, and this is now the Question before you, that he stands upon.

But if so be they were all concerned in the Carriage and Transporting of this Business, then they are all alike guilty of Treason, and therefore they cannot shuffle it from one to another.

Now there appears some Reason why they would not all agree to be tried together; for now it is but turning it from my Lord *Preston* upon *Ashton*, and Mr. *Ashton* upon my Lord *Preston*, and *Elliot* upon either of them, and so by this Means all might escape, if this were sufficient to serve their Turn.

But the Question before you, is, Whether all these Persons are not all in all equally concerned? and 'tis the Evidence that must be your Guide and ours; for it is not Mr. *Ashton's* Affirmation, that he had Business to go into *France*, and he happened unluckily to fall into these Mens Company, that will be a sufficient Excuse, unless he prove it.

It had been an easy matter for him to have proved, if he had been going into *France* upon Business for Colonel *Warden*; but at length that is turned off, and then the Pretence for going is, to recover some Money he had owing to him there, and that he had payed for another Person. Had he Papers of Instructions of this kind? Had he any one Witness of this Thing!

The Merchandize that he carried out with him is of another Import. Where were the Notes or Bonds that he was to recover? Where is the Account that he had to make up with any body beyond Sea? There is no manner of Evidence of any such thing.

Next, Gentlemen, do but consider, if the Man were so innocent as he would insinuate, as if he had not gone with the rest upon this Errand, how came the Man to have so heavy a Concern upon him? Why should he go to take up these Papers, if they were not his Brats? Why should he clap them into his Bosom, if he knew nothing what was in them? Why was his Concern so great to have them thrown overboard?

Gentlemen, if you expect that the Hearts of Men should be proved otherwise, than as Men guess by one another's Meanings, by their Actions, 'tis impossible to convict any Man of a Crime; for if his own Affirmation shall be a Defence, he will never want a Defence to keep himself from being convicted: But that is not what the Law gives Credit to; it must be Proof and Evidence that

that you are to judge upon. But of all he pretends to, he proves nothing.

How came he acquainted with my Lord *Preston*? Sure he was a Man sufficiently known in the World? Why should he go with him and Mr. *Elliot*? Are they not all known? Are they not Persons of the same Disposition, and much in the same Employment?

He had been taken a little before, he says himself, and was hindered from going; and he had strange ill Luck, if there was nothing else in the Business than what he pretends.

Gentlemen, in short, if you do find by the Evidence, that he was going upon a good and an honest Design, and that he knew nothing of the Danger that was in these Papers, and that these Persons were in, by reason of these Papers, and yet would go about to have these Papers concealed; and endeavour to have them thrown away, without knowing what was in them: These are Evidences that will be good for you to go by, if you have any such; but to take his Affirmation, because he says it, when he proves nothing, that is no Evidence to go by.

I leave it to you, as my Lord has done. If you are satisfied upon the Evidence that he is guilty; I doubt not you know, and will do your Duty, and will find him so; and if you have no such Evidence, or any to prove the contrary, that he is not guilty, then you ought to find him so too.

Mr. *Ashton*. I beg your Pardon for one Word.

L. C. *J. Holt*. What would you say?

Mr. *Ashton*. My Lord, I shall reckon it a particular Favour, if you will pardon me one Word, after your Lordship has given the Charge.

L. C. *J. Holt*. Well, what say you?

Mr. *Ashton*. I think, with Submission, that there is no Proof I knew, or was privy, to the Contents of any of these Papers.

L. C. *J. Pollexfen*. Pray, Mr. *Ashton*, shew any Man any Reason, if you can, why did you go down and catch up these Papers, if you did not know what was in them? they might be for your Advantage to be shewn, for any thing you pretend to know.

Mr. *Ashton*. I did it for my L. *Preston's* Sake, whose Hand was proved, and he stands convicted as the Bearer of those Papers.

Mr. *J. Eyres*. But you forget one thing that was plainly proved, Mr. *Ashton*, that when you importun'd Capt. *Billog* to throw away the Papers, you used this as an Argument, *It would do him no good to injure three honest Gentlemen.*

Mr. *Ashton*. I did not say so, my Lord, that I know of, tho' indeed he has sworn it.

L. C. *J. Holt*. Look you, Mr. *Ashton*, you have been heard as long as you did desire to speak, and were ask'd over and over again, whether you had any more? You are not now saying any new Matter; if you could urge any thing that had been omitted, which made for your Advantage, I believe the Court would indulge you, tho' it be against the Course.

Mr. *Ashton*. My Lord, I say there is nothing under my Hand, there is no Privy proved; Does Supposition condemn a Man? And is there any thing but Supposition against me? There is not my Hand proved in any of the Papers. I beseech your Lordship and the Jury to observe that.

L. C. *J. Holt*. Your being in the Company, and being so concern'd, and importunately en-

deavouring to have them thrown overboard; the Hiring the Vessel to go with these Treasonable Papers to an Enemy's Country, and the Papers found about you, is Fact proved, and is left to the Gentlemen of the Jury to consider of.

Mr. *Ashton*. But does all this amount to more than Suspicion?

L. C. *J. Holt*. Look you, Mr. *Ashton*, if you speak after we have charged the Jury, you will give us an Occasion of speaking to answer you; the Gentlemen of the Jury are Men of Understanding; they have very well observed the Evidence, and I perceive they have been very extraordinary intent upon it; they will be able to make a right Judgment, no Question, of it.

Mr. *Ashton*. All that I desire, is; there is nothing proved upon me, of my knowing what was in these Papers.

Mr. *J. Eyres*. And there is that which is very considerable too, that 'tis plain, what you say about Col. *Warden's* Account, is but a Fiction; for when you were search'd, there was not one Paper, nor one bit of Account found about you, nothing but this Bundle of Treasonable Papers and Letters.

Mr. *Ashton*. My Lord, I humbly beg you will observe what is for me, as well as what is against me.

L. C. *J. Holt*. Gentlemen of the Jury, do you think you shall stay out any time. The Court desires to know it, because they will order themselves accordingly.

Juryman. My Lord, we do not know till we come together.

L. C. *J. Holt*. Nay, take your own Time, only the Court would comply with your Conveniency in the Adjournment.

Then the Jury withdrew, and the Court adjourn'd for half an Hour, and when they were returned, the Jury came in to give their Verdict, and being called over, answer'd to their Names.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict;

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *John Ashton*, hold up thy Hand. Which he did. Look upon the Prisoner; How say you? Is he guilty of the High Treason whereof he stands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels?

Foreman. None that we know of.

Maj. *Richardson*. Look to him, he is found guilty of High-Treason.

Cl. of Arr. Then hearken to your Verdict, as the Court has recorded it. You say, I hat *John Ashton* is guilty of the High-Treason whereof he stands indicted, but that he had no Lands nor Tenements, Goods nor Chattels, at the Time of the High-Treason committed, nor at any time since, to your Knowledge, and so you say all?

Jury. Yes.

L. C. *J. Pollexfen*. Gentlemen, I think truly you have gone according to your Evidence, which the Law requires you to do, and that it is which will preserve us all. And tho' it be truly a Thing that falls hard upon the particular Men that are concerned in such Things; yet notwithstanding we must have more Consideration of the general Good and Preservation, and the Support of the Government, and that the Law have its due

Course, than of any particular Man's Case, as to the hard Point of it: we must look to these Things, or there will be no living in the World.

Sir *W. Hedges*. My Lord, we humbly desire of your Lordship, that we may be dismiss'd from further Attendance this Sessions.

L. C. J. Pollexfen. Ay.

Cl. of Arr. Gentlemen, you are dismiss'd, and the Court thanks you for your Service.

Then the Court adjourn'd for an Hour, and then the Lord Mayor and Deputy Recorder, with several of the Justices and Aldermen, returned into the Court, and after Proclamation for Silence, Order was given to bring the Lord Preston, and Mr. Ashton to the Bar. Which was done. *The Lord Preston standing without the Bar, and Mr. Ashton within.*

Cl. of Arr. Sir *Richard Grabme*, hold up your Hand. *Which he did.*

John Ashton, hold up your Hand. *Which he did.*

My Lord *Preston*, you stand convicted of High Treason, for conspiring the Death of the King and Queen's Majesties, for adhering to the King's Enemies, and endeavouring to subvert the Government: What can you say for yourself, why the Court should not proceed to give Judgment against you of Death, according to the Law?

Lord *Preston*. 'Tis true my Lord, the Jury have found me guilty of the Treason assigned in the Indictment. My Lord, it is a Treason of a very heavy and black Nature, 'tis of such a Nature, that if I had been conscious to my self to have deserved, I should be very willing to undergo that Judgment that is like presently to pass upon me. It is to endeavour to bring in the King of *France* to conquer and invade this Kingdom? 'tis a Thought I always abhorred; I love my Religion, my Family, my Country too well to attempt or endeavour any such thing; I must appeal to your Lordship, though now perhaps it is too late, whether the Treason that is laid against me has been perfectly proved; for in the Case of proving Hands, and particularly in the Case of Colonel *Sydney*, it was disallowed that Comparison of Hands should be Evidence; there ought to be at least one, if not two, Evidences to prove the Writing of it. My Lord, I know this is too late, I should have offered this to the Jury before, but being in the Crowd, and in great Disorder by standing so long, I had not Strength or Ability enough to urge it as I should. I have nothing more to say in the Case, but submit to that Judgment that the Law has assigned.

Mr. *D. Recorder*. My Lord *Preston*, your Lordship knows the Proceedings of the Law in such Cases; there is no averring against the Verdict of the Jury; they have found your Lordship guilty, and the Law says, that Judgment must be given upon you according to that Verdict.

Lord *Preston*. Mr. *Recorder*, I do not aver against the Verdict. I own it is too late; I should have offered it before, and I must submit to the Judgment of the Law.

Cl. of Arr. *John Ashton*, hold up thy Hand. *Which he did.*

You are in the same Case with the Prisoner last before you. What can you say for your self, why Judgment should not be given against you, to die according to Law?

Mr. *Ashton*. My Lord, I would humbly desire I might have a Sight of my Indictment; I have some Reason, perhaps, to believe that I am found

guilty upon an Erroneous Indictment; and if it be so, I would desire to have Council to argue the Errors of the Indictment.

Mr. *D. Recorder*. You have heard it twice read in *English*, and once in *Latin*, and that is all that is allowed to any one in your Case; I never knew the Record of any Indictment shewn to any Prisoner at the Bar.

Mr. *Ashton*. Suppose there be any Error in it?

Mr. *D. Recorder*. I am not to suppose any such thing; if there is any, it has been read to you, assign it, and the Court will consider of it.

Mr. *Ashton*. If I can assign the Errors in the Indictment, may I have the Advantage of it then?

Mr. *D. Recorder*. If there be Errors, you will have the Advantage of them, if you will assign them; if there be none, you can have none.

Mr. *Ashton*. Then I say, if there be Words in the Indictment, that there are no such Words in Nature, then, Sir, I am told it is a Vicious and Erroneous Indictment, and that is enough to viciate the Indictment.

Mr. *D. Recorder*. No such Words in Nature? It is hard to tell what you mean by that; perhaps there are Terms of Art in the Law, which, though you are not acquainted with, we are.

Mr. *Ashton*. Then there are such Words in Nature.

Mr. *D. Recorder*. That is an insensible Expression, *Words in Nature!*

Mr. *Ashton*. I am informed that even a Letter in an Indictment is enough to viciate it, or if it be false *Latin*, that will make it an Erroneous Indictment.

Mr. *D. Recorder*. No, that is not so; but if you will tell me what that Letter is, I'll tell you what I say to it; it may, or it may not be material.

Mr. *Ashton*. We know it was lately disputed in a Case of this Nature at this Place, and I am informed the Court were of Opinion, if it had been in the Body of the Indictment, it had been an Error.

Mr. *D. Recorder*. If you please to tell me wherein the Error in your Indictment consists, I may be able to give you a good Answer to it, or you will have the Advantage of it.

Mr. *Ashton*. I say it consists in this; the Word *Cymba* is written with an *S* in the Indictment, whereas it should be with a *C*.

Mr. *D. Recorder*. How do you know it?

Mr. *Ashton*. It is no matter how I know it; I have some Reason to know it, it may be.

Mr. *D. Recorder*. Mr. *Hardesty*, look upon the Record.

Mr. *Ashton*. With Submission, that is an Error, for there is no such Word as *Cymba* with an *S*.

Cl. of Arr. It is a long Indictment; will you please to ask him where about it is?

Mr. *D. Recorder*. Mr. *Ashton*, will you tell me where 'tis written?

Mr. *Ashton*. In the Indictment, when you come to speak of *Cymba* a Boat.

Mr. *D. Recorder*. By the Sound I cannot distinguish whether it be *S* or *C*.

Mr. *Ashton*. Sir, I hope you will do me the Justice to examine the Indictment it self.

Mr. *D. Recorder*. The Clerk is looking upon it: how is it, Mr. *Hardesty*? Is it with an *S* or a *C*?

Cl. of Arr. It is with a *C*.

Mr. *D. Recorder*. The Clerk has read it, and he certifies me it is in both Places with a *C*. which is true *Latin*.

Mr. *Ashton*.

Mr. *Ashton*. Is it in all Places with a *C*?

Cl. of Arr. I have look'd in two Places, and 'tis right; I'll look further, if you please.

Mr. *Ashton*. Pray do. *Which he did.*

Cl. of Ar. It is with a *C* in all Places.

Mr. *D. Recorder*. The Clerk tells me it is the same, and right in every Place, and he has look'd over all the Indictment, as to the Matter.

Mr. *Ashton*. Then, Sir, I submit to it.

Mr. *D. Recorder*. Make Proclamation for Silence; *Which was done.*

Mr. *D. Recorder*. My Lord *Preston*, or rather Sir *Richard Crabbe*, and Mr. *John Ashton*, Ye have been Indicted, Arraigned, and Convicted of High-Treason against their present Majesties King *William* and Queen *Mary*, whom God preserve. Ye have had a long, a fair, and favourable Trial, as any Persons that ever have been tried at this Bar.

The Jury that has passed upon your Lives and Deaths has convicted you; and the Court are now to do their last Act, which is to pronounce that Sentence that the Law does inflict upon such Crimes as ye stand convicted of.

It is a great Trouble to me to pronounce a Judgment that is so heavy upon you; but I must say, the Evidence that has been given against you, was so clear, and, I suppose, not only convincing to the twelve Men that tried you, but to all By-standers, that I can do it with that Satisfaction that becomes one who is intrusted with the King's Justice, that the Law may obtain, and that there should be no Interruption of Justice. And the Sentence that the Law has declared should be pronounced in this Case, is this:

That Ye do respectively go to the Place from whence Ye came; from thence to be drawn upon a Sledge to the Place of Execution, to be there hang'd up by the Neck, to be cut down while Ye are yet alive, to have your Hearts and Bowels taken out before your Faces, and your Members cut off and burnt, Your Heads severed from your Bodies, Your Bodies divided into four Quarters, Your Heads and Bodies respectively to be disposed of according to the King's Will and Pleasure; and the Lord have Mercy upon your Souls.

Then the Prisoners were conveyed away to *Newgate*, the Place from whence they came.

Lord *Preston* obtained a Pardon; but Mr. *Ashton* was executed on the 28th of *January*.

THE Queen having remitted that Part of his Sentence, as to Drawing and Quartering, he went in a Coach, with two Divines, to *Tyburn*, where he was executed, and his Body given to his Relations to bury. He delivered this Paper to the Sheriff.

Mr. *Sheriff*,

Having observ'd, that the Methods of making Speeches at the Place of Execution, were not always attended with the designed Successes; and thinking it better to employ my last Minutes in Devotion, and holy Communion with my God, I have prepared this Paper to leave in your Hands, as well to assert my Principles, as to testify my Innocency.

As to my Religion, I profess, by God's Grace, to die in the Faith into which I was baptized,

that of the Church of *England*, in whose Communion (nothing doubting of my Salvation, thro' the Merits of my Saviour) I have always thought myself safe and happy. According to her Principles, and late much-esteem'd Doctrine (tho' now unhappily exploded) I have regulated my Life; believing myself obliged, by my Religion, to look upon my rightful, lawful Prince (whatever his Principles were, or his Practices might be) as God's Vicegerent, and accountable (if guilty of Male-Administration) to God only, from whom he received his Power; and always believing it to be contrary to the Laws of God, the Church, and the Realm, upon any Pretence whatsoever, to take up Arms against him: And let all the World take Notice in this Belief I die. But I have more particular Obligations to the King, my Master, whom I had the Honour to serve, and received many signal Favours from him, for 16 Years past; so that Gratitude (a Thing not much esteem'd at this Time) as well as Duty and Religion, commanded the utmost Service I could pay him. And when I had these Considerations, That we were born his Liege Subjects; That we had solemnly profess'd our Allegiance, and often confirm'd it with Oaths; That his Majesty's Usage, after the Prince of *Orange's* Arrival, was very hard, severe, and (I may say) unjust; and, That all the new Methods of settling this Nation, have hitherto made it more miserable, poor, and more expos'd to foreign Enemies; and, That the Religion we pretend to be fond of preserving, is now, much more than ever, likely to be destroyed: There seem'd to me no way to prevent the impending Evils, and save these Nations from Poverty and Destruction, but the calling Home our injur'd Sovereign; who, as a true Father of his Country, has (notwithstanding all his Provocations and Injuries) a natural Love and Tenderness for all his Subjects. And I am so far from repining at the Loss of my Life, that had I Ten thousand, I should rather think myself oblig'd to sacrifice them all, than omit any just and honest Means to promote so good and necessary a Work. And I advise and desire all my Fellow-Subjects to think of their Duty, and turn to their Allegiance, before the severe Judgments of God overtake 'em for their Perjury and Rebellion: But certainly the Good and Interest of these Nations, abstracted from all other Considerations, will ere long convince them of the Necessity of doing it.

Having thus frankly declared my Principles, I know the Inference will be, that I have acted accordingly, and consequently, that I am now justly condemn'd: But, as I ingenuously own the Inference, so I as positively deny the Consequence; for whatever my Inclinations or Actings have been, yet, as to the Matter I was sentenced to die for, I declare myself innocent. And I will appeal, even to the Judges themselves, whether or no, upon my Trial, there appear'd the least Proof that I knew a Tittle contain'd in the Papers; but Presumptions were with the Jury thought sufficient to find me guilty, tho' I am told I am the first Man that ever was condemn'd for High-Treason upon bare Suspicion or Presumption; and that contrary to my Lord *Coke's*, and other eminent Lawyers Opinions. The Knowledge of my own Innocency, as to the Indictment and Charge against me, was That that arm'd me with so much Assurance, and occasion'd my casting my Life upon the first twelve Men of the Pannel, without

challenging any. But tho' I have, I think, just Reason to complain of the severe Charge given by the Judges, and hard Measure I have receiv'd; not to mention my close Imprisonment, the hasty and violent Proceedings against me, nor the Industry us'd in the Return of sitting Persons to pass upon me; the denying me a Copy of the Pannel, &c.

Yet, as I beg for Pardon and Forgiveness at the Hands of God, I do most heartily pray for, and forgive them, and all my Enemies, all the World; nay, even that Judge and Juryman who did so signally (contrary to common Justice) expose themselves to destroy me. But let the Will of God be done, I rely wholly upon his Mercy, and the Merits of my blessed Saviour, for Salvation; I do cheerfully and intirely resign myself into his Hands, as into the Hands of a faithful Creator, in sure and certain Hopes of a happy Resurrection.

Bless, protect and strengthen, O Lord God, my good and gracious King and Master: In thy

due Time let the Virtue, Goodness, and Innocency of the Queen, my Mistress, make all their Enemies blush, and silence the wicked and unjust Calumnies that Malice and Envy have raised against her. Make her and these Nations happy in the Prince of *Wales*; whom, from unanswerable and undoubted Proofs, I know to be her Son. Restore them all, when thou test fit, to their just Rights, and on such a Bottom as may support and establish the Church of *England*, and once more make her flourish, notwithstanding what she hath receiv'd of late from her prevaricating Sons. Forgive, forgive, O I ord, all my Enemies; bless all my Friends; comfort and support my dear afflicted Wife, and poor Babes; be thou a Husband and a Father to them; for their Sakes only I could have wished to have lived; but pardon that Wish, O good God, and take my Soul into thy everlasting Glory. Amen.

J. Astton.



CXLVII. *The Trial of HENRY HARRISON, at the Old-Bailey, for the Murder of Andrew Clenche, Doctor of Physick, April 6. 1692. 4 W. & M.*

Wednesday, April 6. 1692.

Judges present { Lord Chief Justice *Holt*,
Lord Chief Baron *Atkins*,
Mr. Justice *Nevil*.

THE Keeper of the Prison of *Newgate* did, according to Order of the Court, being then fate, bring up the Body of *Henry Harrison*, Gent, to the Sessions-House in the *Old-Bailey, London*, who being at the Bar, was Arraigned upon an Indictment of Felony and Murder, found that Day by the Grand Jury for the City of *London*, in Manner following:

Cl. of Arr.



Henry Harrison, hold up thy Hand. Which he did. You stand Indicted by the Name of *Henry Harrison*, late of *London*, Gent. for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the fourth Day of *January*, in the third Year of the Reign of our Sovereign Lord and Lady, King *William* and Queen *Mary*, of *England*, &c. about Eleven of the Clock in the Night of the same Day, with Force and Arms, &c. at *London*, viz. in the Parish of *St. Peter, Cornhill*, in the Ward of *Lime-Street* in *London* aforesaid, being in a certain Coach with one *Andrew Clenche*, Doctor of Physick, and a certain Man yet unknown, in and upon the said *Andrew Clenche*, in the Peace of God, and of our Sovereign Lord and Lady the King and Queen, then and there being, violently, feloniously, and of your Malice before-thought, did make an Assault. And that you

the said *Henry Harrison*, with the Help and Assistance of the said Man unknown, with a Pocket Handkerchief, with a Coal in the same, being put, of the Value of Two-pence, about the Neck of him the said *Andrew Clenche*, then and there Feloniously, Voluntarily, and of your Malice before-thought, did put, fasten and bind; and that you the said *Henry Harrison*, with the said Handkerchief with the Coal aforesaid in it, by you the said *Henry Harrison*, with the Help and Assistance of the aforesaid Man unknown, about the Neck of the said *Andrew Clenche* then as aforesaid, put fastened and bound, him the said *Andrew Clenche*, then and there with Force of Arms, &c. Feloniously, Voluntarily, and of your Malice before-thought, did choak and strangle, by Reason of which Choaking and Strangling of the said *Andrew Clenche* by you the said *Henry Harrison*, with the Handkerchief aforesaid, with the Coal as aforesaid put in it, he the said *Andrew Clenche* instantly died: So that you the said *Henry Harrison*, with the Help and Assistance of the said Man unknown, him the said *Andrew Clenche*, the said fourth Day of *January* in the Year aforesaid, at the Parish and Ward aforesaid, in Manner and Form aforesaid, Feloniously, Voluntarily, and of your Malice before-thought, did Kill and Murder, against the Peace of our Sovereign Lord and Lady the King and Queen now, their Crown and Dignity.

How say you, *Henry Harrison*, are you Guilty of this Felony and Murder whereof you stand Indicted, or Not Guilty?

Mr. Harrison. Not Guilty in Thought, Word nor Deed.

Cl. of Ar. Culprest, How will you be tried?

Mr. Harrison.

Mr. *Harrison*. By God and my Country.

Cl. of Ar. God send you a good Deliverance.

Then the said Mr *Harrison* was taken away from the Bar by the Keeper of Newgate.

And afterwards the same Day, about Eleven of the Clock in the Morning, the said Henry *Harrison* was brought to the Bar, and he desired the Court that he might then be tried, which was granted, and those Persons who were return'd upon the Jury were called over twice, and their Appearances recorded.

Cl. of Ar. You Henry *Harrison*, These Men that you shall hear call'd, and Personally do appear, are to pass between our Sovereign Lord and Lady the King and Queen, and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be sworn, and before they be sworn.

L. C. J. *Holt*. Mr. *Harrison*, you may challenge such of the Jury as you shall think fit before they be sworn.

Then the Jury was called and sworn, and then were counted; and the Twelve sworn were these whose Names follow:

J U R O R S.

<i>John Roll</i>		<i>John Lawford</i>
<i>Nathaniel Houlton</i>		<i>Nicholas Wildeboare</i>
<i>Michael Pindar</i>		<i>Robert Williamson</i>
<i>James Hulbert</i>		<i>William Merriden</i>
<i>Joseph Howse</i>		<i>Thomas Simpson</i>
<i>Richard Chewne</i>		<i>Thomas Pakeman</i>

Then Proclamation for Information and Evidence was made as is usual.

Mr. *Harrison*. My Lord, I have made no Challenges, because I do believe the Jury to be honest Men.

Cl. of Ar. — Henry *Harrison*, Hold up thy Hand. (Which he did.)

Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Henry *Harrison*, late of London, Gent. &c. [he reads the Indictment.] Upon this Indictment he hath been Arraigned, and thereunto hath pleaded Not Guilty; and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of this Felony and Murder whereof he stands indicted, or Not Guilty. If you find that he is Guilty, you are to inquire what Goods or Chattels, Lands or Tenements he had at the Time of the Felony and Murder committed, or at any time since. If you find him Not Guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his Goods and Chattels, as if you found him Guilty. If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Mr. *Darnell*. — My Lord, Mr. *Harrison's* Agents or Friends have, since the last Sessions, made or conveyed away a young Man that was a Principal Evidence against him.

L. C. J. That is a very ill Thing, and if it be prov'd, it will no way conduce to Mr. *Harrison's* Advantage.

Mr. *Harrison*. My Lord, I know nothing of it. But, my Lord, one of my Witnesses, that would have been material for me, is lately dead, Sir *Edward Hungerford's* Son.

Mr. *Darnell*. May it please your Lordships, and you Gentlemen that are sworn: I am of Council for the King and Queen against the Prisoner at the Bar, who stands indicted for the Murder of Dr. *Andrew Clenche*, which was as barbarous a Murder as any that hath been committed in this Age. And considering it was done in the Dark, I think there will be given as clear an Evidence of it against Mr. *Harrison* the Prisoner, as can be expected. And that it was upon this Occasion; One Mrs *Vanwicke* a Widow (between whom and Mr. *Harrison* there was a great Kindness) prevailed with Dr. *Clenche*, to whom she was indebted Twenty Pounds, to lend her so much more as would make it up One hundred and Twenty Pounds, and to take a Mortgage of a House of hers in *Buckingham-Court* near *Charing-Cross* for his Security; and Mr. *Harrison* was present with Mrs. *Vanwicke* at the lending of the rest of the Money, and executing of the Mortgage, as he was wont to be at the Management of her Affairs; but when the Time came that it was to be repaid, the Doctor could not get his Money, and Mrs. *Vanwicke* having but an Estate for Life in the House, and having long delayed the Doctor, he brought an Ejectment for the recovering of the House, upon which the Prisoner came to Dr. *Clenche*, and abused him with very scurrilous Language, and his Passion growing higher, he laid his Hand upon his Sword, and would have drawn it, and if it had not been for one Mr. *Johnson*, 'twas thought he would have kill'd the Doctor at that time; so that the Doctor desired Mr. *Johnson* to take the Business upon himself, and to act in his own Name, he was so much afraid of him. And it will be proved further to you, that at another time the Prisoner said, That Dr. *Clenche* was a Rogue and a Villain, and deserved to have his Throat cut. And some time after this, Mrs *Vanwicke* would have borrowed some more Money of the Doctor, but he refused to lend it her, whereupon she acquainting the Prisoner with it, he said, Leave him to me (Madam) I'll warrant you, I'll manage him; he is a Rogue, and deserves to have his Throat cut. And afterwards, about St. *Thomas's* Day last, the Prisoner went to Mrs *West* the Tenant, who dwelt in the House mortgaged to Dr. *Clenche*, and desired of Mrs. *West* to have some Money for Mrs. *Vanwicke*, and it should be discounted in Part of the then next *Christmas* Rent. But the said Mrs. *West* refused to pay him any, telling him, that she and her Husband were forbid by Dr. *Clenche* and the Ground Landlord, to pay any more to Mrs. *Vanwicke*, and thereupon the Prisoner expressed his further Malice against the Doctor, and said, He is a great Rogue, and a Villain, and deserves to have his Throat cut, and will not die in his Bed. And, Gentlemen, soon after the Prisoner began to put his malicious Design against the Doctor in Execution, and the Method he took was first to change his Lodgings; for on the Day before *Christmas* Eve last, he took new Lodgings at one Mr. *Garway's* in *Tbreadneedle-Street*, near the *Old Exchange*, attended by a Foot-Boy, pretending himself to be a Parliament-Man, and that he was just then come out of the Country, and lay in his Lodgings there every Night, until the first Day of *January* following, but lay out that Night, and the two next Nights following. And whilst he lodged at this Mr. *Garway's* this Matter happen'd, which does conduce somewhat towards

towards the Discovery of this Murder: One Evening the Prisoner being in his Chamber there, and one Mrs. *Jackson*, the Daughter of Mrs. *Garway*, making a Fire for him, he did take out his Handkerchief, and held it before the Fire to dry it, which she took great Notice of, because it was coarse and dirty, and not fit for his Quality (as she thought) it being made of ordinary *Indian* Stuff, like her Mother's Maid's Apron. And, Gentlemen, this very Handkerchief was the same with which the Murder was committed, and this Mrs. *Jackson* will swear it to be the same; for it is a very remarkable one, and it will be produced to you. And we shall shew you further, That on the third Day of *January* (being the Day before this Murder was committed) he caused a sham Letter to be left for him at his Lodgings at this Mr. *Garway's*, as written from a Friend of his that was sick in the Country, earnestly pressing him to come quickly down to him: And we shall prove, that the same Evening he being with Mrs. *Vanwicke* in *Woodstreet* Counter, did again threaten Dr. *Clenche*, and said, That he was a Rogue, and he would have his Blood. And upon the Fourth Day of *January* last he again changed his Lodgings, and took new ones at one Mr. *Jones's*, a Cane Chair-maker in *St. Paul's* Church-yard, and there he pretended himself to be a Country Gentleman, just then come out of *Cumberland*, and brought in a Portmanteau Trunk thither: And the same Day he sent a Letter to Mrs. *Garway*, where he had lodged before, acquainting her, That he was gone out of Town for a Week or ten Days. And, to give you further Satisfaction, we shall prove, that upon the same Fourth Day of *January*, in the Night of which this unfortunate Gentleman was Murder'd, the Prisoner was at one Mr. *Robert Humston's* Lodgings at the *Golden Key* in *Fleetstreet*, over against *Fetter-lane* End, at near Nine of the Clock at Night, and being ask'd by Mr. *Humston* to stay and sup with him, he said, he could not, for he had been about earnest Business that Day, which was to be done that Night, and that a Gentleman stayed for him in the Street to go with him about it, and so he went away. And soon after, about Nine of the Clock the same Night, two Men standing in *Fleetstreet*, at *Fetter-lane* End, call'd for a Coach, and ask'd the Coachman, if he knew Dr. *Clenche*, who dwelt in *Brownlow-street* in *Holborn*; and the Coachman reply'd, He did know the Street, but not the Doctor: whereupon they went into the Coach, and ordered him to drive to the End of *Brownlow-street*; and when they came thither, one of them called to the Coachman, and bad him go to Dr. *Clenche's*, and tell him, That two Gentlemen in a Coach, at the End of the Street, desired him to go with them to a Patient that was very sick? which the Coachman did. And he found the Doctor in his Night-Gown and Slippers, and just a going to Bed; but he immediately dressed himself, and went to them into the Coach. And it fell out very happily for the further Discovery of this Murder, that while this Coach stood at the End of *Brownlow-street*, a young Gentlewoman standing at her Door near it, and fancying that while the Coachman went on the Errand, the Gentlemen would slip out of the Coach (I think they call it Bilking) she watch'd them. And a Lamp that lighted cross *Holborn*, over against *Brownlow-street* End, and another about the Middle of *Brownlow-street*, gave such a

Light into the Coach, that she plainly saw one of the Men that sat in it, and see him look out of the Coach after the Coachman, and heard him swear at the Coachman, because he made no more Haste in going to the Doctor's House; and she is very certain that the Prisoner at the Bar is the same Person that look'd out of the Coach, and that did swear at the Coachman, and is more confident of it from the Remarkableness of his Voice. For the hearing of this Murder, and remembering these Circumstances, she went to *Newgate* to see the Prisoner, and hearing his Voice in another Room, before she saw him, she declar'd to the Persons that were then with her, that the Voice she then heard, was the Person's Voice that she saw look out of the Coach, and that did swear at the Coachman; and afterwards, when she came into the Room where the Prisoner was, though with several other Men, she pointed to him as the Person, and she hearing him then speak again, declared to the Persons with her, that both by his Voice, and by his Countenance, she knew him to be the same Man. And, my Lord, after those Gentlemen had gotten the Doctor into the Coach, one of them called to the Coachman, and bad him make haste and drive them to *Leaden-Hall-Market*, and when they were come within *Holborn-Bars*, one of them called to the Coachman, and bad him drive faster; whereupon the Coachman drove them very fast through *Holborn* to *Leaden-Hall-Market-Gate*; and when he came there, one of them bad him drive to the *Pye* without *Aldgate* (before which time, without doubt, the Murder was committed upon the Doctor, for his Hat was found next Morning in *Holborn*, near *Fetter-lane* End; but the driving so long about after, is supposed to be done lest the Doctor might recover); and when they were come without *Aldgate*, one of them ordered the Coachman to ask there for one *Hunt* a *Chyrurgeon*; which he did, and being answered, that no such Person was there, he ordered the Coachman to drive back again to *Leaden-Hall*, and when they came there, one of them called the Coachman, and gave him three Shillings and Six Pence, and bad him go into the Market there to one *Hunt's* a Poulterer, and buy them a Couple of Fowls, but the Coachman could not find any *Hunt* a Poulterer; but however he bought a Couple of Fowls for three Shillings, and when he came with them to his Coach, the two Gentlemen were gone, and the Doctor left in the Coach, murder'd, with a Handkerchief tied fast about his Neck, with a Coal in it (which will be proved to be the Prisoner's Handkerchief.) Besides, there was a Boy in the Street there, who took Notice of the Coachman's being sent of an Errand, and saw the two Persons come out of the Coach in great Haste, and he going towards the Coach before they went out of it, one of them did swear at him to be gone, and of him the Boy took most Notice, and was as positive as any Man can be to the Person of one that he never saw before, that the Prisoner now at the Bar was one of them, and was the Person that did then swear at him; but this Witness is spirited away, and cannot be heard of, although he hath been described in the *Gazette*, and diligent Search and Inquiry has been made after him. But we have his Examination upon Oath before the Coroner; and we must submit to the Court how far that shall be admitted as Evidence.

Gentlemen, we will call our Witnesses, and if they prove all this Matter, I believe every Man here will be satisfied that the Prisoner at the Bar is guilty of this base Murder.

Mr. Darnel. Pray call and swear Mr. George Wigmore. (*Who was sworn with others.*)

Mr. Darnel. Pray, Mr. Wigmore, tell my Lord and the Jury what you know of any Money that was lent by Dr. Clenche, and to whom.

Mr. George Wigmore. May it please your Lordship, there was a Draught of a Mortgage from Mrs. Vanwicke to Dr. Clenche, made by a Gentleman of Grays-Inn, for the Sum of One hundred and twenty Pounds, and I ingross'd it; and I paid by the Doctor's Order, above threecore Pounds of the Money, and the rest of it was satisfied before; and upon Sealing of the Mortgage for the Money, Mr. Harrison, and one Mr. Rowe, fell out about their Dividend of the Money, and called one another ill Names; and Mr. Rowe produced a Bill of what he had done and laid out for Coach-hire, and other Things for Mrs. Vanwicke, and Mr. Harrison and he had high Words about it, and called one another Rogues; so I told them, if they could not agree, I would put the Money up again, and carry it Home; but Mrs. Vanwicke and they did agree at last, and sealed the Mortgage, and I paid the Money; and Mrs. Vanwicke and Mr. Harrison took out twenty Pounds of the Money, and paid it to Mr. Rowe; and after Mr. Rowe was gone, they desired me to go with them to the *Young Devil Tavern*, and they both used hard Expressions there against Mr. Rowe.

L. C. J. Who was the Mortgage made to?

Mr. Wigmore. My Lord, it was made to Dr. Clenche for One hundred and twenty Pounds.

Mr. Harrison. Pray, Sir, will you tell the Jury how much Money the Gentlewoman had, and if Mr. Rowe had not stept between me and her, I had not been in Question.

Mr. Wigmore. Mrs. Vanwicke acknowledged that the Money I paid her, made up One hundred and twenty Pounds.

L. C. J. What did you hear the Prisoner say against Dr. Clenche?

Mr. Wigmore. My Lord, I do say that he was very troublesome to the Doctor.

L. C. J. Were there any Reproaches cast upon the Doctor at that Time?

Mr. Wigmore. No, my Lord, only upon Rowe, because he was a Trustee.

Mr. Darnel. Did you hear him say any thing against the Doctor?

Mr. Wigmore. Indeed I cannot particularly say.

L. C. J. He is upon his Oath, and he is sensible and understands the Question.

Mr. Wigmore. He did say very ugly Words, and when I met him afterwards in the High-Way, he was very huffy, and I thought he would have drawn his Sword upon me.

L. C. J. What did he say of the Doctor?

Mr. Wigmore. I cannot say particularly what he said.

L. C. J. Stand down.

Mr. Darnel. Call Mr. Thomas Johnson. (*Who was sworn, and stood up.*)

Mr. Darnel. Sir, Pray give the Court an Account what you know concerning this Matter.

Mr. Johnson. My Lord, I believe I shall say nothing that Mr. Harrison will contradict; I was Attorney for Dr. Clenche between him and Mrs. Vanwicke, and I sued Mr. Rowe, that was bound

with Mrs. Vanwicke, in a Bond to perform Covenants for Re-payment of the Money lent her by Dr. Clenche upon Mortgage; and I advised the Dr. and told him, Don't let us trouble the Tenant, but let us take Rowe first; and I sued Rowe, and had him arrested, and after some time, I saw that the Mortgage must do our Business, for Rowe could not pay the Money; whereupon I caused a Declaration in Ejectment to be delivered against Mrs. Vanwicke's Tenant of the House mortgaged by her to Dr. Clenche, and then Mr. Harrison came to me, and he expressed himself against the Doctor after a strange rate, and laid his Hand upon his Sword; so, my Lord, I said to him, What a Fool do you make of yourself? must none go to Law, but they must ask your leave? I suppose Mr. Harrison cannot deny this. Then Mr. Harrison preferred a Petition to the Lords Commissioners of the great Seal for Mrs. Vanwicke, and thereby suggested to their Lordships, that she was wronged in the Purchase, and in the Mortgage Money, and that twenty Pounds of it was a former Debt of her Husband's; and he finding she could have no Relief before them without Payment of the Mortgage Money, he grew troublesome; yet says I, Mr. Harrison, What she hath done, I cannot help, but if she would pay the rest, I told him I would abate her twenty Pounds, and the Interest Money also.

Mr. Darnel. Pray, Sir, did the Doctor desire you to act for him in your own Name, because he had no mind to meet with Mrs. Vanwicke and the Prisoner?

Mr. Johnson. The Doctor did find himself too deeply concerned with them, and he did not care to have to do with them; whether it was that he was afraid of his Life, I cannot say; but he said to me, Pray, Sir, go on, I will put all into your Hands, and I will trust you with all the Affair, and let them come to you, and not trouble me, own it to be your own; and I told him I feared none of them, and the Doctor gave out, That he had made over all to me, although he had not, and upon this, I fear, comes this unfortunate Business, and the Doctor's Lady must look after it her self.

L. C. J. What did he say when he had laid his Hand upon his Sword in your Study?

Mr. Johnson. He said the Dr. had cheated the Widow, and he said, That he would be revenged on him, as near as my Memory will serve me; I suppose he will not deny it; whether he did this in a Passion, or to affright the Doctor or no, I cannot tell.

L. C. J. Was that before you offered to abate the twenty Pounds?

Mr. Johnson. It was before I offered to abate it.

Mr. Harrison. How long was it before Dr. Clenche was murdered?

Mr. Johnson. I think it was about a Fortnight, or three Weeks, or a little more.

Mr. Harrison. I never threatened the Doctor in my Life, but I said, Rowe had been a Villain, and a Cheat, and he and Rowe were the Men, and I shall make it appear that the Dr. never wrong'd the Widow.

L. C. J. How came Rowe to be intrusted or concerned with the Money?

Mr. Johnson. My Lord, Mr. Cornelius Vandinaker a Merchant, gave a Legacy of five hundred Pounds to the Widow Vanwicke and her Children, and

and Mr. Rowe was a Trustee on the Purchase, and had by that the Management of the Affair.

Mr. Darnell. Call Mr. George Howard.
(Who being sworn, stood up.)

Mr. Darnell. Mr. Howard, Give the Court an Account of what you know concerning the Prisoner's threatening Dr. Clenche.

Mr. Howard. My Lord, I was at *Joe's* Coffee-house near *Warwick-House* in *Holborn*, some considerable time before Dr. Clenche was murdered, where Mr. Harrison used several very virulent Expressions against Dr. Clenche; among others, one was, That he was a Rogue and a Raical, and deserved to have his Throat cut. Mrs. Vanwicke was then in Company, and they both said, That they then came from Dr. Clenche's.

Mr. Darnell. You are sure he said that Dr. Clenche deserved to have his Throat cut?

Mr. Howard. Yes: He said, That Dr. Clenche, deserved to have his Throat cut.

Mr. Harrison. Who was I talking to?

Mr. Howard. You were talking to Mrs. Mary Sheriff.

Mr. Darnell. Call Mrs. Mary Sheriff.

(Who was sworn, and stood up.)

Mrs. Sheriff. My Lord, Mrs. Vanwicke came to my House with Mr. Harrison, and desired me to go with her to Dr. Clenche's House; and when we came there, she desired him to let her have Twenty Pounds more, and he said, No; If his House were full of Money, he would not lend her any more, so long as she kept Mr. Harrison Company for he would spend it; and he advised her to be a Gentleman's House-keeper, and he would help her to a Place; and told her withal, That she owed him One hundred and twenty Pounds, for which he would take One hundred Pounds; and we left Mr. Harrison behind us at my House, and did not take him with us, because we were afraid he might anger the Doctor, and fall out with him; so when we came back, Mr. Harrison asked Mrs. Vanwicke, what Dr. Clenche said; Why, says she, he saith, That he will not lend me any more Money while I keep you Company, for you will spend it, and that I must go to Service! To Service! said Mr. Harrison, God damn him, have a Person of your Quality go to Service! he deserves to have his Throat cut; let me alone, I'll manage him as never any Man was managed; and so away they went together.

Mr. Harrison. Did not you say, That as you hop'd to be sav'd, that I was innocent of the Thing?

L. C. J. She does not accuse you of doing the Fact, but gives an Account of some Expressions that passed from you.

Mrs. Sheriff. You were always talking against Dr. Clenche, and you said, God damn him, he was an old Rogue, and that Mrs. Vanwicke was almost starved to Death.

Mr. Harrison. Rowe, Rowe, I meant, my Lord.
(The Prisoner being then in a Passion.)

L. C. J. Mr. Harrison, do not fall into a Passion; it may be more to your Advantage in the making your Defence, if you keep your Temper.

L. C. J. Witness, what were the Words that he said against Doctor Clenche?

Mrs. Sheriff. Why, he speaking of Doctor Clenche, said to Mrs. Vanwicke, God damn him, would he have a Person of your Quality go to Service! he deserves to have his Throat cut;

Well, Madam, says he, be contented, I'll manage him as never any Man was managed.

Mr. Harrison. What had you for your Swearing?

Coroner for the King and Queen. Witness, he asketh you, If you had any thing for your Swearing against him?

Mrs. Sheriff. No, I had nothing, neither have I need of any thing? I had not so much as my Coach-hire.

Mr. Darnell. Call Mrs. Elizabeth West.

(Who was sworn.)

Mr. Darnell. Mistress, give an Account to the Court, what you know about the Prisoner's coming to demand Rent of you, and what passed.

Mrs. West. May it please your Lordship, this Gentleman, the Prisoner, came to me two or three Days before St. Thomas's Day last, and desired me to give him some Rent for Mrs. Vanwicke, and I told him, I had no Power to pay him, because I was warned by Dr. Clenche to pay no more; says he to me again, Dr. Clenche and Rowe, are great Rogues, and great Villains. Sir, says I to him again, I believe that the Doctor is a very honest Man: No, says Mr. Harrison, he is a great Villain, and he will never die in his Bed; which of them he meant, Mr. Rowe or Dr. Clenche, I cannot tell. And Mrs. Vanwicke, and Mr. Harrison, a little time before that, pressed me to let them have some Shop Goods in Part of her Rent, to grow due, and she made great Complaint, that her Children were ready to starve, and I then told them, that Mr. Johnson had fore-warned me to pay any more Rent to Mrs. Vanwicke, and if I did, I should pay it again; and therefore I would not pay any more Rent to her, or deliver her any Goods, until she had agreed with Mr. Johnson; and then Mr. Harrison said, that Mr. Johnson was a great Villain and a great Rogue, and that they had all combined together to cheat the Widow. And Mr. Johnson being at my House, Mrs. Vanwicke fell upon him in a great Rage, and said, she would tear his Throat out, and laid hold on him, and Mr. Johnson got from her, and went away in great Haste. And the last time I saw Dr. Clenche, I pressed very hard upon him, to let Mrs. Vanwicke have more Money; and the Doctor said, that she would never do any good with it, for she spent it all upon Mr. Harrison; and I wished him to let her have twenty Pounds more, and he said, That he advised her to go to Service, and that he had wished her to a Service of Twenty Pounds a Year, and she abused him for it.

L. C. J. What Cloaths had the Prisoner on?

Mrs. West. My Lord, he had an old Threadbare black Cloth Suit of Cloaths on, which looked very shabby.

Mr. Harrison. What Religion are you of, Mistress?

Mrs. West. I was born and bred a Protestant. Mr. Harrison. I believe you are a Papist, and will swear any thing; you keep Roman Catholics in your House, they have murdered Dr. Clenche, for ought I know.

L. C. J. Did Mr. Harrison ever lodge in your House?

Mrs. West. No, my Lord, I have none but Persons of Quality lodge in my House, and they belong to the present Government.

Mr. Darnell. Call Ann Watson.

(Who was sworn.)

Mr. Darnell.

Mr. Darnell. Pray, tell my Lord and the Jury, what you know of Mr. Harrison's taking of Lodgings at Mr. Garway's House, and when it was?

Anne Watson. He came about six a Clock at Night, the Day before Christmas-Eve last, to my Master's, Mr. Garway's House, and told us, that he was newly come out of the Country; and lodged there that Night, and so he did until and upon the last Night of December; and on the first Day of January he went out, and staid out that Night; and on the Sunday, the third of January last, at Night, he came again with a Person with him, and fetch'd away his Portmanteau-Trunk and Things, and paid for his Lodging; and in his Absence there was a Letter left for him, which I gave him, and he said, it came out of the Country, and that he had a Friend sick in the Country, and did intend to go down to see him, being one from whom he expected a Legacy, and he left that Letter on the Kitchen Window, and on the Monday after, being the fourth Day of January last, he sent a Letter, signifying he was gone out of Town.

(Then the Letter was produced, marked with the Penny-Post Mark.)

Mr. Darnell. Who knows Mr. Harrison's Hand? Mr. Johnson, take that Letter and look upon it, and tell the Court if you think it to be Mr. Harrison's Hand.

(Mr. Johnson takes the Letter and looks upon it.)

Mr. Johnson. My Lord, I believe it to be Mr. Harrison's Hand.

Mr. Darnell. My Lord, I desire that the Letter may be read.

L. C. J. Mr. Clerk of the Peace, read the Letter; and the Subscription first.

(Clerk of the Peace reads.)

To Mrs. Garway, at the Hand and Apple in Threadneedle-Street, near the Royal-Exchange, Present.

Mrs. Garway,

I AM sorry it should be such an Inconveniency to you, as it is. I have left with your Maid, Three Half Crowns, and if it is not enough, I will give you more. I am gone out of Town for a Week or Ten Days, and as soon as I come again, I will wait on you; which is all till I see you, from

Your Friend,

4th Jan. 1691.

and Servant,

H. Harrison.

Mr. Darnell. Call Mr. Henry Garway and his Wife. (Who were called and sworn.)

Mr. Darnell. Mrs. Garway, take that Letter, and look upon it, and tell the Court, when you received it.

(Then she takes the Letter which was produced, and read as before, and looked upon it.)

Mrs. Garway. My Lord, I received this Letter on Monday the 4th Day of January last.

L. C. J. Watson, when did he leave the Lodgings, say you?

Anne Watson. He went away the first of January last, about nine a Clock in the Morning, and returned not that Night, but on the second of January last, he was at my Mistress's Shop again (as my Mistress told me) and he came about five a Clock on the next Sunday Night (being the third of January last) with a Person

with him, to my Master's House, and fetch'd away his Portmanteau-Trunk and Things, and left Three Half Crowns with me for his Lodgings, which I gave to my Mistress.

Mr. Darnell. Call Mrs. Catherine Jackson.

(Who was sworn.)

Mr. Darnell. Pray, tell my Lord and the Jury, what you know concerning Mr. Harrison's coming to lodge at Mr. Garway's, and when he went away, and what you know of any Handkerchief he had.

Mrs. Jackson. He came on the Day before Christmas-Eve, to lodge at my Father's, Mr. Garway's House, and lodged there several Nights, and went away the third of January at Night, with his Things, but was absent some Nights between his coming and going away, and whilst he lodged there, I observed a Handkerchief in his Hand, as I was making a Fire for him in his Chamber, and the more, because he had said he was a Parliament-Man, and I thought it more like a Seaman's Handkerchief, than a Parliament-Man's, and our Maid had an Apron of the same kind of Stuff.

(Then the Handkerchief was produced in Court by the Coroner, and the Coal in it, wherewith Dr. Clenche was strangled.)

Mr. Darnell. Mrs. Jackson, I desire that you would look upon that Handkerchief, and tell the Court what you know of it.

Mrs. Jackson. This is the Handkerchief that I saw Mr. Harrison hold to the Fire, when I was making of it in his Chamber, or very like that Handkerchief, for I observed it to be very like my Mother's Maid's Apron.

(Then a Piece of the Maid's Apron was produced, and they being compared, were very like.)

Mr. Harrison. Did you hear me say, I was a Parliament-Man?

Mrs. Jackson. Yes, I heard you say so.

Mr. Harrison. Perhaps, you might hear my Boy say so.

Mrs. Jackson. Your Foot-Boy said, you were a Parliament-Man: And you said so yourself.

Mr. Darnell. Call Mr. Garway again.

(He appeared.)

Mr. Darnell. Where is the Letter you receiv'd from Mr. Harrison, since he was a Prisoner?

L. C. J. What do you say about a Letter that came to your House from the Prisoner?

Mr. Garway. My Lord, I had this Letter from him last Saturday, directed to my Wife, and I believe it to be his Hand.

(He produceth the Letter.)

Mr. Darnell. My Lord, I desire that the Letter may be read.

L. C. J. Read the Letter, Mr. Tanner.

(Clerk of the Peace reads.)

To Mrs. Garway, at the Hand and Apple in Threadneedle-Street, behind the Royal-Exchange, Present.

Mrs. Garway,

I Was informed Yesterday, that you are to appear against me, at next Sessions. I am sure, you never heard me mention Dr. Clenche, in all your Life; and if you do, it will look like Malice. My Lord Chief Justice is sensible of the Wrong done me. This is all from

Your Servant,

Henry Harrison.

L. C. J. Mr. Harrison, Did I ever tell you That I was sensible of it?

(*To which he made no Reply.*)

Mr. Darnel. Call Mr. John Cartwright.
(*Who was sworn.*)

Mr. Darnel. I would have you declare, what you heard Mr. Harrison say, concerning Doctor Clenche.

Mr. Cartwright. My Lord, upon the Third of January last, Mr. Harrison came to Woodstreet Compter; it was on a Sunday in the Evening, about Five or Six a Clock, I was standing in the Gate, and I let him in. Aftoon as he came in, he asked how poor Mrs. Vanwicke did; says he, She hath been wronged of Five Hundred Pounds within these 12 Months: Then I let him into the Court, and he went into her Chamber; and about half an Hour after, I was sent by my Master, to require some Chamber-rent of Mrs. Vanwicke, and I heard Mr. Harrison and she at high Words, and in a great Passion, and I heard Mr. Harrison swear, God damn his Blood, he would be reveng'd of that Rogue, and named Clenche or Winch, I cannot tell which, and he would have his Blood, ere it were long.

Mr. Harrison. Where were you?

J. Cartwright. My Lord, I was at the Chamber-door, and there was no Body on that Side of the House, but Mr. Harrison, Mrs. Vanwicke, and my self.

Mr. Darnel. Call Mrs. Mary Jones.
(*Who was sworn.*)

Mr. Darnel. Now, my Lord, I will call one to prove, where he took a new Lodging, the very Day the Murder was done.

L. C. J. Cartwright, was that in Mrs. Vanwick's Chamber that you heard him swear so?

Mr. Cartwright. Yes, my Lord, in her Chamber, and none was with her, but he only.

Mr. Darnel. You, the last Witness Mrs. Jones, when did Mr. Harrison come to lodge at your House?

Mrs. Jones. He came on a Monday.

Mr. Darnel. What Day of the Month was it?

Mrs. Jones. I can't tell what Day of the Month, for I did not set it down.

Mr. Darnel. Was it the Monday before he was taken?

Mrs. Jones. Yes, it was the Monday before.

Mr. Darnel. Whence did he pretend to come?

Mrs. Jones. He said, That he was come out of the Country, and had formerly lodged in Fleetstreet, and that where he had lodged formerly, they had left off House-keeping, and were gone into the Country.

L. C. J. Where is your House?

Mrs. Jones. In St. Paul's Church-Yard, at the Sign of the Golden-Ball.

Mr. Darnel. Call James Howfeman.
(*Who was sworn.*)

Mr. Darnel. Do you tell what you know, about Mr. Harrison's being at Mr. Jones's House.

Howfeman. My Lord, he came in about Eight a Clock at Night, and brought a Porter with him, and a Portmanteau Trunk; and after that, the Porter went out a little before him, and then he followed him, and went out after.

Mr. Darnel. Did you hear him say, from whence he came?

Howfeman. No, I did not.

Mr. Darnel. Call Anne Evans.
(*Who did not appear.*)

Mr. Darnel. Then call Mr. Robert Humston.
(*Who was sworn.*)

Mr. Darnel. Mr. Humston, I desire you will give the Court an Account of Mr. Harrison's being at your House that Night Dr. Clenche was murdered.

Mr. Humston. My Lord, I met Mr. Harrison on Monday the 4th of January last, and he told me, he was going to the Compter, to a Gentlewoman that was much oppressed, and that he wanted Money to get her released; upon which, I gave him some Money, and after some Discourse, I desired him to bring home my Gown, that I formerly lent him, and seemed angry with him, for that he had several times promised me to bring it home, but had failed therein; and thereupon he promised, that I should have it that Night: And that Evening about Nine of the Clock, he came to my Lodgings, and brought home my Gown, and when he came, I asked him, if he had gotten Mrs. Vanwicke released: And Mr. Harrison answered, No. Upon which, I blamed him for neglecting an old Friend; and Mr. Harrison excused it, telling me, That he had met with some Persons upon earnest Business, which prevented him. And then I asked Mr. Harrison to stay and sup with me, but he refused it, saying, That he had been about extraordinary Business that Day, which must be done that Night, and that a Gentleman stay'd in the Street for him, and they two were going to do it.

L. C. J. Where do you live? And how long stayed he at your House?

Mr. Humston. I lodged then at the Golden Key in Fleetstreet, over against Fetter-lane End: He came to my Lodgings about Nine of the Clock at Night, and stayed there but a little time.

L. C. J. What manner of Cloaths had he on?

Mr. Humston. My Lord, he had a Cloak on, but I cannot tell what Cloaths he had under it, he brought my Gown up under his Cloak.

Mr. Darnel. Swear Esther King.
(*Who was sworn.*)

Mr. Darnel. Do you know what time Mr. Harrison was at Mr. Humston's Lodgings.

Esther King. It was on Monday the fourth day of January last, about Nine of the Clock at Night, as near as I can guess, the Shop was shut up, and I let him out.

Mr. Darnel. Where was it?

Esther King. At the Golden Key in Fleetstreet, over against Fetter-lane End.

Mr. Darnel. What Cloaths had he on?

Esther King. I cannot tell well, but he had a Cloak on, I do not know what Cloaths he had on besides.

Mr. Harrison. Was it Eight or Nine a Clock?

Esther King. It was near Nine, as near as I can guess.

Mr. Darnel. Swear John Sikes the Coachman.
(*Which was done.*)

Mr. Darnel. Give an Account to the Court what you know about carrying two Men in your Coach, and how you found Dr. Clenche murdered.

John Sikes. My Lord, on the 4th of January last, being Monday, I was at the Play-House, and there I took up a Man and a Woman, and carried them into the City; so I brought the Gentleman back again, to the Green-Dragon Tavern in Fleetstreet; and then, he said, he would pay me by the Hour; he said, That it was but much about Nine a Clock. Then I left him

him, and was driving up the Street towards the Temple, and two Men stood in Fleet-street, about Fetter-lane End, and they asked me, If I knew Dr. Clenche, who dwelt in Brownlow-street in Holborn? I told them, That I did not know Dr. Clenche, but I knew the Street. So they went into my Coach, and one of them bad me drive thither, and I did, and stopt at the Street's End; because the Gate at the other End was shut, so that I could not turn my Coach: And one of them bid me go and tell the Doctor, That there were two Gentlemen in a Coach at the Street's End, that would desire him to go with them to see one that was not well. The Doctor asked me, If I could tell who they were? Or, who it was, that he was to go to? I told him, that I could not tell. The Doctor was in his Night Gown and Slippers, and he dressed himself: and when he came to the Coach, one of them removed from his Place, and gave him the hinder Part of the Coach, and told him, That they had a Friend, that was not well: And one of them bad me drive to Leaden-Hall-Market; and when I came about Holborn-Bars, one of them called to me, and asked me, Why I drove so slowly? And bid me drive faster; so I drove fast, and came to Leaden-Hall. And then one of them bad me drive to the Pye Tavern without Aldgate, and there ordered me to stop. And when I had stopped there, one of them called to me, and told me, That I need not stir out of my Coach Box; but call to the Boy at the Tavern, and ask for one Hunt a Chyrurgeon, which I did do: And when the Boy came to me again, he said, there was no such Man. Then one of them bad me drive back again to Leaden-ball; and in the Time I stayed there, and turned my Coach, Aldgate was shut; and when I came to the Gate, one of them gave Six Pence to the Watch, and the Gate was opened, and I drove to Leaden-ball Gate. And when I came there, I stopped again, and one of them gave me half a Crown, and bad me go and buy a Fowl of one Hunt a Poulterer; but after I had gone a little way from the Coach, he called me again, and said, Here, Coachman, you had as good take another Shilling, and buy a Couple: so I went, and bought a Couple of Fowls, but could find no such Poulterer as Hunt; so I bought them of another, and I gave three Shillings for them. And when I came back to the Coach Side, I found Dr. Clenche, (as I thought) sitting against the Fore-seat, with his Head against the Cushion: I pull'd him, and cryed, Master, Master, for I thought he had been in Drink, but I could not get one Word from him; and then I went to the Watch, who were near; and when they came, we found him Strangled; with a Handkerchief about his Neck, and a Coal in it, plac'd just upon his Wind Pipe, but the other two Men were gone.

L. C. J. Had one of the two Men a Cloak on?

J. Sikes. I cannot remember that.

L. C. J. What kind of Habit had he? Had he black Cloaths on?

J. Sikes. My Lord, I cannot tell justly what Cloaths he had on?

L. C. J. You have heard him speak. What said he?

J. Sikes. My Lord, he never spoke to me; it was the other Man.

Mr. Harrison. What kind of Man was the other? Was he less than I, or taller?

J. Sikes. He was taller than you, with his own Hair.

Mr. Darnel. Can you be positive that the Prisoner at the Bar is one of those two Persons?

J. Sikes. My Lord, one of those two Persons had a Perriwig on, of a light coloured Hair: And I do verily believe, that the Prisoner at the Bar is the same Person; I cannot be positive he is one of them, but as near as I can judge of a Man whom I have seen but once, he is one of them.

Mr. Harrison. My Lord, I desire your Lordship to observe the Time that he took the two Men up, and what Time it was they ran out of the Coach.

L. C. J. Coachman, what Time was it that they left your Coach?

J. Sikes. About half an Hour past Ten, and it was about a quarter of an Hour past Nine, when I took them up.

Mr. Darnel. Pray let's ask the Coachman one Thing more. Coachman, look upon that Handkerchief, do you know it, and where did you see it?

The Handkerchief was produced by the Coroner.

J. Sikes. I do believe that it is the same Handkerchief that was about Dr. Clenche's Neck when he was found murdered.

L. C. J. Call the Coachman again. Hark you, In what Posture did you find Dr. Clenche when you came back to your Coach?

J. Sikes. My Lord, he was sat in the Bottom of the Coach, leaning on one Side, with his Head against the Cushion.

L. C. J. Was a Handkerchief then about his Neck?

J. Sikes. Yes, my Lord, I untied this Handkerchief, and this is the same; and here is the Coal that was lapt in it: it was lapt in the Middle of it, and it laid just against the Doctor's Wind Pipe.

Mr. Darnel. Call Mr. Rebone and Mr. Marriot. (Who were sworn.)

Mr. Darnel. Mr. Rebone, tell what you know concerning the Handkerchief, and how you found the Doctor.

He takes the Handkerchief, and locks on it.

Mr. Rebone. This Handkerchief was about the Doctor's Neck, and the Coal in it, and it lay just upon his Wind Pipe, when I saw him dead in the Coach. The Coachman came to Mr. Marriot's House, and ask'd for a Constable, and we went to the Coach Side, and there we found him laying along; and we took him, and carried him to the Bull Inn, and there he was let Blood on the Arms, and the Chyrurgeon took about half a Spoonful of Blood out of his Right Arm; and he was let Blood on the other Arm, but that did but just trickle down, and we could not get him to Life again; and we found a Silver Ink-horn in his Pocket, and that, and the rest of his Things, were secured. That is all I can say to the Matter.

Mr. Darnel. Call Mrs. Elianor Asbbolt.

(Who was sworn.)

Mr. Darnel. Pray tell my Lord, and the Court, what you know of any Persons you saw in a Coach at Brownlow-street End, that Night Dr. Clenche was murdered.

Mrs. Asbbolt. May it please your Lordship, I went out of an Errand for one Madam Anwel, a Gentlewoman who lodges at my Mother's

houfe; and coming home again, I faw a Coach ftop at *Brownlow-street* End, between Nine and Ten a Clock at Night, and the Coachman went to the fide of the Coach: And one in the Coach bad him go to Dr. *Clenche's*, and tell him, That there were two Gentlemen ftayed for him in a Coach; and as he went up the Street, he went flowly, and looked back two or three times: Whereupon, one of the Perfons leanced out of the Coach, and did fwear at the Coachman to make Haffe; and I went round the Coach, and could difcern Mr. *Harrifon's* Face; and I ftayed, and faw Dr. *Clenche* go into the Coach, and one of them gave his Place to the Doctor.

Mr. *Darnell*. Why were you fo curious, Miftrefs, and what did you obferve further?

Mrs. *Afbolt*. I thought they might give the Coachman a Slip. I well obferved Mr. *Harrifon*, but do not know the other Man. There were two Lamps burning, one in *Brownlow-street*, and the other in *Holbourn*, over againft the End of *Brownlow-street*, and they lighted quite through the Coach; and the Men pulled themfelves backwards, when they faw me look on them: It was that Night that the Doctor was murdered. I went to *Newgate* afterwards. Madam *Clenche* defired me to go and fee Mr. *Harrifon*; and when I came to *Newgate*, it feems, he was writing Letters, fo I ftaid before I went into the Room: And there were two Men with me, and Mr. *Harrifon* was talking very loud; faid they to me, Who is that fpeaks now? Why, fays I, it is one of the Perfons that was in the Coach when Dr. *Clenche* was murdered.

L. C. *J.* Who are thofe two Men that were with you?

Mrs. *Afbolt*. One of them was one Mr. *Jones*, a Coachmaker in *Holbourn*, and the other was Madam *Clenche's* Coachman.

L. C. *J.* Did you know the Prifoner, when you faw him in *Newgate*, to be one of them that were in the Coach?

Mrs. *Afbolt*. Yes, I did; I knew him to be the fame Man, as foon as I faw him: And he changed Countenance, as foon as he faw me.

Mr. *Harrifon*, My Lord, This Woman is certainly hired by the Villains that are againft me. Pray, ask her, my Lord, Why fhe did not make a Difcovery fooner?

L. C. *J.* Miftrefs, What fay you to that?

Mrs. *Afbolt*. I acquainted Madam *Anwell* what I had feen and obferved, and fhe told Madam *Clenche*, after laft Seflions; and then fhe defired me to go to *Newgate*, to fee Mr. *Harrifon*, and I went accordingly: and I would have told it to Madam *Clenche* fooner, but my Mother was loth I fhould be concerned about fuch a Thing.

Mr. *Darnell*. My Lord, we have fome Witneffes who can give your Lordfhip an Account, that one of our Witneffes, whom I mentioned to your Lordfhip before, is fpirited, or withdrawn from us, by a Gentleman that faid he came to him from the Prifoner, and defired him to be kind to the Prifoner; which Witnefs is fince abfent, and not to be found: his Name was *Andrew Bowfell*, a Youth, and an Apprentice to one Mr. *Tims*, a Shoe-Maker.

L. C. *J.* You muft prove upon him, that he made him keep away.

Mr. *Darnell*. Call *Barnabas Smith*.

(*Who was fworn.*)

Mr. *Darnell*. Give my Lord and the Court an Account, what you know of this Matter.

Mr. *Smith*. My Lord, This *Andrew Bowfell*, which the Council for the King fpeaks of, was fent to *Leadenball-Street* of an Errand, to the *Bull-head-Alehoufe* there. And as he was going along, a Gentleman met him, and asked him, if he was not an Evidence againft Mr. *Harrifon*: And being told by the Boy that he was, he defired him to be kind to him; and pulled out a Piece of Money, and offered it him, defiring him to be kind to Mr. *Harrifon*. Upon which the Youth replied, That he owed him Nothing, and Nothing he would take. Then the Gentleman told him, That he would come again another Time, and fend for him near to his Mafter's. So the Boy faid, and told me: And faid further, That if he could have gotten him to have gone to the *Bull-Head Ale-Houfe*, he would have feized him.

Mr. *Darnell*. What is become of the Boy?

Mr. *Smith*. Truly, we do not know what is become of him, we never heard of him fince the fixth Day of *March* laft.

Mr. *Darnell*. Call his Mafter, Mr. *Richard Tims*.

(*Who was fworn.*)

Mr. *Darnell*, Tell my Lord, and the Court, what you know of this Matter, and what is become of your Apprentice, *Andrew Bowfell*.

Mr. *Tims*. My Lord, He went away from me on the fixth Day of *March* laft; he was inticed away by three Soldiers that Night, and on the Morrow-morning one of them came and demanded his Coats, Shirts, and Neckcloths: Says I to him, Who fent you, and who is your Captain? and he answered, why, Captain *Harris*: He huffed, and faid, That if I would not give him the Cloaths, he would fend his Officer; and then I told the Soldier, I would have him before a Juftice of the Peace, fo he went away, and never came to me again: And I could never hear of my Apprentice fince, tho' I have made great Enquiry after him.

L. C. *J.* Did your Servant tell you of any Money that had been offered him by the before-mentioned Gentleman?

Mr. *Tims*. No, my Lord; he did not tell me, but he told Mr. *Smith*, the Witnefs that was laft examined, as he told me.

Mr. *Darnell*. My Lord, I defire that *Andrew Bowfell's* Examinations before Mr. *John Browne*, the Coroner of *London*, upon Oath, may be read.

(*Which being proved by the Coroner, were directed to be read.*)

Clerk of the Peace reads. 12. Januarii, 1691.

Andrew Bowfell, Servant to *Richard Tims*, Shoemaker, fworn and examined touching the Death of *Andrew Clenche*, Doctor in Phyfick, deceafed, faith, that he, this Informant, being fent to Mr. *Parker's*, at the *Bull-head-Alehoufe* in *Leadenball-Street*, on *Monday* laft was Se'nnight, being the Fourth of this infant *January*, between the Hours of Ten and Eleven of the Clock in the Evening, faw a Coach ftanding againft *Leadenball-Market*; and heard fome Pertion that was in the Coach fay, Make Haffe: And this Informant fays, that, according to the beft of his Remembrance, he heard him talk of a Poulterer's. And this Informant fays, That foon after the Coachman was gone into the Market, this Informant faw two Perfons go out of the Coach, one whereof had, as this Informant believes, a black Coat on; and that this Informant faw the fame Perfon, as foon as he came out of the Coach, fling a Cloak over him: and then both the Perfons went through

the

the *Market* on the West Part. And this Informant saith, That this Informant going to look into the Coach, the Person that had the Cloak on him, cry'd Damn him; and this Informant saith, That he, this Informant, thereupon going away, went to Mr. *Parker's*, and told them, that two Persons had cheated a Coachman, or to that Effect.

And. Bowfell being further Examined the 23d Day of *January*, 1691. touching the Death of *Andrew Clenche*, saith, That he hath seen *Hen. Harrison*, now a Prisoner in Their Majesties Gaol of *Newgate*, and believes he was one of the Persons that came out of the Coach at *Leaden-hall*, a little after ten of the Clock at Night, on *Monday* the 4th of this Instant *January*; and believes he knows him by his Voice. And soon after, this Informant understood that the said *Andrew Clenche* was murder'd in a Coach, being the same Coach which the said *Harrison*, and another Person unknown, a little before went out of.

L. C. J. Mr. *Harrison*, What have you to say against that which hath been proved against you? what Defence can you make?

Mr. *Harrison*. My Lord, I did attend Dr. *Clenche* about a Mortgage that was made him by Mrs. *Vanwicke*, and Dr. *Clenche* did pay one Hundred Pounds, but this Gentlewoman would pay, or allow *Rowe* but Fifteen Pounds, and we did not know how to get the Money from *Rowe*, so we petition'd the Lords Commissioners about it, which was above Six Months before Doctor *Clenche* was murder'd; and Mr. *Fairbeard* wonder'd that I would put Doctor *Clenche's* Name into a Petition with such a Rogue as *Rowe*; and I do positively say, That I had not seen Doctor *Clenche* in a Month before, and if Doctor *Clenche* had died in his Bed, it had been the same thing to me; and, my Lord, Mr. *Johnson* and I had never any angry Words between us; and I have the Report in Chancery, which I had from Sir *John Hoskins*, which I will read, if your Lordship pleases.

L. C. J. Let's see it.

Which was handed to the Lord Chief Justice, sitting on the Bench.

Mr. *Harrison*. My Lord, that is the Original, which if your Lordship pleases to remember, I had *Rowe* before you twice about it; and it is *Rowe* that hath been the Rogue, and therefore what Occasion had we to be angry with Doctor *Clenche*?

Then the Report was perus'd by the Lord Chief Justice, and return'd to him.

L. C. J. Mr. *Harrison*, this will do you no good, not being to the present Purpose; therefore proceed in your Defence.

Mr. *Harrison*. Now, my Lord, I have some Witnesses to prove where I was at the Time that the Coachman says the Murder was done. *Cryer*, call *Thomas Turner* a Porter, and Mr. *Maccaffee*.

Who appeared, but were not sworn, and examined apart, at the Request of Mr. *Darnell*, the King's and Queen's Council.

Mr. *Harrison*. My Lord, I shall prove by these Witnesses, that I was elsewhere when the Coachman said he took up those two Men, a little after Nine o' Clock. Pray, Mr. *Turner*, give an Account to the Court, what time it was I called you to carry my Trunk.

Tho. Turner. My Lord, I was, about Seven of the Clock in the Evening, the 4th Day of *January* last, at the *Two Kings* and *Key* in *Fleet-street*,

over against *Salisbury-Court*; and I was told, That a Gentleman at *Joe's Coffee-house* in *Salisbury-Court*, wanted a Porter; and I presently went to him thither, and it was this Mr. *Harrison*; and he bad me take up his Trunk, which I did, and carried it to the *Two Kings* and *Key*, and he went with me; and he asked me to get some Linen wash'd for him against the next Day at Noon; and he gave me some Linen, which I carried to my Wife to wash for him, and return'd to him again presently; and I went with him from thence, and carried his Trunk to his Lodgings in *Paul's Church Yard*; and when I had deliver'd his Trunk, I left them there; and then it was about Eight of the Clock at Night.

L. C. J. At whose House was it you deliver'd the Trunk?

Thomas Turner. My Lord, it was at Mr. *Jones's* House in *Paul's Church Yard*.

L. C. J. And did he stay within?

Thomas Turner. No, my Lord, he went out presently after me.

L. C. J. Were you any where else with him that Night, besides at the Places you have mentioned?

Tho. Turner. No, my Lord.

Mr. *Harrison*. My Lord, I will prove that Mr. *Humston* mistakes an Hour.

Mr. *Humston*. I cannot mistake an Hour, because the Shop is shut up about Nine a Clock, and it was shut when you came first to my Lodgings.

Mr. *Harrison*. My Lord, there stands in Court one *Thomas Johnson*, Apprentice to Mr. *Pemmel*; he can tell what time a night it was I came to Mr. *Humston's*, he let me in? I desire he may be call'd.

Mr. *Darnell*. Swear *Thomas Johnson*.

Who was sworn.

L. C. J. What time of the Night was it that Mr. *Harrison* came to speak with Mr. *Humston*, on that Night Dr. *Clenche* was murder'd?

Tho. Johnson. My Lord, on the 4th of *January* last at Night, Mr. *Harrison* came to my Master's House, and knock'd at the Door; and I went to the Door, and open'd it, for I had shut up the Shop; and he ask'd me if Mr. *Humston* was within? And I told him, he was; And he came in, and went up to Mr. *Humston's* Chamber; and it was then about Nine of the Clock, as near as I can guess.

L. C. J. Where is your Master's House?

Tho. Johnson. My Lord, it is the *Golden Key* in *Fleet-street*, over against *Fetter-lane* end.

Mr. *Harrison*. Pray call *Adam Maccaffee*, Mr. *White*, Mr. *Carden*, and *John Allen*.

Who appeared. And Mr. *Maccaffee* stood up.

Mr. *Maccaffee*. Upon *Monday* the 4th Day of *January* last, the Prisoner was at my House, and stay'd from Nine a Clock till past eleven, and play'd at Cards with one Mr. *Baker*, and one Mr. *White* and his Wife; and he stay'd till it had struck Eleven a Clock.

L. C. J. Where is your House, Sir?

Mr. *Maccaffee*. My House is in *Chancery Lane*, over against *Serjeants-hm*.

L. C. J. Did he tell you where he had been before?

Mr. *Maccaffee*. He said, That he had been towards the City, and was very cold.

L. C. J. Did he say any thing of Mr. *Humston*?

Mr. *Maccaffee*. No, my Lord.

Mr. *Darnell*. Pray what Room were you in? Did you play at Cards in the Kitchen?

Mr. *Maccaffee*.

Mr. *Maccaffee*. Yes.

Mr. *Darnell*. Were they up Stairs?

Mr. *Maccaffee*. No, my Lord.

Lord Mayor. At what time a Night did they come in?

Mr. *Maccaffee*. Betwixt Nine and Ten a Clock, my Lord.

L. C. J. What made you take Notice of the Day of the Month, and Hour of the Day?

Mr. *Maccaffee*. My Lord, I heard that Doctor *Clenche* was murder'd, and that Mr. *Harrifon* was taxed with it? and that made me take Notice of the Day

L. C. J. Call Mrs. *Maccaffee*. *Who stood up.*

L. C. J. Miftrefs, what time did Mr. *Harrifon* come to your Houfe on the 4th of *January* laft at Night?

Mrs. *Maccaffee*. My Lord, it was near Nine a Clock as any thing can be, when he came in firft.

L. C. J. How long did he ftay there?

Mrs. *Maccaffee*. I cannot tell how long he ftay'd, but there were two Accidents happen'd; one was, our playing at Cards; and the other was, that there was a Pick-Pocket carried by to be pump'd at *Lincolns-Inn*; it was from Nine to Eleven before he went away, and there were Mrs. *White*, Mr. *Baker*, and one Mrs. *Faireleffe*.

L. C. J. Did any one come with the Prifoner to your Houfe? in what Humour did he feem to be?

Mrs. *Maccaffee*. No, my Lord, there was no one came with him, and he never ftirr'd out, neither did he feem to be disorder'd; he was neither too merry, nor too melancholy.

L. C. J. Where did he fay he had been?

Mrs. *Maccaffee*. He faid that he had been in the City.

L. C. J. Did he ufe to frequent your Houfe?

Mrs. *Maccaffee*. Formerly he did; but I had not feen him in half a Year before.

Mr. *Darnell*. How many were there, do you fay?

Mrs. *Maccaffee*. There was one Mrs. *Faireleffe*, and one Mrs. *White*, and my felf, and my Husband was upon the Bed, and Mr. *White* came for his Wife about Ten a Clock, to come home.

Mr. *Darnell*. Do you remember that Mr. *Baker* was there?

Mrs. *Maccaffee*. Yes, he was there.

L. C. J. Pray, Miftrefs, did Mr. *Harrifon* come in, and find them at Cards?

Mrs. *Maccaffee*. No, we went to Cards afterwards.

L. C. J. Where was your Husband?

Mrs. *Maccaffee*. He was upon the Bed in the Kitchen.

L. C. J. Call Mr. *Baker*. [*Who flood up.*]

Mr. *Baker*. This Gentleman, the Prifoner, is a Stranger to me; but here is a Letter that he fent me two or three Days afterwards. I came into Mrs. *Maccaffee's* Houfe about half an Hour after Nine a Clock, with two Women more: Mrs. *Maccaffee* owed me Money, and I had been in *Lincolns-Inn*, for I do fome Work there for Sir *Thomas Cook*, and the Women ask'd me to play at Cards; and I faid, that I did not care to play, becaufe I had been abroad, and could not get any Money, which made me out of Humour. My Lord, I never faw the Man in my Life before.

L. C. J. Who were they that play'd at Cards?

Mr. *Baker*. It was one Mrs. *Faireleffe*, the Woman of the Houfe, and Mr. *Harrifon*, and my felf.

L. C. J. Who were together?

Mr. *Baker*. Mrs. *Faireleffe* and I, and the Woman of the Houfe and Mr. *Harrifon* the Prifoner, and we play'd for a Penny a Corner. I cannot fay any more to it, my Lord.

L. C. J. How long did he ftay?

Mr. *Baker*. I left him there after Ten a Clock, and, as I hope for Mercy, I never faw him but once before, and I had not known him again, but by a particular Token.

Mr. *Harrifon*. Were there not fome Accidents happen'd at that Time?

Mr. *Baker*. Yes, there came a Vintner's Boy to ask for a Woman, one Mrs. *Frances*, and he was in great Hafte, and a Pick-pocket was carried up the Lane to be Pump'd at *Lincolns-Inn* Pump.

Mr. *Harrifon*. Call Mrs. *Faireleffe*, call Mrs. *Whipple*. [*neither of which appear'd.*]

Call Mr. *Sutton*. [*Who appeared.*]

L. C. J. Where do you live, and what is your Name?

Mr. *Sutton*. My Lord, my Name is *Sutton*, and I live in *Stone-cutter-Street*.

Mr. *Harrifon*. Mr. *Sutton*, what time was it that I was coming by, when one Mr. *Ruffell* and you were drinking?

Mr. *Sutton*. My Lord, it was about Eleven a Clock at Night, at the *King's Head Tavern* at *Chancery-Lane* End.

Mr. *Harrifon*. What had I on, a Cloak and a Muff?

Mr. *Sutton*. Yes, I think you had a Cloak on.

Mr. *Darnell*. What time was it? before or after Eleven a Clock?

Mr. *Sutton*. It was about a quarter before Eleven.

Lord Mayor. What Day of the Month was it?

Sutton. It was the fourth of *January*.

L. C. J. Where was he going? which way went he?

Mr. *Sutton*. He was going towards *Fleet-Bridge*, my Lord, and I called after him, but could not make him hear me at firft; but afterwards he came to us.

Mr. *Harrifon*. Pray call Mr. *Ruffell*.

[*Who appeared.*]

Mr. *Ruffell*. I can't hear, my Lord, but if you pleafe to permit Mr. *Sutton* to fpeak to me, I can hear his Voice better than any Man's.

L. C. J. Speak as loud as you can, Sir, and we will let you hear us; Mr. *Sutton* must not fpeak for you.

Mr. *Harrifon*. Pray, Mr. *Ruffell*, what time of Night was that you faw me go by you, when you were drinking at the *King's Head Tavern*?

Mr. *Ruffell*. I can't tell, my Lord, I have not heard a Clock thefe three Years.

L. C. J. Where were you going at that time of Night?

Mr. *Ruffell*. I was going to *Wild-Street*, to the *Cbyrurgeon's-Arms*, to receive fome Money.

L. C. J. How came Mr. *Sutton* to go with you?

Mr. *Ruffell*. He had been with me all that Day, and I defired him to go with me; and, my Lord, I did expect that the Money would have been brought to me, but it was not, fo I went for it.

L. C. J. Well, and what then?

Mr. *Ruffell*. While we ftay'd at the *King's-Head Tavern* Door to drink Wine, Mr. *Sutton* fent the Drawer to call Mr. *Harrifon*.

L. C. J. What had you been doing before that time?

Mr. Russell. We had (I suppose) been drinking together.

L. C. J. Where had you been before you came to the King's Head Tavern?

Mr. Russell. We had been at the *Horseshoe Tavern* in *Chancery-lane*.

L. C. J. Did you request Mr. Sutton to go with you?

Russell. Yes, I did, my Lord.

L. C. J. You say your Business was to go to *Wild-street*, to receive some Money?

Mr. Russell. Yes, it was, my Lord, and I did receive it.

L. C. J. When was it that you met Mr. Harrison, the Prisoner?

Mr. Russell. My Lord, I can't positively say, but by Computation of the Night, I believe it was about Eleven a Clock.

L. C. J. Did you meet Mr. Harrison before you went to the *Horseshoe Tavern*, or after?

Mr. Russell. Afterwards, my Lord, I saw Mr. Harrison turn at the Corner of *Fleet-street*, towards *Fleet-Bridge*.

L. C. J. At the Time when Mr. Sutton and you went first out, did you agree of your going to the *Horseshoe Tavern*?

Mr. Russell. We went thither to send for the Gentleman out of *Wild-street*.

L. C. J. When you had been drinking all the Afternoon, how came you to stop your Coach at the *King's Head*?

Mr. Russell. We stopt there, whilst Mr. Sutton sent for some-body to come to him.

L. C. J. You said just now, That Mr. Sutton sent for Mr. Harrison.

Mr. Russell. No, my Lord, I do not remember that; but Mr. Sutton said, *Harry*, or *Harrison*; where art thou going, when he went by us.

Mr. Harrison. My Lord, this Man is a Stranger to me. Call *John Allen*, Drawer at the *King's Head Tavern*. [*Who appeared.*]

Mr. Harrison. *John Allen*, what time of Night was it that Mr. Sutton and Mr. Russell came to your House in a Coach?

J. Allen. I believe it was about Eleven a Clock.

L. C. J. How much Wine had they?

J. Allen. Two Half Pints of Canary.

L. C. J. What Night was it? what Day of the Month was it?

J. Allen. My Lord, I can't remember what Day of the Month, but it was that Night that Doctor *Clenche* was murder'd.

L. C. J. Did you see Mr. Harrison there?

J. Allen. I can't tell that, I never saw him, 'till I saw him at Prison.

Mr. Harrison. Did not you go to Mr. *Maccaffee's* House?

J. Allen. Yes, I did.

Mr. Harrison. Did not one strike you with a Muff?

J. Allen. Yes, but I can't remember who it was.

Lord Mayor. Look upon that Man, do you know him to be the Person?

J. Allen. No, my Lord, I do not know him to be the Person.

Mr. Darnell. Who sent you to *Crown-Court*?

J. Allen. Mr. Russell.

Mr. Darnell. For what?

J. Allen. For a Servant Maid, and he bid me tell her, that he had a Desire to speak with her.

Mr. Darnell. How long did you tarry at the House?

J. Allen. I did not stay at all.

Mr. Harrison. Call Mr. *Carden*, Drawer at the *King's Head Tavern* [*Who appeared.*]

Mr. Harrison. What time did Mr. Sutton come to your House? did you see any one stand at the Coach Side? and what Cloaths had he on?

Carden. I saw one stand at the Coach Side, and he had a Hanging Coat, or a Cloak on; it was about the Hour of Eleven, to the best of my Knowledge, and I saw a Man go into the Coach, and come out again.

Mr. Coroner. What time of Night do you shut your Doors, especially on *Monday Nights*? and were they shut when Mr. Sutton called in the Coach?

Carden. We shut them commonly about Eleven a Clock at Night, but on *Monday Nights* usually later; they were shut when Mr. Sutton called, and I opened them for him.

L. C. J. Can you say that the Prisoner was the Man that drank with Mr. Sutton?

Carden. To the best of my Knowledge (*looking on the Prisoner*) that is the Man, I can't be positive, my Lord.

L. C. J. Well, have you any more Witnesses?

Mr. Harrison. No, my Lord, unless Mr. *Effington* be here, he promised to be here to give an Account of me. My Lord, there is a Gentleman that is in the *Pres's Yard*, one Mr. ——— *Butler*, I desire he may be sent for, if your Lordship please.

L. C. J. Let him be fetch'd down.

[*Which was done.*]

L. C. J. But in the mean time, it behoves you to give an Account of these Things. First, Why did you say that you were a Parliament Man? Secondly, Why did you leave your Lodgings, and take other Lodgings in *Paul's-Church-Yard*? Thirdly, Why did you say that you had extraordinary Business? Give some Account what your Business was, and who that Gentleman was, that said for you in the Street, when Mr. *Hunston* desired you to stay and sup with him; what hinder'd you from accepting his Invitation? Now we would have you to consider of these Things, and give an Answer to them, for it much concerns you so to do.

Mr. Harrison. My Lord, first, as to the first, I do declare, That I never went for a Parliament Man, nor never said so: Secondly, That Night I was to go out of Town, I had left Word at several Coffee Houses, that I was going out of Town upon earnest Business, and with above twenty People besides, that I was going out of Town, and I was about to go to *Basing-Stoke*, to a Gentleman that owed me Money, one Mr. *Bulling*, but I could not get Money to go.

L. C. J. Prove that you were to go into the Country.

Mr. Harrison. My Lord, I can't prove that now, except I could have sent to *Basing-Stoke*.

L. C. J. That you should have done before now; why did you not stay with Mr. *Hunston*, when he invited you to sup with him? You might have been better entertained there, than by going among Strangers to play at Cards for a Penny a Corner, at an Ale-house.

Mr. Harrison. My Lord, I was unwilling to stay, because he had Strangers with him.

L. C. J. What if he had? you are not such a bashful Man that you could not sup with Strangers.

Mr. Harrison.

Mr. *Harrifon*. My Lord, Mr. *Rowe* was accused with me.

L. C. J. What if he was? he was under some Suspicion, and he hath made it appear where he was at the Time the Fact was committed, and now he is discharged.

Then Mr. *Butler* was brought into Court from Newgate, attended by a Keeper.

Mr. *Harrifon*. Mr. *Butler*, Pray tell the Court what Mr. *Fairbeard* said to you about me?

Mr. *Butler*. My Lord, Mr. *Fairbeard* asked me, what I could say about what Mr. *Harrifon* had said to me concerning the Murder of Doctor *Clenche*? I told him, I could not tell what to make of his broken and rambling Speeches and Discourses, they being most of them spoken when he was in his Drink. This is all that I know, my Lord.

L. C. J. This is not a Witness for your Turn.

Mr. *Darnell*. Call Mrs. *Anwell*.

Who was sent for from her Lodgings in Brownlow-Street in Holborn, and appeared, and was sworn.

Mr. *Darnell*. Madam, pray give an Account what Mrs. *Afbolt* told you concerning any Man's being in a Coach at Brownlow-street End.

Mrs. *Anwell*. I know nothing of my own Knowledge, but the Night that Doctor *Clenche* was murdered, I sent Mrs. *Afbolt* of an Errand; and at her Return, I blam'd her for staying so long; and she told me, That as she was returning home, a Coach stopt at Brownlow-street End, with two Men, with Cloaks on, in it, and that one of them bad the Coachman go for Doctor *Clenche*, and desire him to come to them; and in his going several times look'd back, as if he suspected the Men would leave the Coach, and so she stay'd until Doctor *Clenche* came and went into the Coach, and that one of the Men gave the Doctor his Place; and that one of them had a fair Perriwig, and a sanguine Complexion.

Mr. *Darnell*. What Discourse had you with her when you heard that those Men had murdered Doctor *Clenche*?

Mrs. *Anwell*. She told me, That one of those Men had a fair Perriwig, and a sanguine Complexion, and that one of them had a Cloak on.

L. C. J. Did she say, that she observed either of their Faces?

Mrs. *Anwell*. Yes, my Lord, she said that one of them had a round Face, and a big Voice.

L. C. J. Did she say, she could know him again?

Mrs. *Anwell*. No, my Lord, she did not say so, but she said, that she could know his Voice again. And after the last Sessions, I told Mrs. *Clenche* of it, and that if she would send for the young Woman, she would inform her further of it.

L. C. J. Madam, pray what was the Reason that she did not discover it sooner to Mrs. *Clenche*?

Mrs. *Anwell*. Why truly because Mrs. *Afbolt*, her Mother, was unwilling she should concern her self in such a Matter.

Mr. *Darnell*. Call another Witness, Mr. *Jones*, Coach-maker.

Who was sworn.

Mr. *Harrifon*. Pray, my Lord, take Notice, that now she says, that those Gentlemen had Cloaks on, that came in the Coach to Brownlow-street End.

L. C. J. Yes, we heard her what she said.

Mr. *Darnell*. My Lord, I will ask this Witness, Mr. *Jones*, a Question.

Mr. *Darnell*. Pray Sir, tell my Lord and the Jury, what Mrs. *Afbolt* did at Newgate?

Mr. *Jones*. My Lord, I went with her to Newgate, together with Doctor *Clenche* his Coachman, and when she came to Newgate, before she saw Mr. *Harrifon* (only stood at the Chamber Door, and heard him speak) she said, That, to the best of her Thoughts, he was the Man that put his Head out of the Coach to look after the Coachman, and swore at him, for she knew his Voice. And when she came to see him, she said, that she knew his Face, and declared that was the Man that put his Head out of the Coach.

L. C. J. Did he look out of the Coach, Mrs. *Afbolt*?

Mrs. *Afbolt*. Yes, my Lord, he put his Head out of the Coach, and look'd after the Coachman, to see if he went right to Doctor *Clenche*'s Door, and did swear at him, because he went no faster.

L. C. J. How could you discern his Face?

Mrs. *Afbolt*. By the Light of two Lamps that were near, which did shine into the Coach.

L. C. J. Can you take it upon your Oath that the Prisoner is the same Person?

Mrs. *Afbolt*. Yes, my Lord, I can, both by his Voice and Face.

Mr. *Darnell*. Now, my Lord, we shall shew your Lordship somewhat in Relation to the Credit of those Witnesses, that the Prisoner hath brought here; particularly, as to Mr. *Baker*, we shall prove that he hath been convicted for a Cheat. And as for *Maccaffee*, he keeps a very disorderly House, where all People commonly resort.

Mr. *Darnell*. Cryer, call Mrs. *Martha Wbelstead*, and Mr. *Thomas Cole*.

L. C. J. Mrs. *Jones*, what time did Mr. *Harrifon* come to your House, to his Lodging, that Night that the Murder was committed?

Mrs. *Jones*. I think it was about Eleven a Clock, or a little before Eleven.

L. C. J. What time on the Monday did he hire the Lodging of you?

Mrs. *Jones*. It was some time after Dinner.

L. C. J. It was before Night, was it not?

Mrs. *Jones*. Yes, my Lord, it was before Night.

Mr. *Darnell*. My Lord, I desire that Mr. *Tanner* may read the Record against Mr. *Baker*, whereby it will appear, that he was indicted and convicted at *Hicks's Hall* for cheating the Parish of St. *Giles* in *Middlesex*, when he was Scavenger there, by altering the Figures in the Book, and rating the Sums of Money higher upon divers of the Parishioners, than they were in the Parish Book, and then collecting and extorting the Money, so by him increased, from them.

Mr. *Tanner* reads the Indictment aforesaid, by which it did appear to the Court, and to the Jury, that the said Mr. *Baker* was indicted for the Offence aforesaid, and confessed the Indictment, and was fined for it twenty Shillings.

Mr. *Baker*. My Lord, I was wrongfully indicted, and traversed the Indictment, and was acquitted.

L. C. J. Mr. *Tanner*, give me the Record.

Lord Chief Justice peruses the Record.

Mr. *Baker*, I have read the material Parts of the Record, and do find that you were indicted for

for that Offence, and that you confessed the Indictment, and was fined for it.

Mr. Baker. My Lord, I was acquitted of it, and can prove it by Captain Cannon, who knows me, and my Reputation, and he is in Court.

L. C. J. Mr. Baker, the Record testifieth the Truth, and cannot err, therefore you have great Confidence to aver against it; yet I will hear what Captain Cannon saith.

Mr. Baker. Call Captain Cannon.
(Who appeared.)

L. C. J. Captain Cannon, do you know this Mr. Baker?

Captain Cannon. Yes, my Lord, very well.

Mr. Darnel. My Lord, I desire that Captain Cannon may be sworn.

L. C. J. Mr. Tanner, swear Captain Cannon.
(Who was sworn.)

L. C. J. Sir, do you know that Mr. Baker was indicted for falsifying of the Scavenger's Book when he was Scavenger, and acquitted, or convicted, and what do you know about it?

Captain Cannon. My Lord, I am an Inhabitant of the Parish of St. Giles in the Fields, and so I was when Mr. Baker was Scavenger, and do well remember, that some of the Inhabitants of that Division where he was Scavenger, were troubled, and complained, that they were charged more than usually they had been to the Scavenger's Rate; and it was discover'd that several Figures of the Book by which Mr. Baker collected the Money to the Scavenger's Rate, were blotted and altered, and did not agree with the Parish Ledger-Book, but the Sums in his Book so blotted and altered were razed; whereupon it was ordered, that he should be indicted for it, and it was done accordingly, and he was fined for it, and, to the best of my Remembrance, he confessed that Indictment.

L. C. J. Captain Cannon, Pray tell the Court and the Jury, of what Reputation Mr. Baker is now.

Captain Cannon. My Lord, he is now of none of the clearest Reputations.

Captain James Patrick, of the same Parish, being in Court, offered himself, and gave the same Account of Mr. Baker that Captain Cannon did.

Mr. Darnel. Cryer, Call Mr. Francis Bramton, Mrs. Martha Whelstead, and Mr. Thomas Cole.

(And Mrs. Whelstead and Mr. Cole appeared, and were sworn.)

Mr. Darnel. Mrs. Whelstead, pray give the Court and Jury an Account what disorderly House Mr. Maccaffee keeps?

Mrs. Whelstead. My Lord, I dwell in Crown-Court in Chancery-lane, over against Mr. Maccaffee's House; and he and she are very ill People; and keep a very evil and scandalous House; and such as are reputed to be House-breakers, Pick-Pockets, and lewd Women, do use and frequent the House; and there is commonly at late Hours in the Night, Persons calling out Murder, and Whore and Rogue, and such sort of Language, disturbing their Neighbours; and their House hath been several times searched by several Constables for stolen Goods, and for the Persons that have stolen them; and upon such Searches, there have been stolen Goods found there: And I have seen great Lewdness there between Men and Women; and the Neighbours do account it

a House of an ill Fame, and do avoid going thither.

Mr. Tho. Cole. My Lord, I do know Mr. Maccaffee and his Wife; I do dwell over against his House, and they are reputed to keep an ill House, and most Persons that frequent it, are reputed to be Persons of lewd and evil Lives and Conversations; and it is amongst the Neighbourhood noted for a scandalous House, and several Constables have several times searched there for stolen Goods.

L. C. J. What have you more to say, Mr. Harrison?

Mr. Harrison. I cannot say any thing more; you may deal with me according to my Deserts in this Matter.

L. C. J. You may assure your self, that we will do you no Wrong; have you any more to say?
(He made no Reply.)

Mr. Darnel. My Lord, we have another Witness come now, who was not here before. Cryer, call Mr. Charles Whitfield.

(Who was sworn.)

Mr. Darnel. My Lord, this Gentleman can give your Lordship an Account what the Prisoner said of his being just come out of the Country, upon the fifth Day of January last. Pray tell my Lord what you know, Sir.

Mr. Charles Whitfield. My Lord, upon the fifth Day of January last, being the Day after Dr. Clenche was murdered, I went to Joe's Coffee-house in Salisbury-Court, and there Mr. Harrison sitting by the Fire-side, says I to Mr. Harrison, Where have you been for a long time that I have not seen you? Says he, I have been in the Country; Where says I? Says he, about twenty Miles of, in Kent; and I want a Landress, and a Lodging. Says I, do you hear the News, Sir? What News, says he? Why, said I, of Dr. Clenche's being murdered: I cannot tell the Occasion, said I, but he was found dead in a Coach last Night in Leaden-ball-street. Then says he, I did love him very well once, but of late he hath been a barbarous Rogue to a Gentlewoman, a Friend of mine, and she is in the Compter now: And Mr. Harrison said it was a just Judgment of God upon the Doctor for being so great a Villian to the Gentlewoman; therefore I will write to her presently, and give her an Account of his Death. And, my Lord, the Contents of his Letter were these, as near as I can remember.

Madam,

I Am just now going to Lambeth, but hearing of Dr. Clenche's Murder, I do hereby give you an Account of it, and can impute it to no less than a just Judgment of God upon him for his Baseness shewed to you. And if you think fit to send to Madam Clenche, it may be, she may send somewhat towards your Relief, she now being a Widow as well as you.

MADAM,

I am yours to command,

Henry Harrison.

My Lord, after this, came into the same Coffee-house another Person, one Mr. Ravenscroft, of whom Mr. Harrison asked some Question about Dr. Clenche; who reply'd, That he heard that Dr. Clenche was murdered, and that it was committed

mitted by a Bully of the Town that belonged to a Gentlewoman in the Compter, who was laid in there upon Dr. *Clenche's* Account; at which he was much startled: Says he again, There is no Person familiar with that Gentlewoman but my self; for I know and am concerned in all her Affairs: Perhaps then I may be taken up about it: Or, my Lord, he used Words to that Effect.

Mr. *Harrifon*. My Lord, this Woman was not in the Compter upon Dr. *Clenche's* Account.

L. C. J. No, the Witnesses don't say so; but that it was the Discourse of the Town that she was, and the Town did suppose her so to be. What did he say further, Sir?

Mr. *Whitfield*. My Lord, he said, That he had been in *Kent* about twenty Miles off; and he said, That he wanted a Landress, because he had some foul Linen to wash; which he produced. This was on the *Tuesday*, and the Murder was committed on the *Monday* Night before: And, my Lord, there were two more Gentlemen that heard him as well as I, that he said, That he had been about twenty Miles off in *Kent*, and that he was newly come to Town. Now, my Lord, I could not imagine for what Reason this Man should say, That he had been out of Town about a Fortnight or three Weeks, when he was in that House but the *Monday* Night before; that is, the Night the Murder was committed.

Mr. *Darnel*. Cryer, call Mr. *Bishop*.
(*Who appeared and was sworn.*)

Mr. *Bishop*. About three Years ago the Prisoner came to my Master's Shop to cheapen some Linen, and when —

L. C. J. Hold, what are you doing now? Are you going to arraign his whole Life? Away, away, that ought not to be; that is nothing to the Matter. Have you done, Prisoner?

Mr. *Harrifon*. Yes, my Lord, I have done, I refer my Cause to your Lordship.

L. C. J. Gentlemen of the Jury; The Prisoner at the Bar, *Henry Harrifon*, stands indicted for the wilful Murder of Dr. *Andrew Clenche*, who was barbarously murdered on the fourth day of *January* last: You have heard the Witnesses that have been sworn; and upon their Testimony, it doth appear, that two Persons came to *Brotwallow-freet* End in a Coach, after Nine a Clock at Night, and sent the Coachman to the Doctor's House, under Pretence to get him to a Patient, a Friend of theirs, that was sick. By this Contrivance, they got him into their Coach, which they had brought for that Purpose, and then they ordered the Coachman to drive to *Leadenball-street*; and when they came about *Holborn-Bars*, one of them ask'd the Coachman, why he drove so slow, and bad him drive faster. When they came to *Leadenball-street*, then they bad him drive to the *Pye-Tavern* without *Aldgate*; where one of them bad the Coachman ask for one *Hunt*; but he not being there, one of them bad the Coachman return back, and gave Sixpence to the Watch to come through the Gate, which was shut in the mean time; and when they came to *Leadenball-Market*, one of them gave the Coachman three Shillings and Sixpence, and sent him to buy a Couple of Fowls; which the Coachman did buy, and brought them to the Coach; but when he came back, he found the Doctor in the Body of the Coach, leaning against the fore Seat of the Coach, a Handkerchief being tied about his Neck, with a Coal in

it, placed upon his Wind-pipe; which Handkerchief and Coal have been produced in Court.

The Question is, Gentlemen, Whether the Prisoner at the Bar be guilty of this base and barbarous Murder? To prove which, there hath been a very long Evidence given, some Positive, some Circumstantial. It has been proved that Dr. *Clenche* had some Dealings with a Woman named *Vanwicke*, and had lent her one hundred and twenty Pounds, and had taken a Mortgage for it. This Prisoner, Mr. *Harrifon*, was a great Acquaintance, and very intimate with this Woman; and did concern himself in the Management of her Affairs: and because Dr. *Clenche* did refuse to lend the Woman more Money, therefore he had an Animosity against Dr. *Clenche*. The Money not being paid to the Doctor as he did expect, he did call it in; and therefore this Gentlewoman did oftentimes repair to Dr. *Clenche* to desire farther Time of Forbearance, because she could not raise or procure the Money elsewhere. That about *Michaelmas* last, it seems she came to a Coffee-house near *Warwick house* in *Holborn*, and there was Mr. *Harrifon*; where they consulted what to do. And it was agreed, that the Mistress of the House, and Mrs. *Vanwicke*, should go to Dr. *Clenche's*; but Mr. *Harrifon* should stay behind, for it was not thought convenient that he should go, lest he should provoke the Doctor. When they came to the Doctor, Mrs. *Vanwicke* was very importunate to have more Money; but the Doctor would lend her no more. And when they returned to the Coffee-house again, Mr. *Harrifon* enquired what passed between the Doctor and Mrs. *Vanwicke*. She told him that the Doctor would not furnish her with any more Money, although she had pressed him to do it, and urged her great Necessities, but advised her to go to Service; Damn him, says *Harrifon*, does he say that a Woman of your Quality should go to Service? He is a great Rogue, and deserves to have his Throat cut, but let me alone, I will magage him.

At another Place there was a Discourse betwixt Mr. *Harrifon* and one Mr. *Johnson*; and that the Prisoner did then speak very hard and ill Words of Dr. *Clenche*: And that Mr. *Harrifon* came frequently to him; and one time laid his Hand upon his Sword, using some menacing Words, but what they were he cannot tell: But he likewise says, That at several times he did expostulate with him, and told him, That he would not do any good with such Discourses as these are, &c. That the Mortgage Money not being paid, it was thought fit, that there should be a Prosecution made to get Possession of the mortgaged Estate, and that the Tenants should be forbid to pay their Rents. And Mr. *Harrifon* went to Mrs. *West* the Tenant, some few Days before *St. Thomas's* Day last, and demanded the Rent of her. To which she made Answer, That Dr. *Clenche* had forbid the Payment of the Rent to Mrs. *Vanwicke*. Thereupon Mr. *Harrifon* grew very angry, and answered, That Dr. *Clenche* was a Rogue and a Villian, and bid her that she should not pay him any Rent. And the Witness saith further, That the Doctor being prest to let her have some more Money, refused to do it, because she would spend it all upon *Harrifon*.

Then the Council for the King called some Witnesses, who gave you an Account of the Prisoner's

soner's shifting his Lodgings the Day before the Murder was done. He takes a Lodging at Mr. *Garway's* in *Threadneedle-street*, on the twenty third Day of *December*, and there he continued till about the first of *January*. The second of *January* he was at *Garway's* Shop; and on the *Sunday* Night he came and fetch'd away his Things. The *Monday* after, being the Day that this barbarous Fact was committed, he sent a Letter to Mrs. *Garway*, to acquaint her that he was gone out of *Town*; but he left three Half Crowns with her Maid to pay for his Lodging. But as to his going out of *Town*, it was false, for he never went into the Country; but took a Lodging at Mr. *Jones's* in *St. Paul's Church-Yard*. It's observable also, that he went for a Parliament-man when he lodged at Mr. *Garway's*, and had his Footman to attend upon him, &c. There it was that he was seen to have an ordinary Handkerchief, and to hold it to the Fire; which was taken Notice of by Mrs. *Jackson*, the Daughter of Mrs. *Garway*, which was not fuitable, as she thought, to a Parliament-man's Quality, but rather fit for a Seaman; for it was like the Apron of the Maid in the House: which hath been shewed in Court, and compared with the Handkerchief that was tied about Dr. *Clenche's* Neck. She saith it is the same, or very like that which she did see Mr. *Harrison* hold in his Hand.

Cartwright, the Officer at the Compter, he tells you, that the *Sunday* Night, the Day before the Murder, Mr. *Harrison* came to *Woodstreet* Compter, and enquired for Mrs. *Vanwicke*, and that he only was in her Chamber, and no other Body on that Side of the House but Mrs. *Vanwicke*, the Prisoner, and this *Cartwright* the Keeper, who stood at the Door, and heard *Harrison* say, That he would have the Blood of that Rogue, and named *Clenche*, or *Winch*.

Mr. *Harrison*. My Lord, he was not in the Room.

L. C. J. No, he was not; but there were none on that Side the House but you, *Cartwright*, and Mrs. *Vanwicke*.

Now, on the *Monday* on which this Fact was committed, he having taken a Lodging at *Jones's* his House, he came thither with a Porter, who brought his Portmantua-Trunk about eight a Clock at Night; and after he had been there a little while, he went away.

And you are told, by a Gentleman that lodges at the *Golden-Key* against *Fetter-lane* End; That he had some Acquaintance with the Prisoner, that he had lent him a Morning-Gown; and that about nine a Clock that very Night, he came to his Lodging in a Cloak; and then the Gentleman asked him for his Gown; and he told him, That he had brought it with him. Thereupon the Gentleman invites Mr. *Harrison* to stay and sup with him. Mr. *Harrison* said, He could not stay, for he was engaged; he must be gone, for that a Gentleman staid in the Street for him to go about extraordinary Business.

The Coachman tells you, That near about that Time two Men in *Fleet street*, near *Fetter-lane* End, hired his Coach of him to go to *Brownlow-street* to Dr. *Clenche's*; but he can't positively say, that the Prisoner at the Bar was one of them, but he swears, he does verily believe that he was one of them.

Mr. *Harrison*. He said before your Lordship, That he could not remember what I had on.

L. C. J. Well, well, he doth not remember it now; but being hired to go to Dr. *Clenche's*, he drove to the Street End, and no further, because the Gate as the lower End was shut up, and he could not turn his Coach in the Street; but he was sent by them to the Doctor's, to desire the Doctor to come out to them, and they sat in the Coach in the mean time. The Doctor made haste, and went to them immediately, and they drove away to *Leaden-hall*, and then to *Aldgate*; and they called at the *Pye-Tavern*, and enquired for one Mr. *Hunt* a Chyrurgeon, as I mentioned to you before: He not being there, they returned to drive through *Aldgate*, gave the Watch Sixpence, and passed through the Gate without any Manner of Notice taken; but if the Watch had done their Duty, it might have been better discovered. But further, the Coachman tells you, that when he came to *Leadenball-street*, they called to him, and directed him to buy one Fowl; and after that he had been gone a little way from the Coach, they called him back, and bad him take some more Money and buy two Fowls. So he went and bought the Fowls; but when he came back, the two Gentlemen were gone, and he found the Doctor still in the Coach; and he not stirring, he thought he had been in Drink; but upon further Examination, and calling the Watchman with his Candle, it appeared that the Doctor was strangled with a Handkerchief and a Coal.

There is one Mrs. *Elienor Abbott*, who lives in *Brownlow-street* with her Mother, and had been sent of an Errand; and between nine and ten of the Clock at Night, she saw the Coachman in *Brownlow-street*, and thought that those Men in the Coach might have put a Trick upon him, by going away without paying him his Fare. And she says further, That by the Help of the Lamps she did discern the Face of this *Harrison* in the Coach; he had a Cloak on, with a light Perriwig, and looked out of the Coach, and did swear at the Coachman; and by this means she knew him when she saw him again, to be the same Man, both by his Face and Voice. This Woman indeed was not before the Coroner, and she gives you this Reason for it, Because her Mother was not willing she should be concerned in such a Matter as this was; and what she could say, was not known to Mrs. *Clenche* until after the second Sessions; And when he was in *Newgate*, she saw him there, and declared he was the same Man.

There was another Piece of Evidence; viz. That of the Boy's, who does not appear; he was examined before the Coroner. There has been Evidence given of ill Practice to take him out of the way, and therefore his Affidavit is read for Evidence: He swears he saw two Gentlemen come out of the Coach when it stood in *Leadenball-street*, and that having seen the Prisoner in *Newgate* since, doth believe him to be one. This, Gentlemen, is the Sum and Substance of the Evidence for the King, to prove that the Prisoner was one of those that committed the Murder.

You have heard likewise what the Prisoner says for himself; he does undertake to prove that he was in another Place; (that is) that he should come into *Maccaffee's* Houle in *Crown-Court*, over against *Serjeants-Inn* in *Chancery-lane*: and *Maccaffee*, he tells you, That there were some

other Company there, and that *Harrison* came in very cold, and that they went to Cards, and plaid for one Penny a Corner at Whisk; and that he did continue there from nine till eleven a Clock; and if he was there then, it is impossible he should be guilty of this Fact, for the Fact was done between the same Hours.

Maccabee's Wife tells you the same, and they both tell you who were there besides, and who plaid together, and are positive that the Prisoner was there.

Baker says, That he went away about half an Hour after ten at Night, and left *Harrison* behind him. To confirm this Evidence, they have called two other Witnesses, besides the Drawers at the *King's-Head-Tavern*, viz. Mr. *Sutton*, the Chyrurgeon, who lives in *Stone-Cutter's-street*, and Mr. *Russell*. Mr. *Sutton* says, They had been at the *Horse-Shoe Tavern* in *Chancery-lane*, and called for half a Pint of Sack at the *King's-Head-Tavern* when they came by: and as they sat in the Coach, Mr. *Harrison* came by accidentally, and one of them looking out of the Coach, cries *Harry* or *Harrison*; and he went to them, and they drank together another half Pint of Sack.

As to their meeting with *Harrison*, and as to other Passages there, *Russell* says the same; but as to the Time of Night he is not positive. And they sent one of the Drawers to a House in *Crown-Court* to enquire for some body there.

The Drawers at the *King's-Head-Tavern*, say, That Mr. *Sutton* and Mr. *Russell* did call there about that time; and that they drank two half Pints of Wine: and that when they were drinking, a Man came by with a hanging-Coat or Cloak on, and drank with them. And one of the Drawers went to call some body in *Crown-Court*; and one of the Company up with his Muff, and gave him a Slap in the Face.

Now this is the Sum and Substance of the Evidence that you have heard on the Behalf of the Prisoner, to induce you to believe that he was not the Person that was concerned in the Murder of Doctor *Clenche*.

To which Evidence, an Answer hath been offered;

First, as to those Witnesses, *Maccabee* and his Wife, divers Witnesses have been produced to prove, that they are People of doubtful Credit; it seems they keep an House of ill Fame.

Mr. *Harrison*. I am glad, my Lord, that I was there.

L. C. J. Well, well. Gentlemen, the People of the House are not of very good Reputation; they keep a naughty and a disorderly House, (if you believe the Witnesses) you may consider of their Credit.

And as to Mr. *Baker*; about nine Years since, he was convicted of an arrant Cheat, which is no less than Forgery, for altering the Scavenger's Rate for St. *Giles's* Parish, and therefore the less Credit is to be given to his Evidence; for now it appears, that he is a Knave upon Record: and the very Record it self was produced against him, which is true without doubt, notwithstanding his Pretence of Innocency. What is said by Mr. *Russell* and Mr. *Sutton*, I must leave to your Consideration; they had been a drinking, and the Drawer says, they were at the *King's-Head Tavern* at Eleven of the Clock at Night. Mr. *Harrison*, the next day after the Murder, met a Gentleman at *Joe's* Coffee-House in *Salisbury-*

Court; and though he had taken a Lodging in *Paul's* Church-Yard, yet he said, that he was newly come to Town, and had been in *Kent*, and had remained there about three Weeks; and that he wanted a Laundress and a Lodging, although he had not been out of Town, and had taken a Lodging but the Day before: And then he told the Witnesses, who discoursed with him about the Death of Dr. *Clenche*, That he had formerly loved him, but he said he had been of late a barbarous Rogue to a poor Gentlewoman, a Friend of his; and that the just Judgment of God had fallen upon him for so doing, and that he would write to her to give her an Account of it; and advise her to write to Mrs. *Clenche*, and to tell her, That she was a Widow now as well as Mrs. *Vanwicke*; and he thought by that Means to move Mrs. *Clenche* to pity her, being a Widow as well as herself: And that whilst they were talking thus, one Mr. *Ravenscroft* tells him, That Dr. *Clenche* was murdered, and that a Bully of the Town, that belonged to a Gentlewoman in the Compter, one Mrs. *Vanwicke*, was suspected. At which Mr. *Harrison* was much startled, and said, That no one was concerned with that Gentlewoman but himself; and for ought he knew, he might be taken up for it. This is that which he said.

Now what said Mr. *Harrison* further for himself? Why, says he, this Gentlewoman is not in Prison at the Prosecution of Dr. *Clenche*, and was not so affirmed, but so reported; and whether it were so or no, is no great matter. Gentlemen, you ought to consider of the Evidence that you have heard against him, and also to weigh well the Evidence he hath brought for himself.

It is most plain, if you believe the Witnesses, that Mr. *Harrison* was concerned for this Woman *Vanwicke*, and hath threatened Dr. *Clenche*, called him Rogue and Rascal, and said, That he deserved to have his Throat cut; that *Harrison* went under a Disguise for some time before the Murder. You have had an Account of the Handkerchief, what kind of Handkerchief *Harrison* had, and what Handkerchief was taken about Dr. *Clenche's* Neck, you have seen: And you heard what Evidence was given by Mr. *Humpton*; how the Prisoner was with him about nine a Clock that Night; and how he refused to stay and sup with Mr. *Humpton*. If Mr. *Harrison* had no earnest Business, one would have thought he might have staid with Mr. *Humpton*, better than to have gone to an Alehouse in *Crown-Court*, and plaid at Cards at one Penny a piece a Corner; he might have had better Fare no doubt.

The Witnesses for the Prisoner say for him, That he came to *Maccabee's* House about nine a Clock at Night, and staid till eleven: That is contrary to that Evidence given for the King, viz. That he was in the Coach at *Brookenlow-street* End; for if he was at *Maccabee's* House all the time they mention, it is impossible he should be guilty. All these Things are under your serious Consideration. You had best go together, and if you are not satisfied upon the Evidence you have heard, that he is guilty, then you ought to acquit him; but if you are satisfied that he did commit this Murder, then you ought to find him guilty.

Then the Jury withdrew, and the Court adjourned for half an Hour; and when they were returned, the Jury came to give their Verdict; and

and being called over, answered to their Names; and Mr. *Harrison* was brought to the Bar.

Cl. of Arraign. Gentlemen, Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arraign. Who shall say for you?

Jury. Our Foreman.

Cl. of Arraign. *Henry Harrison*, hold up thy Hand. (*Which he did.*)

Look upon the Prisoner, How say you? Is he guilty of the Felony and Murder, whereof he stands indicted, or not guilty.

Foreman. Guilty, of wilful Murder.

Cl. of Arraign. What Goods or Chattels, &c?

Foreman. None that we know of.

Major Richardson. Look to him, he is found guilty of wilful Murder.

Cl. of Arraign. Then hearken to your Verdict, as the Court hath recorded it.

You say that *Henry Harrison* is Guilty of the Felony and Murder whereof he stands indicted; but that he had no Lands nor Tenements, Goods nor Chattels, at the Time of the Felony and Murder committed, nor at any Time since, to your Knowledge: And so you say all?

Jury. Yes.

Then the Prisoner was remanded to *Newgate*, until the last Day of the Sessions; and then he was brought to the Bar, to receive Sentence of Death.

Cl. of Arraign. *Henry Harrison*, Hold up thy Hand. *Which he did.*

Henry Harrison, You stand convicted of Felony and Murder, for the Murder of Dr. *Andrew Clenche*: What can you say for yourself, why Judgment should not be given against you, to die according to Law?

Mr. D. Recorder. Mr. *Harrison*, You have been indicted, Arraigned, and convicted, of Felony and Murder, for the Murder of Dr. *Andrew Clenche*: You have had as long, and fair, and favourable a Trial, as any Person that ever hath been tried at this Bar.

The Jury that has passed upon your Life and Death hath convicted you, and the Court are now ready to do their last Act, which is to pronounce that Sentence that the Law does inflict upon such Crimes as you stand convicted of.

Mr. Harrison. I expect no Mercy here, therefore I humbly desire you would interceed to the Queen, that I may have twelve Days allowed me, in order to my better Preparation for Death.

Mr. D. Recorder. Well.

Mr. Harrison. I must needs acknowledge, that I was tried before the best of Judges, my Lord Chief-Justice *Holt*; but one Thing I think strange, that my Witnesses should be examin'd singly, and not the King's.

Mr. D. Recorder. That is no more than what is usual; the Council for the King and Queen requested it, and you did not.

Mr. Harrison. I begg'd that I might have timely Notice of my Trial, and I had not: There were seven People in my Company at that Time when this black and bloody Murder was done, and I could not get them to be here.

Mr. D. Recorder. You have had a long Time to get them ready, and you pressed on your own Trial, which you should not have done if you had not been ready.

Mr. Harrison. I humbly submit.

Then the usual Sentence of Death was pronounc'd against him, and he was remanded to *Newgate*.

The Examination of *Henry Harrison*, this 6th Day of January, 1691.

THIS Examinant being asked where his Lodgings are, answereth, That he lodgeth at the *Golden-Ball* in *Paul's Church-Yard*, and came to lodge there on *Monday-Night*, about Eleven of the Clock, or half an Hour after, but took the Lodgings in the Morning, the Master of the House being one Mr. *Jones*, a Cane-Chair Seller; and before that Time this Examinant lodged at the *Hand and Apple* near the *Exchange*, which said Lodgings he left on *Saturday* last in the Morning, and paid for them on *Sunday* Afternoon: And this Examinant saith, that on *Saturday* Night last he lodged at the *White Balcony* in *Old Southampton-Buildings*, the Mistress of the House being one Mrs. *Pitts*, and this Examinant lodged there on *Sunday-Night* also. And this Examinant saith, That he was at the *King's-Head* in *Crown-Court* in *Chancery-Lane* upon *Monday* last, from between Seven and Eight of the Clock at Night, and stayed there until Eleven, playing at Cards with the Man and Woman of the House, and other Persons unknown. And being asked where he dined on *Monday*, and how he spent his Time on *Monday* in the Afternoon, he saith, he cannot give an Account. And this Examinant saith, That on *Tuesday* last Mr. *Hartly* of *Old Southampton-Buildings*, discoursing concerning the Murder of Dr. *Clenche*, said, That this Examinant was suspected to be guilty of that Murder. And this Examinant further saith, That he wore the same Cloaths he hath now on upon *Monday* last; and hath worn them a great while, having no other Cloaths to wear.

Capt. & Cognit. 6 Die
Jan. 1691, *Coram*
J. Holt.


Hen. Harrison.

He was afterwards Executed, pursuant to the Sentence.

CXLVIII. *The Trial of JOHN COLE, at the Old-Baily, for the Murder of Andrew Clenche, Doctor of Physick, Sept. 2. 1692. 4 W. & M.*

Judges present { Mr. Justice *Dolben*, and
 { Mr. Justice *Powel*.

THE Keeper of *Newgate* did, according to Order of the Court, on *Friday* the 2d Day of *September*, bring up the Body of *John Cole* to the Sessions-House in the *Old-Bailey, London*; who, being at the Bar, was Arraigned upon an Indictment of *Felony* and *Murth*er, found against him by the Grand Jury for the City of *London*, for the *Murth*er of *Dr. Andrew Clenche*.

Cl. of Arr.  JOHN COLE, hold up thy Hand. (*Which he did.*) You stand Indicted by the Name of *John Cole*, of *London*, Labourer, for the *Murth*er of *Dr. Andrew Clenche*, &c. and the Indictment is in such Manner as that against *Mr. Henry Harrison*.

How say you, *John Cole*, are you guilty of the *Felony* and *Murth*er whereof you stand indicted, or not guilty?

John Cole. Not Guilty.

Cl. of Ar. *Culprist*, how will you be tried?

John Cole. By God and my Country.

Cl. of Ar. God send you a good Deliverance.

And afterwards the said John Cole was brought to the Bar upon his Trial: And those Persons who were returned upon the Jury were called over twice, and their Appearances recorded.

Cl. of Ar. You, *John Cole*, These Men that you shall hear call'd, and personally do appear, are to pass between our Sovereign Lord and Lady the King and Queen and you upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be sworn, and before they be sworn.

Then the Jury were call'd, and sworn, and then were counted, and the Twelve sworn were these whose Names follow:

- | | | |
|-------------------------|--|-------------------------|
| <i>John Clay</i> | | <i>Cutbert Lee</i> |
| <i>Edward Sherlock</i> | | <i>Thomas Watson</i> |
| <i>John Ruddyer</i> | | <i>Thomas Milburne</i> |
| <i>Benj. Evans</i> | | <i>Thomas Applebury</i> |
| <i>George Bestow</i> | | <i>Nicholas Harris</i> |
| <i>Archibald Wilson</i> | | <i>Ralph Cates</i> |

Then Proclamation for Information and Evidence was made as is usual.

Cl. of Ar. *John Cole*, Hold up thy Hand. (*Which he did.*)

Gentlemen, You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *John Cole*, late of *London*, Labourer, &c. as in the Indictment. Upon this Indictment he hath been Arraigned, and thereunto hath pleaded Not Guilty; and for his Trial hath put himself upon God and his

Country, which Country you are. Your Charge is to inquire whether he be Guilty of this *Felony* and *Murder* whereof he stands indicted, or Not Guilty. If you find that he is Guilty, you are to inquire what Goods or Chattels, Lands or Tenements he had at the Time of the *Felony* and *Murder* committed, or at any time since. If you find him Not Guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his Goods and Chattels, as if you found him Guilty. If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Cl. of Ar. Cryer, Call *Mary Milward, Joseph Dudley, John Dudley, Jane Warren, Sarah Duly, Anne Gunn, Anne Gesson, Anne Warren, Elizabeth Harper, Mary Edwards, John Gamble, John Sykes, Robert Rebone, Richard Eades, Richard Marryot, Samuel Revet, Henry Milward, Squire Dalley, William Brown, Francis Hobbs*. Who were all sworn.

Cl. of Ar. Set *Mary Milward* up.

Mr. Justice *Dolben*. What have you to say, Woman, against *Cole* the Prisoner, concerning the *Murth*er of *Dr. Clenche*?

Mrs. *Milward*. My Lord, my Husband declared to me, that he and *Mr. Cole* were in the Coach with *Dr. Clenche*, and that they Two kill'd *Dr. Clenche*.

Mr. Justice *Dolben*. That's no Evidence at all, what your Husband told you; that won't be good Evidence, if you don't know somewhat of your own Knowledge.

Mrs. *Milward*. My Lord, I have a great deal more that my Husband told me to declare.

Mr. Justice *Dolben*. That won't do; what if your Husband had told you that I kill'd *Dr. Clenche*, what then? that will stand for no Evidence in Law: We ought by the Law to have no Man call'd in question, but upon very good Grounds, and good Evidence, upon Oath, and that upon the Verdict of Twelve good Men. Have you any Body that can prove any Thing against *Cole*, or does it all arise barely from your Husband's Report?

Mrs. *Milward*. My Husband declared that he and *Mr. Cole* were to go under a Pretence to rob the Doctor, and so take their Opportunity to kill him; and the first Time they call'd at Doctor *Clenche's* he was not within, but the second Time they went he was within, and then they did the *Murth*er.

Mr. Justice *Powel*. When dy'd your Husband, *Mistress*?

Mrs. *Milward*. The 23d of *May* last, Sir.

Mr. Just. *Dolben*. Here hath been two or three Sessions since that Time, why did not you take up *Cole* about it before now?

Mrs. *Milward*. I did not know where to find him.

Mr. Just. *Dolben*. Why, then you should have gone to a Magistrate, and told him of it, and taken some Advice about it.

Mrs. *Milward*. I did, as soon as I had found *Mr. Cole*.

Mr. Just. *Dolben*. Your Business had been to have discovered this to Mrs. *Clenche*, and she should have looked after *Cole*. Is Mrs. *Clenche* here?

Sir *Will. Ashurst*. Here is her Brother-in-Law.

Mr. Just. *Dolben*. Do you prosecute *Cole* upon this Indictment?

Mr. *Wife*. No, my Lord, I do not. Mrs. *Milward* is the Prosecutor, and she charged Mr. *Cole* with the Murder of my Brother, Dr. *Clenche*; and she told my Sister *Clenche*, that Mr. *Milward*, her Husband, confessed and said some Time before his Death, that he and Mr. *Cole* murdered Dr. *Clenche* in a Coach: and Mrs. *Milward* said, that she had sufficient Evidence against Mr. *Cole* for it. And my Sister *Clenche* told Mrs. *Milward*, that Mr. *Harrison* murder'd Dr. *Clenche* in a Coach, together with another Person, which my Sister *Clenche* said she believed was the said Mr. *Milward*, Husband of the said Mrs. *Milward*; and that she had a Warrant against him, the said Mr. *Milward*, upon Suspicion for it, but could not take him; and that she suspected that there were other Persons Contrivers or concerned in it, who were set down at the *Blue Boar's-Head* Alehouse near *Clement's-Inn*, by Mr. *Gamble*, a Coachman, out of his Coach, together with the said Mr. *Milward*, in their Return from Dr. *Clenche's* House, that Night he was murdered. And, my Lord, by my Sister *Clenche's* Order, I went with Mrs. *Milward* to all her Witnesses, and took Notes of their Evidence; and I went with several of them to my Lord Chief Justice *Holt's* Chamber, before whom they gave in their Informations upon Oath about it: And when I had done it, I told Mrs. *Milward* I could find no Evidence that she had against M. *Cole*, more than that he was at Dr. *Clenche's* House, and at the said *Blue Boar's-Head* Alehouse, with Mr. *Milward*, and another Person, that Night Dr. *Clenche* was murdered, and so he might be concerned in the Contrivance of it; whereupon Mrs. *Milward* was dissatisfied, and said, she was not able to prosecute him for it: so my Sister said to Mrs. *Milward*, that she might if she would prefer an Indictment against him for it, and that she would pay for it, and other Charges about it, which she did. And Mrs. *Milward* hath a Note of the Names of all her Witnesses, and may call 'em.

Sir *Rob. Clayton*. Did not you lie at *Cole's* House, Mistress?

Mrs. *Milward*. Yes, Sir, I did.

Mr. Just. *Dolben*. Why did you not take him then?

Mrs. *Milward*. Because he absconded himself, and gave out that he was gone to Sea.

Mr. Just. *Dolben*. Was there no Quarrel between *Cole* and you about your Goods?

Mrs. *Milward*. No, my Lord, I had no Quarrel with him.

Mr. Just. *Dolben*. Because you did not do it sooner, have you not been troubled with your Husband's Ghost? Tell the Jury the Story; we have heard on't, but I am afraid they will laugh at you.

Mrs. *Milward*. That was very true, my Lord.

Mr. Just. *Dolben*. Well, if you have any thing else to say, that is material, speak; otherwise, my Brother and I are of Opinion, that what you have already offered is no Evidence.

Mrs. *Milward*. My Lord, Here is a Coachman or two that can acquaint your Lordship of the Matter of Fact better than I can.

Cl. of Ar. *Cryer*, call *John Gamble*, the Coachman.

(Who stood up.)

Mr. Just. *Dolben*. You, Coachman, Do you know the Prisoner?

Mr. *Gamble*. No, my Lord, I do not know him.

Mr. Just. *Dolben*. Look upon him, do you know him or no?

Mr. *Gamble*. No truly, my Lord, I do not know him.

Mr. Just. *Dolben*. Why, look you, Woman, he does not know him! You, Coachman, the Story is well known; therefore I ask you again, upon your Oath, if that Prisoner at the Bar be one of the three Persons that you carried to the *Blue Boar's-Head* on the Back-side of *St. Clements*, that Night Dr. *Clenche* was murdered?

Mr. *Gamble*. Indeed, my Lord, I cannot be positive whether he be one of them or no: I took up in *Cheapside* three Men into my Coach, and set one of them down at *Grays-Inn*, and drove the other two to Dr. *Clenche's* House, that Night he was murdered, and he was not at home; and afterwards the Man I had set down came in again, and I set them all down at the *Blue Boar's-Head* Ale-House near *Clement's-Inn-Gate*, about Eight a-Clock at Night.

Cl. of Ar. Set up *William Brown*, Servant at the *Blue Boar's-Head*.

Mr. J. *Dolben*. Hark you, Is this one of the three Men that the Coachman set down at your Master's House, that Night Dr. *Clenche* was murder'd?

Will. Brown. Yes, my Lord, it is.

Mr. Just. *Dolben*. What Time did they come to your House?

Will. Brown. They came about Eight a Clock at Night, and this Man and the other stay'd till after Eleven a Clock: Only *Milward* went out, and returned presently; and then immediately he went out again, which was before Nine a clock, and return'd not until Eleven a clock after.

Mr. Just. *Dolben*. What Time was Dr. *Clenche* kill'd?

Will. Brown. About Ten a clock, or betwixt Ten and Eleven, as I think.

Mr. Just. *Dolben*. Who went out first, only *Milward*?

Will. Brown. Only Mr. *Milward*, my Lord: But this Man stay'd all the Time, till Eleven a clock at Night; and another, who went by the Name of *Harper*, as I am since informed.

Mr. J. *Dolben*. Why then this Man could not be in the Coach when Dr. *Clenche* was murdered, so *Harrison* and *Milward* kill'd the Doctor in all Probability; for he says, this Man at the Bar, and another, stay'd at his Master's House till after Eleven a clock.

Will. Brown. My Lord, When *Milward* came back, he brought a Couple of Men with him, in Soldiers Habit, about Eleven of the clock at Night.

Mrs. *Milward*. My Husband told me, that Mr. *Cole* and he went out of the House, and left Mr. *Harper* behind.

Mr. J. *Dolben*. But this Man swears, that the Prisoner did not go out of the House till Eleven a clock at Night, and they were set down about Eight of the clock, and Dr. *Clenche* was found kill'd a little after Ten at Night; and that *Milward* went out, and then came in again about Eleven a clock, and brought two Men with him

him: 'Tis to be feared he had been killing Dr. *Clenche* in that Time; Have you any more to say? If this Man says true, nothing can be said more.

Mrs. *Mikward*. Speak what was done when they came to drink the Pot of Ale, Mr. *Brown*.

Mr. *J. Dolben*. I would fain know, Mistress, who set you upon this Business? Is there not some Money promised you? It was not the Fear of your Husband's Ghost that put you upon it, I am afraid.

Mrs. *Mikward*. I am much wronged, my Lord, I know nothing of any Money offered me.

Mr. *J. Dolben*. What say you more?

Will. *Brown*. My Lord, Mr. *Mikward* being at my Master's House that Night Dr. *Clenche* was killed, desired to make a Fire in the same Room the next Morning, and that he would come again then; and I made a Fire accordingly, but he came not then, nor afterwards at any time to my Knowledge; but on a Sunday Night about a Fortnight after, came the two Persons that came with Mr. *Mikward* in the Coach to my Master's House that Night Dr. *Clenche* was murdered, and my Master being above Stairs, I sent him Word, that the two Men were there who were there that Night that the Doctor was murdered, and they inquired for Mr. *Mikward*, saying he promised to meet them there, and he not being there, before my Master could come down, they paid for the Pot of Drink, and went away.

Mr. *J. Dolben*. When they came together to the *Blue Boar's-Head*, they had some evil Design, no doubt, but if it be true that those two Men staid from eight a Clock till eleven, then it could not be this Man that murdered Dr. *Clenche*; but hark ye, Fellow, you say, there were three Persons, whereof *Cole* was one, and *Mikward* the other, who was the Third?

Will. *Brown*. I do not know his Name, my Lord, otherwise than as I have since heard.

Mrs. *Mil*. The other Man's Name was *Harper*.

Mr. *J. Dolben*. You know nothing but what your Husband told you, and 'tis most probable that *Harrison* and he did the Murder, for that it appears that the Prisoner at the Bar is not the Man that kill'd the Doctor, that's plain. Have you any more?

Mrs. *Mikward*. About a Fortnight after the Murder was done, they came to inquire for my Husband at the *Blue Boar's-Head*, and whilst the Tapster went to tell his Master, they left their Money for the Drink and went away, and would not be seen.

Mr. *J. Dolben*. What if they had run away, what then? If they were at the *Blue Boar* when Dr. *Clenche* was kill'd, they could not kill him.

Mrs. *Mikward*. His Master says, that they were in the House, and out of the House, very often. Call Mr. *Dalley* the Master. Who appear'd, and stood up.

Mr. *Dalley*. My Lord, Two of them were not out of the House all the Night, I am not positive that this is the Man that came in with *Mikward*, but those two Men that came in with him, never went out at all until after Eleven a Clock at Night, but only *Mikward* went out between Eight and Nine, and returned about Eleven a Clock.

Mr. *J. Dolben*. What do you say to this, Woman? your Husband told you that the Prisoner was one of the Two, this Witness cannot say he was one, but says positively those two Men never went out till Eleven a Clock, and from St. *Cle-*

ment Danes to *Leadenball-Street* is not to go in and out, they must take a great deal of time to go thither and back again. Hark you, Mr. *Dalley*, you say that those two Men that *Mikward* left, never went out of your House till after Eleven a Clock; you are sure on't?

Mr. *Dalley*. No, my Lord, they did not go out.
Mr. *Wife*. Mrs. *Mikward* hath two Witnesses that can tell somewhat more of the Matter concerning her Husband's being concerned in the Murder.

Mrs. *Mikward*. My Husband told me, that the Coachman took them up not far from *Chancery Lane* End, and that Mr. *Cole* laid Hands upon the Doctor in the Middle of *Holbourn*.

Cl. of Arr. Cryer, Call *John Sikes* the Coachman; who stood up.

Mr. *Sikes*. My Lord, I took up two Men in *Fleet-Street*, about *Fetter-Lane* End.

Mr. *J. Dolben*. What manner of Men were they? What Cloaths had they on?

Mr. *Sikes*. My Lord, one of them had a light-coloured Perriwig on, and the other was in sad-coloured Cloaths, and lank Hair, but I cannot be positive that this is one of them: They asked me if I knew Dr. *Clenche* of *Brownlow-Street*? I told them, that I did not know the Doctor, but I knew the Street; and they bid me drive thither; and when I came to the Street's End, they sent me to the Doctor's House, and bid me tell him, that two Gentlemen were at the Street's End in a Coach, who desired him to go with them to one that was not well; so the Doctor came presently after me, and when he was in the Coach, they bid me drive to *Leadenball-Street*; and when I came about *Holborn-Bars* they bid me drive faster; and when I came to *Leadenball-Market*, they bid me drive to *Aldgate*, and I drove thro' the Gate to the *Pye* Tavern, and when I had turned my Coach, they bid me ask for one *Hunt* a Chyrurgeon, but he was not there; and then I told them the Gate was shut, and one of them put his Hand out of the Coach, and gave the Watchman Six-pence to open the Gate, and then I drove back again to *Leadenball-Market*, and there they bid me stop again, and one of them gave me half a Crown to buy a Fowl, and I went a little way from the Coach, and one of them called me back again, and gave me a Shilling more, and bid me bring a Couple; and he bid me ask for one *Hunt* a Poulterer; I went all over the Market, but I could find no such Man, so at length I bought the Fowls of another Man, and would have had the Man gone with me to my Coach, but he would not; then I came to my Coach-side, and found the Door open, and I found the Doctor sitting at the Bottom of the Coach, with his Head against the Cushion, and the two Men gone, and one of them seemed to be in Drink when I took them up, and I thought him to be that Man fallen asleep, and that the Doctor and the sober Man were gone to the Person that was not well; so then I call'd the Watch, and found the Doctor dead, and then it was about half an Hour after Ten a Clock at Night.

Mr. *J. Dolben*. Then I ask you, was that one of the Men?

Mr. *Sykes*. I cannot say it, my Lord; I don't know him.

Mr. *J. Dolben*. What time of Night was it that you took them up at *Fetter-Lane* End?

Mr. Sykes. It was about Nine a Clock, somewhat after.

Mr. J. Dolben. Why then, they say, that this Man never stir'd out of the House from Eight a Clock till Eleven; this Man can't be concern'd.

Cl. of Ar. Set up John Dudley: Which was done.

Mrs. Milward. Mr. Dudley, What did my Husband say concerning the Doctor to you in the Country?

Mr. Dudley. He came into the Country presently after the Death of the Doctor, and he sent for me, and was very much concern'd; I ask'd him what was the Matter with him, and he told me, that he was come out of Town about the Murder of Dr. Clenche; I told him, that I hoped he was not concern'd in it; he told me, No, but there was a Warrant out against him upon account that he quarrell'd with the Coachman that Night that he carried him to Dr. Clenche's; and he said, that Mr. Harrison had sent to him from Newgate, and told him, that he would give him Twenty Pounds if he could make his Trial easy.

Mr. J. Dolben. Mistress, this makes it out, that he told you one Story, and to this Witnesses another, which contradicts your Story fully; he told him, that he came away for Fear, and that he was innocent of the Murder; and since that he told you, that he was guilty. Well, what else did he say to you, Mr. Dudley?

Mr. Dudley. He was much concern'd to enquire after the Gazettes, and Letters, if he were in them, about the Doctor's Murder, and to enquire if Mr. Cole and Mr. Harper were taken up about it.

Mr. J. Dolben. You hear what is said against you; what do you say to it, Mr. Cole?

Mr. Cole. My Lord, I know nothing of it.

Mr. J. Dolben. No, I doubt you do, you were one of the Three that was set down on the Backside of St. Clement's Church, at the Blue-Boar's-Head, where all Things were consulted.

Mr. Cole. My Lord, there was not one Word spoke about killing of Dr. Clenche in my Company.

Mr. J. Dolben. Were not you acquainted with Milward?

Mr. Cole. Yes, my Lord.

Mr. J. Dolben. Were you not with Harrison?

Mr. Cole. No, my Lord, I never saw him with my Eyes.

Mr. J. Dolben. Well, have you any more to say?

Mrs. Mikw. Call Mr. Hobbs. Who stood up.

Mr. Hobbs. I met Mr. Mikward in York-Buildings, and he ask'd me how I did, and he went from me a little way, and then came to me again, and ask'd me if I would drink: So we went to the George in York-Buildings, and there we drank a Pot or two; and he ask'd me if I heard that he was accus'd about the Murder of Dr. Clenche; I told him No, but he never told me any thing of this Man at the Bar.

Mr. J. Dolben. What was Mikward?

Mr. Hobbs. I do not know how he got his Living.

Mr. J. Dolben. Have you any Body else, Mistreiss?

Mrs. Mikw. No, my Lord, I know no more.

Mr. J. Dolben. Gentlemen of the Jury, Cole the Prisoner at the Bar stands indicted for murdering Dr. Clenche, who, as it now appears, was murder'd in a Coach by two Persons that were

therein together with the Doctor. The Question now before you is, whether Cole was one of these two?

Gamble the Coachman swears, That the Night Dr. Clenche was killed, he took up three Men in Cheapside, set one of them down at Gray's-Inn, and drove on to Dr. Clenche's House; the Doctor was not at Home, then the third Man came in again to the Coach, and he drove to the Blue-Boar's-Head, an Alehouse by Clement's-Inn, and set those three Men down there, and 'twas then about Eight of the Clock.

Sykes the Coachman swears, He took up two Men at Fetter-Lane End in Fleet-Street, and by their Directions drove to Brownlow-Street, where the Doctor lived, whom they got into the Coach, and he drove as far as Aldgate, and through the Gate, and then came back to Leadenhall; was sent by the two Men in the Coach to buy a Fowl; when he returned they were gone, but the Doctor found dead in the Coach; and 'twas now half an Hour past Ten.

The Question now, as I said before, is, Whether Cole the Prisoner at the Bar, was one of these two Men?

The Woman tells you, Milward her Husband told her, that he and Cole were in the Coach with Dr. Clenche, and that they two kill'd Dr. Clenche.

She likewise tells you, her Husband told her, that Cole and her Husband went out from the Blue-Boar's-Head near Clement's-Inn, and left only Harper behind.

The Court hath already declar'd to you, That her Evidence, being only what her Husband told her, is no Evidence in Law to take away a Man's Life, especially when it is single, without any Circumstance to confirm it, as here 'tis. But that is not all, there is a very great Evidence, that what she says her Husband told her, is false.

He told her, she says, that he and Cole went from the Blue-Boar's-Head and kill'd the Doctor, leaving only Harper behind.

The Master of the House, and his Servant (Witnesses which she produceth) both swear, That her Husband went out alone, and left two Men behind, who both staid in the House till Milward return'd, which was about Eleven of the Clock. The Master, 'tis true, cannot say that Cole is one of the two, but the Servant is very positive he is, and both are positive, that two Men that Milward left behind, continued in the House till Milward return'd at Eleven of the Clock. These two Mens Depositions do plainly contradict her Story, and if they swear true, Cole the Prisoner was not one of the Persons that kill'd the Doctor.

You have all heard, I am sure, that one Harrison hath been convicted by a Jury in this Place for the Murder of Dr. Clenche: If he was one of the two, then Mikward, by his own Confession (if his Wife swear true) was the other; but this you cannot take notice of, the Record is not produced, neither hath the Prisoner taken notice of it. The Question is only, Whether Cole be guilty of the Murder? which I leave to you upon the Evidence you have heard.

The Jury having considered the Verdict, return'd, That the Prisoner was Not Guilty.

CXLIX. *The Trial of CHARLES Lord MOHUN, for the Murder of William Mountford, Jan. 31. 1692.* 4 W. & M.



Tuesday, Jan. 31. 1692.

IN the Court erected in *Westminster-Hall*, for the Trial of the Lord *Mohun* for the Murder of *William Mountford*;

About 12 a Clock this Day, the Lords came from their own House in their Robes, in Procession in this manner into the Court.

First, the Lord High Steward's Gentlemen-Attendants, two and two.

Then the Clerks of the House of Lords, with the two Clerks of the Crown in the *King's-Bench* and *Chancery*, two and two.

Then the Masters in *Chancery*, two and two.

Then the Judges, eight of them, two and two.

Then the Peers eldest Sons, and Peers Minors, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then the Yeoman Usher of the House.

Then the Peers according to their Seniority, beginning with the youngest Baron, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then *Garter King at Arms*, and the Gentleman Usher of the Black-Rod: *Garter* on the Right-Hand, and Black-Rod on the Left, carrying the White Staff before the Lord High Steward.

Then his Grace the Marquis of *Carmarthen*, Lord High Steward, alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Wooll-Pack, the two Clerks of the Crown standing before the Clerks Table, and the Clerk of the Crown in *Chancery*, having their Majesties Commission to his Grace the Lord High Steward in his Hand, they both made three Reverences to his Grace, and at the third coming up before the Wooll-Pack, they did both kneel down, and the Clerk of the Crown in *Chancery*, on his Knee, presented the Commission to his Grace, who deliver'd it to the Clerk of the Crown in the *King's-Bench*; and then with three Reverences, they return'd to the Clerks Table, where the Clerk of the Crown in the *King's-Bench* opening the Commission, commanded Proclamation of Silence to be made in this manner.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. My Lord High Steward of England, his Grace, does straitly charge and command all manner of Persons to keep Silence, and to hear the King and Queen's Majesties Commission to his Grace my Lord High Steward

of England directed, openly read, upon pain of Imprisonment.

Which Words the Serjeant at Arms repeated aloud.

Lord High Steward. My Lords, pray be pleased to stand up and be uncovered whilst their Majesties Commission is reading.

Which his Grace himself did, and all the Peers.

Clerk of the Crown reads.

WILLIAM R.

*G*Uilielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. Cbarissimo Consanguineo & Consiliario nostro Thome Marchioni Carmarthen Presidenti Consilii nostri, Salutem. Sciatis quod cum Carolus Dominus Mohun nuper de Paroch' S. Clement Dacor. in Comitatu nostro Middlesex coram dilectis & fidelibus nostris Lanceloto Johnson, Arm' Carolo Lee, Milit. Samuele Buck, Andrea Lawrence, Willielmo Allystrey, Thoma Harriott, Theophilo Eytton, Nich. Grice, Arm's, & aliis Sociis suis Justiciariis nostris ad inquirend. per Sacrament' probor' & legalium hominum de Comitatu nostro Middlesex predict. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra Libertates quam extra per quos rei Veritas melius sciri poterit & inquire de quibuscunque Proditionibus Misprisionibus Proditionum Insurrectionibus Rebellionibus Contrafacturis Infuriis loturis falsis fabricationibus & aliis falsitat. Monetae hujus Regni nostr. Angl. & aliorum Regnorum sive Dominiorum quorumcumque ac de quibuscunque Murdris Feloniis Horumcumque Interfectionibus Burglariis Raptibus Mulierum Congregationibus & Conventualibus illicitis verborum Prolationibus Coadnationibus Misprisionibus Confederationibus falsis Alleganciis Transgressionibus Riotis Routis Retentionibus Escapiis Contempt. falsitat. negligentis Conclamentis manuteneat. Oppressionibus Cambiparcis Deceptionibus & aliis Malefactis Offensis & Injuriis quibuscunque. Necnon accessariis eorundem infra Comitatu predict. (tam infra Libertates quam extra) per quoscunque & qualitercunque habit. fact. perpetr. sive Commiss. & per quos vel per quem cui vel quibus quand. qualiter & quomodo & de aliis Articularis & Circumstantiis premiss. seu eorum aliquod vel aliquem qualitercunque concernend. plenius veritat. & ad eandem Proditiones & al' premiss. audiend. & terminand. secundum Legem & Consuetudinem Regni nostri Angl. nuper assignat. de Felonia & Murdro per ipsum Carolum Dominum Mohun Commiss. & perpetrat. per sacrum proborum & legalium hominum Comitatu nostri Middlesex predict. indictat. existit. Nos Considerantes quod Justitia est Virtus excellens & Altissimo complacens Volentesque quod predict. Carolus Dominus Mohun de & pro Felonia & Murdro unde ipsa ut preferatur indictat. existit coram Nobis in presenti Parlamento nostro secundum Leges & Consuetudines hujus Regni nostri Angl. Audiatur, Examinetur Sententietur & Adjudicetur, ceteraque omnia que in hac parte pertinent debito modo exerceantur & exequantur.

tur. Ac pro eo quod Officium Seneschall. Angl. (cujus presentia in hac parte requiritur) ut accipi- mus jam vacat. Nos de Fidelitate Prudentia pro- videra Circumspectione & Industria vestris plurimum Confidentes, Ordinavimus & Constituimus vos ex hac Causa Seneschall. Angl. ad Officium illud cum omni- bus eidem Officio in hac parte debet & pertinent' (hac vice) gerend. occupand. & exercend. & ideo vobis Mandamus quod circa premissa diligenter in- tendatis & omnia que in hac parte ad Officium Seneschall. Angl. pertinent & requiruntur (hac vice) faciatis Exerceatis & Exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes. Testibus Nobis ipsis apud Westm. tricesimo primo die Januarii Anno Regni nostr. Quarto.

Per ipsum Regem propria Manu Signat.

CHUTE.

GOD Save King William and Queen Mary.

Then Proclamation was made for all Persons but the Peers to be uncovered.

After which, their Majesties Writ of Certiorari, directed to the Commissioners of Oyer and Terminer for the County of Middlesex, to remove the Indictment found before them against the Lord Mobun, with the Return thereof, and the Record of the Indictment, were read by the Clerk of the Crown in the King's-Bench: Thus,

Clerk of the *G*ulielmus & Maria, Dei Gratia Anglia, Scotia, Francia & Hibernia Rex & Regina, Fidei Defensores, &c. Dilectis & Fidelibus nostris Lanceloto Johnson, Armigero, Carolo Lee, Militi, Samueli Buck, Andrea Lawrence, Willielmo Allefree, Thomæ Harriott, Theophilo Eyton & Nicholao Grice, Armigeris, Salutem. Vobis Mandamus quod Indictamentum de Felonia & Murdro unde Carolus Dominus Mobun nuper de Parochia Sancti Clementis Dacorum in Comitatu nostro Middlesex coram Vobis in Comitatu nostro Middlesex predict. & penes vos jam ramanen. indictatus existit ut dicitur, cum omnibus illud tangentibus nobis in presenti Parlamento nostro sub sigillis vestris vel unius vestrum deliberetis indilate una cum hoc brevi. Testibus nobis ipsis apud Westmonasterium vicesimo octavo die Januarii Anno Regni nostri Quarto.

CHUTE.

Virtute istius brevis mibi & aliis directi Indictamentum in eodem brevi mentionatum cum omnibus ea tangentibus Domino Regi & Domina Regina in presenti Parlamento sub sigillo meo in isto brevi contenta in quadam Schedula huic brevi annexa mitto prout merim mibi precipitur.

Responf.

Lanceloti Johnson, Armigeri, unius Justiciariorum dictorum Domini Regis & Domine Regine ad inquirendum, &c. infra scripti.

L. A. JOHNSON.

Middlesex ff. Memorandum quod per quandam Inquisitionem captam pro Domino Rege & Domina Regina apud Hicks-Hall in S. John-Street in Comitatu Middlesex Die Martis (scilicet) decimo septimo die Januarii Anno Regni Domini & Domine nostrorum Gulielmi & Mariæ Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Regine Fidei Defensorum, &c. Quarto, coram Lanceloto Johnson, Armigero, Carolo Lee, Milite, Samuele Buck, Andrea Lawrence, Willielmo Allefree, Thomæ Harriott, Theophilo Eyton & Nicholao Grice, Armigeris, & aliis Sociis suis Justiciariis dictorum Domine Regis & Domine

Regine ad inquirendum per Sacramentum proborum & legalium Hominum Comitatus Middlesex predicti ac aliis viis modis & mediis quibus melius sciverint aut poterint, tam infra libertates quam extra per quos rei veritas melius sciri poterit & inquire de quibuscunque Proditionibus Misprisionibus Productionibus Insurrectionibus Rebellionibus contrasacturis tonsuris falsis Fabricationibus & aliis falsitatibus monetiæ hujus Regni Angliæ & aliorum Regnorum sive Dominorum quorumcunque ac de quibuscunque Murdris Feloniis Homicidiis & Interfectionibus & aliis Articulis & Offensis in Literis patentibus dictorum Domini Regis & Domine Regine eis & quibuscunque quatuor vel pluribus eorum inde directis specificatis, necnon accessariis eorundem infra Comitatum predictum tam infra libertates quam extra per quoscunque & qualitercunque habitis factis perpetratis sive commissis ac de aliis Articulis & Circumstantiis premissa & eorum aliquid vel aliquem qualitercunque concernentibus plenius veritatem & ad eadem conditiones & alia premissa audendum & terminandum secundum legem & consuetudinem hujus Regni Angliæ assignatis per Sacramentum Samueli Philipps, Thomæ Head, Georgii Sparkes, Thomæ Lum, Johannis Waterman, Willielmi Keyte, Johannis Usber, Willielmi Pangborne, Artuburi Aliborne, Willielmi Devereux, Jacobi Garrison, Antbonii Hartley, Roberti Rogers, Thomæ Knight & Thomæ Long proborum & legalium hominum Comitatus predicti ad tunc & ibidem juratorum & oneratorum ad inquirendum pro dicto Domino Rege & Domina Regina & pro corpore Comitatus præd. presentatum existit modo & formâ prout patet in quodam Indictamento huic Schedule annexo.

L. A. JOHNSON.

Middlesex ff. Juratores pro Domino Rege & Domina Regina super Sacramentum suum presentant quod Richardus Hill nuper de Parochia Sancti Clementis Dacorum in Comitatu Middlesex Generosus & Carolus Dominus Mobun nuper de Parochia predictâ in Comitatu predicto Deum præ oculis suis non habentes sed instigatione Diabolica moti & seducti nono die Decembris Anno Regni Domini & Domine nostrorum Gulielmi & Mariæ Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Regine, Fidei Defensorum, &c. Quarto, vi & armis, &c. apud Parochiam predictam in Comitatu predicto in & super quandam Willielmum Mountford Generosum in pace Die & dictorum Domine Regis & Domine Regine nunc ad tunc & ibidem existentem Felonice voluntarie & ex malitiis suis precogitatis insultum fecerunt. Et quod predictus Richardus Hill cum quodam Gladio (Anglice a Rapier) de ferro & Chalybe confecto valoris quinque Solidorum quem ipse idem Richardus Hill in manu sua dextra ad tunc & ibidem extractum habuit & tenuit præstatum Willielmum Mountford in & super dextram partem corporis (Anglice the Right-side of the Body) ipsius Willielmi Mountford prope dextram Mammillam (Anglice the Right Pap) ejusdem Willielmi ad tunc & ibidem Felonice voluntarie & ex malitia sua precogitata percussit & pupugit (Anglice did strike and thrust) dans eidem Willielmo Mountford ad tunc & ibidem cum Gladio extracto predicto in & super predictam dextram partem corporis ipsius Willielmi Mountford prope dictam dextram Mammillam ejusdem Willielmi unum Vulnere mortale latitudinis unius pollicis & profunditatis viginti pollicum, de quo quidem vulnere mortali predictus Willielmus Mountford à predicto nono die Decembris Anno supradicto usque decimum diem ejusdem Mensis Decembris Anno supra dicto apud Parochiam predictam in Comitatu predicto languebat & languidus vixit, quo quidem decimo die Decembris,

Decembris Anno supra dicto predictus Willielmus Mountford de vulnere mortali predicto apud Parochiam predictam in Comitatu predicto obiit. Et quod predictus Carolus Dominus Mobun tempore Felonia & Mordri predicti per presatum Richardum Hill modo & formâ predictis Felonie voluntarie & ex malitia sua precogitata factorum & perpetratorum ad tunc & ibidem Felonie voluntarie & ex malitia sua precogitata fuit presens auxilians abettans confortans assistens & manutens presatum Richardum Hill ad predictum Willielmum Mountford in formâ predictâ Felonie voluntarie & ex malitia sua precogitata interficiendum & murtherandum. Et sic Juratores predicti super Sacramentum suum predictum dicunt quod predictus Richardus Hill & Carolus Dominus Mobun presatum Willielmum Mountford modo & formâ predictis Felonie voluntarie & ex malitiis suis precogitatis interfecerunt & murtheraverunt contra pacem dictorum Domini Regis & Domine Regine nunc, coronam & dignitates suas, &c.

Then his Grace remov'd from the Wooll-Pack to the Chair, which was placed upon an Afcnt just before the uppermost Step of the Throne, and seated himself in the Chair.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Cl. of Cr. Chief Governor of the Tower of London, return the Precept to you directed, together with the Body of Charles Lord Mohun your Prisoner, forthwith into the Court, upon Pain and Peril will fall thereon.

Then the Deputy-Governor of the Tower brought the Lord Mohun to the Bar, having the Ax carried before him by the Gentleman Gaoler of the Tower, who stood with it at the Bar, on the Right-Hand of the Prisoner, turning the Edge from him.

The Prisoner at his Approach to the Bar, made three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand, and his Grace and all the Peers returned the Salute to him.

Lord High Steward. My Lords, my Voice will not serve to speak at such a Distance, so as to be heard, and therefore I must beg leave of your Lordships to come down to the Wooll-Pack again.

Lords. Ay, Ay.

Then his Grace came down, and seated himself on the Wooll-Pack.

Lord High Steward. My Lord Mohun, I am to let your Lordship know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Council at the Bar likewise know, that both you and the Witnesses, are to direct yourselves to the Court, in the Style of My Lords, speaking to the Court.

Then there was a little Pause, after which his Grace addressed himself to the Prisoner thus.

L. High Steward. My Lord, you are brought here before this Supreme Court in order to your Trial.

The Charge against you is, for the Murder of one of the King's Subjects, which is a Crime the King will at no time pass over in the meanest Man's Case, without making a strict Inquiry into the Offence, and causing due Punishment to be inflicted on the Offender.

This, my Lord, is charged upon you, not by any slight Information, but by the Grand In-

quest of this County, made up of Gentlemen of good Worth and Consideration. It is true, that this Inquest does not amount to much more than a bare Accusation; and therefore it ought not to be made any use of, so as to prejudice your Lordship's Trial; but it is that which is the Ground of presenting this Black Crime before my Lords your Peers, who cannot receive it without some Trouble, to find any one of their Body suspected to be guilty of an Action so Dishonourable as this is represented to their Lordships.

My Lord, you are a very young Man, and therefore it is to be hoped, you cannot so early have had your Hands in Blood. And the same Reason, because you are so young, may, perhaps, make you conceive, that you are under some greater Disadvantage in making your Defence, than you would be if your Experience had been longer.

But to remove any Misapprehension you can have of that kind, it is very proper to put your Lordship in mind, that you have the good Fortune now, to be tried for this Fact in full Parliament, where no Evidence will be received, but such as must be manifest and plain, beyond all Contradiction; so that you have nothing to fear here, but your own Guilt.

In the next Place, my Lord, you need not be discourag'd for the want of Council, for the Honour of this Court is such, as will take care to inform you of any Advantage that the Law can give you. And you may be farther assured, that no Art or Skill in Arguing, can take any Place here, either against your Innocency, or to divert my Lords from doing you exact Justice. Nay, I dare presume to say, on the Part of my Lords, that if there be Room for any Abatement of Severity, you may reasonably expect to find it from their Lordships.

These Considerations, my Lord, cannot but give you great Consolation under your unhappy Circumstances, it being most certain, that nothing but your own Crimes can hurt you.

But at the same time I must tell you, that your Lordship is not to flatter yourself with an Expectation or Hope, that any Favour will be shewed you beyond what Honour and Justice can allow: And I hope you have well considered, that it is no less than your Life, your Honour, and your Estate, that you are now to defend, inasmuch, that I cannot doubt but your Lordship has recollected and prepared yourself for the Defence of what so very much concerns you.

I will not therefore detain you any longer than to give you some Directions in the Order and Method of your Trial; and those are, that your Lordship do give Attention carefully to the Reading of your Indictment. That you give no Interruption to the Council or Witnesses when they speak against you; and when the proper time shall come for your Witnesses to be examined, and that you are to be heard in your own Defence, I will give you due notice of it.

Your Lordship may also be certain, that when it shall come to your turn to speak, you shall be heard with all the Patience and Favour that the Matter will bear; and at last, when all hath been heard that can be said on both Sides, your Lordship needs not doubt, but that my Lords will give such a Judgment as will be suitable to the Honour, Justice and Equity of this great Court. Clerk, read the Indictment to my Lord.

Clerk of the *Crown*. *Charles Lord Mobun*, You stand indicted by the Name of *Charles Lord Mobun*, of the Parish of *St. Clement Danes*, in the County of *Middlesex*, for that you, together with one *Richard Hill* of the same Parish and County, Gentleman, who is fled, and withdrawn from Justice, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 9th Day of *December*, in the 4th Year of the Reign of our Sovereign Lord and Lady *William and Mary*, by the Grace of God of *England, Scotland, France, and Ireland*; King and Queen, Defenders of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County aforesaid; in and upon one *William Mountford*, Gent. in the Peace of God, and our said Sovereign Lord and Lady the King and Queen, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault. And that he the said *Richard Hill*, with a certain Rapier made of Iron and Steel, of the Value of 5s. which he the said *Richard Hill*, in his Right-Hand then and there had and held drawn, the said *William Mountford*, in and upon the Right-side of the Body of him the said *William Mountford*, near the Right-Pap of him the said *William*, then and there feloniously, wilfully, and of his Malice aforethought, did strike and thrust, giving unto him the said *William Mountford* then and there, with the Sword drawn aforesaid, in and upon the aforesaid Right-side of the Body of him the said *William Mountford*, near the said Right Pap of the said *William*, one Mortal Wound of the Breadth of one Inch, and of the Depth of twenty Inches, of which said Mortal Wound the aforesaid *William Mountford*, from the aforesaid ninth Day of *December*, in the Year aforesaid, unto the tenth Day of the same Month of *December*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, did languish, and languishing, did live, on which said tenth Day of *December* in the Year aforesaid, the aforesaid *William Mountford* of the Mortal Wound aforesaid, at the Parish aforesaid, in the County aforesaid, died. And that you the said *Charles Lord Mobun*, at the Time of the Felony and Murder aforesaid, by the aforesaid *Richard Hill*, in Manner and Form aforesaid, feloniously, wilfully, and of his Malice aforethought, done and committed, then and there feloniously, wilfully, and of your Malice aforethought, were present, aiding, abetting, comforting, assisting and maintaining the aforesaid *Richard Hill*, the said *William Mountford* in Form aforesaid, feloniously, wilfully, and of his Malice aforethought to kill and murder. And so that you the said *Charles Lord Mobun*, and the said *Richard Hill*, the said *William Mountford* in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our said Sovereign Lord and Lady the King and Queen, their Crown and Dignity.

How say you, *Charles Lord Mobun*, Are you Guilty of this Felony and Murder, or not Guilty?

L. Mobun. Not Guilty, my Lords.

Clerk of the *Crown*. How will your Lordship be tried?

L. Mobun. By God and my Peers.

Clerk of the *Crown*. God send your Lordship a good Deliverance.

L. High Steward. Will your Lordships please that the Judges may be covered?

Lords. Ays, Ay.

Then the Judges put on their Caps.

Clerk of the *Crown*. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Clerk of the *Crown*. If any one will give Evidence on the Behalf of our Sovereign Lord and Lady the King and Queen's Majesties, against *Charles Lord Mobun* the Prisoner at the Bar, let them come forth, and they shall be heard, for now he stands at the Bar upon his Deliverance.

L. High Steward. You Gentlemen that are of the King's Council, will you begin?

Mr. Serj. Thompson. May it please your Lordships, I am of Council for the King and Queen, against my Lord *Mobun* the Prisoner at the Bar, who stands indicted for the Murthier of one *William Mountford*.

L. Mobun. My Lords.

L. High Steward. My Lord *Mobun*, what does your Lordship say?

L. Mobun. Do not your Lordships think it proper, that I should have Pen, Ink and Paper?

Lords. Ay, by all means.

L. High Steward. Yes, give my Lord Pen, Ink and Paper.

Which were carried to him by one of the Clerks.

L. High Steward. Go on, Sir, now.

Mr. Serj. Thompson. My Lord *Mobun* stands indicted here before your Lordships, for the Murder of one *William Mountford*, and the Indictment sets forth, that one *Richard Hill*, who is since fled from Justice, did upon the 9th of *December* last, make an Assault upon this same *William Mountford*, and that the said *Lord Mobun*, did likewise make that Assault. The Indictment particularly sets forth, that this *Hill*, by a Sword or Rapier, which he had in his Hand, did give this *William Mountford* a Wound on his Right-side, and that *Mountford* did languish of that Wound till the next Day, which was the 10th of *December*, when he died; and that at the Time of the giving the Wound, my Lord *Mobun* was present, and was aiding, abetting, assisting, and comforting of *Hill*; and thereupon we do say, he is Guilty of this Murder, and for this he stands indicted. It is my Duty to open the Indictment to your Lordships, we shall call our Proofs, and give you the Evidence, and then leave it to your Lordships Judgment.

Mr. Att. Gen. Sir John Somers. My Lords, the Indictment has been open'd, and by that your Lordships see, the Noble Lord at the Bar stands charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be tried in this Great and Noble Court; and as my Lord has just Reason to put a high Value upon this Privilege, so on the other Hand, their Majesties, who are making Inquisition for the Blood of one of their Subjects, have a full Assurance, that no Compassion for my Lord's Youth, no Consideration for his Quality, or Regard for one of your own Order, will make your Lordships unmindful of the heinous Nature of the Crime, or cause any Variation in the Steadiness of your Justice.

It is true, my Lords, the Difference between the Trial of a Peer and a Commoner is very great, but

but there is no Difference in the Crime, whether committed by one or the other: It is the same Law by which they must be tried and judged; and that Fact which would be Murder in the meanest Subject, is no less than Murder if committed by the greatest Peer.

My Lords, it is not insisted upon, that the Noble Lord at the Bar gave the Mortal Stroke with his own Hand; Nor is it so alledged in the Indictment: The Indictment findeth the Wound to have been given by the Hand of *Richard Hill*; but if my Lord the Prisoner was of his Party, if he concurr'd with him in the Thing, if he was present and abetting to the Fact, though he did not strike a Stroke, though he was no more than a Looker-on when the Thing was done, the Law saith, He is a Principal in the Murder.

Whether my Lord's Case will fall within this Rule, is the Point for your Lordships to determine, when the Witnesses are heard.

My Lords, it is my Part to give an Account of the Nature of the Evidence, to the end, that your Lordships may more easily go along with the Witnesses, as they are examined, and more readily make your Observations upon what they say.

This I shall do as shortly, and as exactly as I can, without pretending to aggravate any thing, which I could never think did become any one in my Station; and I am sure, would be to very little purpose before such a Judicature as this; for after all, your Lordships will found your Judgments upon the Fact, not as it is represented by us, but as it appears upon the Oaths of the Witnesses.

The Time when the Fact for which my Lord is to be tried was committed, was the 9th Day of *December* last.

The Occasion of it, was this.

Captain Hill, the Person mentioned in the Indictment, had for some time before made Addresses of Courtship in the Way of Marriage, to one Mrs. *Bracegirdle*, an Actress in the Play-House; But these Proposals were totally rejected. This put Mr. *Hill* in a very great Rage, and he declared, that Mr. *Mountford* (the Person slain) was the only Man that stood in his way, and with many Execrations, expressed his Resolution to be revenged upon him: This he did at several times, and before several Persons.

The same Day the Fact was committed, in the Morning, my Lord, who is now at the Bar, and *Captain Hill*, went together to hire a Coach to go to *Totteridge*, and directed the Coachman to have six Horses ready, but to be waiting for them in *Drury-Lane* near the *Play-House*, with only two Horses in his Coach, about nine a Clock the same Night. My Lord and *Captain Hill* dined together that Day, at a Tavern in *Covent-Garden*; and here much of their Discourse was about Mrs. *Bracegirdle*; and both of them did freely declare their Opinion, that Mr. *Mountford* lay with her. But the Principal of their Discourse, was in relation to a Design which they had formed for the seizing upon Mrs. *Bracegirdle*, and forcing her into a Coach, and carrying her away somewhere into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that purpose: Mr. *Hill* did acquaint my Lord, that the Soldiers would be ready by the time; and my Lord took Notice, that the carrying her off, would

stand Mr. *Hill* in 50 *l.* at least. Thereupon (as your Lordships will hear from the Evidence) Mr. *Hill* used this Expression, If the Villian resist, I will stab him; and then my Lord was pleased to say, That he would stand by his Friend.

After they had continued there some time, being about to part, Mr. *Hill* told my Lord, That unless he was at the Play-House by six a Clock, the Thing could not be effected, and he should be undone: But my Lord promised to be there at the time.

Accordingly they both met at the Play-House, and after they had been behind the Scenes, and informed themselves that Mrs. *Bracegirdle* would not be there that Night, they left the Play-House.

But it seems they had got Intelligence, that she was to sup that Night at one Mr. *Page's* House in *Drury-Lane*; and therefore they planted themselves with their Soldiers near that Place, over against my Lord *Craven's* House.

Lord High Steward. They; who do you mean?

Mr. *Attorney General*. My Lord, the Prisoner at the Bar and Mr. *Hill*. After they had continued there for a considerable time (I think till towards nine a Clock) they began to have a Jealousy, that they might be under some Misinformation; and therefore ordered the Coachman to drive them into *Howard-street*, the Place where Mrs. *Bracegirdle* lodged, and observing some Persons walking near her Lodging, they said, they doubted they were deceived, and had been betrayed.

But they soon came back again to *Drury-Lane*, and fixed themselves in their former Station. About Ten a Clock, Mrs. *Bracegirdle*, accompanied with Mr. *Page* (at whose House she had been) and with her Mother, and (I think) her Brother, going Home; when they came to the Place where the Coach stood, with the Door open, and my Lord at the Bar placed in the Coach; and several Cafes of Pistols by him, the Soldiers, together with *Captain Hill*, came up to Mrs. *Bracegirdle*, seized upon her, and would have forced her into the Coach: Mr. *Hill* endeavoured with Violence, to force away Mr. *Page*, who was then leading her, and struck him; but Mrs. *Bracegirdle's* Mother holding her about the Middle, they could not readily get her into the Coach, and during this Struggle, there was an Opportunity given to Mr. *Page* to call for Help, and several Persons coming presently from the Houses near, and the People in the Street beginning to rise upon them, they found it impracticable to effect their Design at that Time.

Thereupon the Soldiers were dismissed, but my Lord and Mr. *Hill*, would not be denied the Liberty to wait upon Mrs. *Bracegirdle* to her Lodging, and accordingly, together with Mr. *Page* and her Mother, and other Persons, they went together to Mrs. *Bracegirdle's* Lodging, at one Mrs. *Browne's* House in *Howard-street*. Mr. *Mountford's* House was in *Norfolk-street*, below *Howard-street*. *Howard-street* is a Cross Street, which leads from *Arundel-street*, and through *Norfolk-street* to *Surrey-street*; and so it was not possible for *Mountford* to come to his own House, but whoever should fix themselves in *Howard-street*, must have the Opportunity of seeing him.

As they were going along, *Hill* swore he would be reveng'd; but nam'd no-body.

After that Mrs. *Bracegirdle* and the Company were come to her Lodging, she and her Mother, and *Page* went into the House: My Lord *Mohun* and

and Mr. *Hill* staid in *Howard-street*, and there continued for near two Hours together, and for the most part of that Time, with their Swords drawn.

Mr. *Mountford*, as it happen'd, did not come Home till late that Night; so that their Stay being long, my Lord and Mr. *Hill* thought fit to send for Wine, and had one or two Bottles, which they drank in the Street, near Mrs. *Bracegirdle's* Lodgings.

During this Time, they were heard to say (that is, one of them was; but which of them, by reason of the Darknes, we cannot tell) that if he could not be revenged that Night, he would the next Morning; upon which, a Boy, who was there with them; (but who the Boy was we cannot discover) said, Good my Lord, do not do it, alter your Resolution. I did observe before, that Mrs. *Bracegirdle* supped that Night at Mr. *Page's* House, and Mrs. *Page* having heard of the great Outrage and Tumult in the Street, and that her Husband was gone home with Mrs. *Bracegirdle*, and being under a great Concern for his Safety, thought fit to follow him thither, As she entered into the House, she saw my Lord *Mobun* and Captain *Hill* near the Door; and presently after, before she could have a full Relation of what had happened in *Drury-lane*, Mrs. *Browne*, the Owner of the House where Mrs. *Bracegirdle* lodged, came into the Room, and told them, That my Lord *Mobun* and *Hill* were waiting for Mr. *Mountford*, and that she was apprehensive it was with no good Intention. Thereupon Mrs. *Page* thought it requisite to go to Mrs. *Mountford's* House to give her Notice of it, and to desire her to find out where her Husband was, and to caution him not to come Home, unless he brought a good Guard with him.

As she went out, she saw them both with their Swords drawn, and she acquainted Mrs. *Mountford* with it, who sent to several Places in Search of her Husband; but she was so unfortunate, that the Messengers could not find him.

Whilst this was doing, the Watch came into *Howard-street*, being alarm'd at the Report that two Gentlemen were drinking in the Street, and walking there with their naked Swords. The Watch demanded of my Lord *Mobun*, why he had his Sword drawn. My Lord was pleas'd to return them this Answer, That he was a Peer of the Realm, and bid them touch him if they durst. They then asked *Hill*, why his Sword was out, and my Lord made the Excuse for him, That *Hill* had lost his Scabbard.

The Watch observing the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surrey-street*, went to inform themselves, who these Persons should be, that were walking in such a Manner at that time of Night. But they were hardly got into the House before they heard the Cry of Murder.

The Witnesses will inform your Lordships, that as Mr. *Mountford*, about twelve a Clock, was coming home, my Lord *Mobun* met him, and saluted him. Mr. *Mountford* said, My Lord *Mobun*, What does your Lordship do here at this time of Night? and my Lord made Answer, He supposed Mr. *Mountford* had been sent for. No, no, says *Mountford*, I came by Chance. My Lord said to him again, I suppose you have heard about the Lady. Mr. *Mountford* answered, I hope my Wife has given your Lordship no Of-

fence. No, says my Lord *Mobun*, It's Mrs. *Bracegirdle* I mean. To this the Reply of Mr. *Mountford* was, Mrs. *Bracegirdle* is no Concern of mine; but I hope your Lordship does not countenance any ill Action of Mr. *Hill*.

Upon this *Hill* came up to them, and said to my Lord, It was not a Time to discourse of those Matters; and as my Lord continued to talk with *Mountford*, *Hill* struck *Mountford* first, and, in a manner, at the same Instant made a Pass at him, and run him clean through the Body, and this before Mr. *Mountford's* Sword was drawn. Immediately, upon this, there was a Cry of Murder, and the Watch came with what haste they could, and took my Lord *Mobun*, but *Hill* was fled; when my Lord was taken, his Sword was not drawn.

As soon as my Lord *Mobun* was taken, the first Question he asked was, If *Hill* was apprehended; and when he was told, he was not, he said he was glad of it, and he did not care if he were hang'd for him. And he said, adding at the same time, That he was sorry that Mr. *Hill* had so little Money about him, and wished him all that he had in his own Pocket; and he did then also own to the Watch, that he had changed Coats with Mr. *Hill*, and had *Hill's* Coat on him at that time.

My Lords, this is the Substance of the Evidence, and in this Order, with your Lordships Leave, we shall offer the Proofs to your Lordships; I do not doubt, but your Lordships will attend to the Evidence with all Care, and will determine upon it according to Justice and Honour. I will detain your Lordships no longer, but proceed to call the Witnesses to prove what I have opened.

L. H. Steward. Pray call your Witnesses together, and let me know who you begin with.

Mr. *Att. Gen.* My Lords, We do not know what Place is designed for the Witnesses; but if they are to be on the other Side, and this Croud do interpose between us and them, it will be impossible for us, who are the King's Council, to hear what they say, or know how to proceed.

L. H. Steward. There must be Room made there for the Witnesses; where are your Witnesses Mr. *Attorney*?

Clerk of the Crown. If you please to name them, Sir, we will call them.

Mr. *Att. Gen.* Call Mr. *John Hudson*, and Mr. *George Powel*.

Lord High Steward. I know not how this is ordered, but Way must be made there by the Bar, that the Prisoner may see the Witnesses, and they him.

Mr. *Att. Gen.* Yes, my Lord, by all means.

Mr. *Serj. Tremain.* If your Lordships please, the Witnesses will be most conveniently heard, if they come and stand by us.

Mr. *Att. Gen.* If your Lordships please, it will not be possible either for my Lord at the Bar, or for us, to hear what the Witnesses say, unless they be brought into this Place to stand between us.

L. H. Stew. My Lord Great Chamberlain, be pleas'd to give order for them to be brought in thither.

Then the Lord Great Chamberlain went down to the Bar.

L. Gr. Cham. The Witnesses must be brought to this Place.

And accordingly, Way was made for the Witnesses,

nesses, as called, to stand at the Bar between the Prisoner and the King's Council.

L. H. Stew. Give me the Name of him that you begin with.

Mr. Att. G. We begin, my Lords, with Mr. *John Hudson*. Who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.

Cl. of the Cr. Hearken to your Oath, Sir; The Evidence that you shall give on the Behalf of our Sovereign Lord and Lady the King and Queen's Majesties against *Charles Lord Mohun*, the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth: So help you God. *(Then he kissed the Book.)*

Mr. Att. Gen. *Mr. Hudson*, Do you give my Lords an Account what you know of any Applications of Courtship made to Mrs. *Bracegirdle* by *Mr. Hill*, and what became of it; and what you heard *Hill* say about her, or about any one else relating to that Matter.

Hudson. My Lord, I had the Honour to be invited to Supper with my Lord *Mohun*, at the *Rose-Tavern* in *Covent-Garden*, where I found Captain *Hill* with his Lordship.

Mr. Att. Gen. When was this, Sir? tell the time.

Hud. This was three Nights before this unfortunate Accident happen'd, there I found Captain *Hill*, and we supped together; and after Supper, Captain *Hill* rais'd a Discourse of Mrs. *Bracegirdle* and Mr. *Mountford*; says he, I should not doubt the Success of my Amour with Mrs. *Bracegirdle*, if I were not obstructed by *Mountford*, whom I design to be the Death of: This is Truth upon my Oath. My Lord *Mohun* was in the Company; but I cannot say that my Lord made any Reply to the Thing, or took any Notice of it: But this Captain *Hill* did say, not only then, but several times before.

Mr. Att. Gen. Did he say it at any other time in your Hearing?

Hud. Yes, several times before.

Mr. Att. Gen. Do you know any thing more of this matter?

Hud. No more, than that my Lord *Mohun*, that very Night that Mr. *Mountford* was killed, and Capt. *Hill*, came into the Scene Room of the Play-House, and my Lord *Mohun* had Capt. *Hill*'s Coat on, and Capt. *Hill* had my Lord *Mohun*'s Coat on, and they changed their Cloaths in the Play-House. I saw them change their Cloaths; but what their Design was, I cannot tell.

Mr. Att. Gen. When was that, Sir?

Hud. That very Night that the Gentleman that is dead, Mr. *Mountford*, was killed.

Mr. Att. Gen. You say, That my Lord *Mohun* was present when that Discourse of *Hill* was, about *Mountford* at the Tavern.

Hud. Yes, but I cannot say my Lord took any Notice of it, for he made no Reply that I heard.

L. H. Stew. Have you done with this Witness?

Mr. Att. Gen. Yes, my Lord,

Hud. This is all that I know of the Matter.

L. H. Stew. My Lord *Mohun*, have you any thing to say to this Witness;

L. Mob. No, my Lord.

Mr. Att. G. Then our next Witness's Name is *George Powell*. *(Who was sworn in like manner.)*

Mr. Att. G. Mr *Powell*, You have heard the Questions that have been ask'd Mr. *Hudson*. Pray will you make Answers to them; and give my Lords an Account what you know of this Matter.

Powell. May it please your Lordships, about

5 or 6 Days before Mr. *Mountford* was wounded, I was in Company with Captain *Hill*, and he began Mrs. *Bracegirdle*'s Health. I told him I would pledge it. Says he, I am sure there is no Bar between me and Mrs. *Bracegirdle*, but *Mountford*; and I am resolv'd to be revenged on him, one way or another. About 3 Days afterwards I was at Supper with my Lord *Mohun* and Captain *Hill*, and another Gentleman, and the same Discourse arose again, and Captain *Hill* whispered me in the Ear, says he, I am resolv'd to have the Blood of *Mountford*. I told him I did not think it fit for him to speak so behind a Gentleman's Back, and to me, who was his Friend. I said, I would acquaint Mr. *Mountford* what he said, and I did not doubt but he would give him the Satisfaction of a Gentleman for any Injury he did him. I heard no further Discourse at that time, nor do I know more of that Matter, till the Night that Mr. *Mountford* was wounded, when I saw him lying upon the Parlor Floor, and afterward saw him laid to Bed, and sat up all Night with him, and about four a Clock in the Morning, I asked Mr. *Mountford* how the Thing happened. He told me Captain *Hill* killed him basely; I asked him if his Sword was drawn; Yes, says he, but it was after I had received my Wound, for whilst my Lord *Mohun* talked to me, *Hill* run me thro'.

Mr. Att. G. At that time, when those Words were spoke at Supper, That he, designed to be the Death of *Mountford*, was my Lord present?

Powell. Yes, my Lord *Mohun* was present, but he was talking to Colonel *Tredenham*.

Mr. Att. G. Did my Lord *Mohun* say any thing to what *Hill* said?

Powell. I did not hear him make any Answer to it at all.

Mr. Att. G. Do you know any thing else in relation to this Fact?

Powell. Nothing else, but that Captain *Hill* did give a Letter to be delivered to Mrs. *Bracegirdle*, but I know not whether it was delivered or not, and he often told me, he would marry her with all his Heart.

Mr. Att. G. You say you had that Discourse with *Mountford*, when he lay a dying?

Powell. It was about four a Clock, and he died about One.

Mr. Att. G. Was there any thing said about my Lord *Mohun* at that time?

Powell. Nothing, but that my Lord *Mohun* was talking to him, whilst the other run him thro'.

L. H. Stew. If I understand you aright, you say nothing against my Lord *Mohun*, but his being by one time at Supper when *Hill* said some Words about *Mountford*; and then the other thing you say is, what *Mountford* told you after he was wounded, That my Lord was talking to him, when *Hill* gave him the Wound?

Powell. Yes, my Lord, That is all that I heard.

L. H. Stew. Has your Lordship any thing to say to this Witness?

L. Mobun. No, my Lord.

Mr. Att. G. The next Witness that we shall desire to call is Mrs. *Knight*. *(Who was sworn.)*

Mrs. Knight I have nothing to say to my Lord *Mohun*; but what I have to say, is to Mr. *Hill*. About 4 Days before Mr. *Mountford* was killed, Mr. *Hill* came to me, and ipoke to me about Mrs. *Bracegirdle*: He told me he was satisfied she hated him. I told him I did not believe she hated any Body, or loved any Body? Yes,

he said, she did love some Body, but he had thought of a Way to be even with that Body. Upon the *Wednesday* Night before Mr. *Mountford* was killed, he came to me as I was coming out of the dressing Room; saith he, Mrs. *Knight*, let me speak a Word with you; says he, You are very great with Mrs. *Bracegirdle*, and I desire you to be so kind, as to speak to her for me, and I would beg of you, if you would give me leave, to give her this Letter from me: No, said I, Mr. *Hill*, I beg your Pardon; you say she hateth you, and if she hateth you, she will not love any Body that speaketh for you; and I am not fond of creating my self Enemies in the House, knowing I have some already. What Enemies, saith Mr. *Hill*, *Mountford* do you mean? And then repeating a great Oath, I shall find a Way with him speedily.

L. H. Stew. A Way, with what?

Mrs. *Knight*. A Way with him speedily; *Hill* said it of Mr. *Mountford*.

L. H. Stew. What do you call this Witness for, Mr. *Attorney*? what Use do you make of her Evidence against my Lord *Mobun*?

Mr. *Att. G.* My Lord, the Use that we would make of these Witnesses, is to give an Account of the whole Fact from the Beginning to the End, *Hill's* Malice, and what was the Occasion of it, his Design in coming there that Night, and what he did, and to leave it to your Lordships, to judge what Influence this will have, how far it will affect my Lord *Mobun*. The next Witness is Mrs. *Sandys*.

L. H. Stew. What is this Woman's Name?

Mr. *Att. G.* Mrs. *Elizabeth Sandys*.

(*She was sworn.*)

Mr. *Att. G.* Mrs. *Sandys*, give my Lords an Account, whether you were present with my Lord *Mobun* and Mr. *Hill* at the Tavern that Day that Mr. *Mountford* was killed, and what passed there.

Sandys. I dined with my Lord *Mobun* and Captain *Hill*, at the *Three Tuns* in *Shandois-street*, and there arose a Discourse about Mrs. *Bracegirdle* and *Hill*, and my Lord *Mobun* asked me, If I thought *Mountford* had lay with her or no. I said I could not tell; presently after, says my Lord *Mobun*, It will cost *Hill* 50 Guineas this Design. Saith Mr. *Hill*, if the Villian offers to resist, I will stab him; saith my Lord *Mobun*, I will stand by my Friend. When this was done, Mr. *Hill* desired Mr. *Brough* to borrow a Case of Pistols of Captain *Leister*, and he said, he would not borrow them himself, for he doubted, if he knew of the Design, he would not lend them. When that was done, Captain *Hill* told me, he had a Coach and six Horses in *Witch-Street*, to seize Mrs. *Bracegirdle*, and carry her away into the Country; and my Lord *Mobun* said he would stand by his Friend: And when my Lord *Mobun* went away, *Hill* said to him, My Lord, if you be not there by six a Clock, I am ruined. Saith my Lord *Mobun*, upon my Word and Honour I will be at the Play-House by Six.

L. H. Stew. My Lord *Mobun*, have you any thing to say to that Witness?

L. Mobun. Yes, my Lord, I desire to have her asked, Whether she is a Maid, or a married Woman?

L. H. Stew. You hear the Question; but I do not know what Use my Lord will make of it.

Mr. *Att. G.* You can easily answer, whether you are married or unmarried.

L. H. Stew. That Question is very fair; Are you a married Woman or a single Woman?

Sandys. I am a single Woman, my Lord.

Mr. *Att. G.* Pray, Mrs. *Sandys*, repeat the Words that my Lord *Mobun* said, when *Hill* said, if the Villian resisted, he would stab him.

Sandys. My Lord *Mobun* said nothing in the World, but that he would stand by his Friend.

L. H. Stew. Have you any further Questions, Mr. *Attorney*, to ask this Witness?

Mr. *Att. G.* I have nothing more to ask her, my Lord.

L. H. Stew. What say you, my Lord *Mobun*; would you ask her any thing else?

L. Mobun. No, my Lord.

L. H. Stew. Then withdraw. (*Which she did.*)

Mr. *Att. G.* The next Witness we call is Mr. *Rogers*.

(*Who was sworn.*)

L. H. Stew. What is this Witness's Name?

Mr. *Att. G.* *Rogers*, my Lord.

L. H. Stew. What is his Christian Name?

Mr. *Att. G.* *John*. If your Lordships please to remember, that the last Witness, Mrs. *Sandys*, said, that Mr. *Hill* desired my Lord *Mobun*, not to fail of being at the Play-House by six a Clock, and that he was undone if he did not come; and my Lord promised upon his Word and Honour that he would come: Now we call this Witness to prove, that they met at the Play-House according to the Appointment on the 9th of *December*.

Rogers. My Lord, all that I know of this Matter was, That my Lord *Mobun* and Captain *Hill* were at the Play-House that Night, and that which made me take particular Notice of their being then at the Play-House, though they had been frequently there before together, was, that Captain *Hill* had my Lord *Mobun's* Coat on, and my Lord *Mobun* had Captain *Hill's* Coat on.

Mr. *Att. G.* Did you observe any thing else, when they were at the Play-House?

Rogers. Nothing but only some Words that passed between Captain *Hill* and my Lord *Mobun*, when I went to ask them for the Overplus of the Money for coming in, because they came out of the Pit upon the Stage; he said, he would not give it me, but if I brought any of our Masters, he would slit their Noses, or something to that Effect.

Mr. *Att. G.* What were the Words he said when you asked him for Money?

Rogers. I asked them for Money, that they ought to pay more than the rest that were in the Pit, because they came upon the Stage, and they would not give it me; but he said, if I brought any of our Masters, he would slit their Noses, or cut their Faces, or to that Effect.

L. H. Stew. My Lord, will your Lordship ask him any Questions?

L. Mobun. No, my Lord.

L. H. Stew. Call another Witness then.

Mr. *Att. G.* My Lords, with your Lordships Favour, the next Witness that we shall call, is the Coachman, *William Dixon*. (*Who was sworn.*)

Mr. *Att. G.* Mr. *Dixon*, do you remember the Day when Mr. *Mountford* was killed?

Dixon. Yes, Sir.

Mr. *Att. G.* Pray acquaint my Lords, what Persons you carried in your Coach that Day; whether you carried my Lord *Mobun* and Mr. *Hill*, and to what Place, and where you waited for them.

Dixon. If it please your Lordships, Captain

Hill and my Lord *Mobun* came in a Hackney Coach to my Gate, where I live, and I was just a going to set my Coaches into the Street for Hire: They bargain'd with me for six Horfes, and I was to have thirty Shillings to set them down at *Totteridge*, on this Side *Barnet*. I ask'd them, Whether they would have me bring all the six Horfes with the Coach. No, they said, a Pair would serve to the Play-Houfe, and the other four should stand at the Pound's End. So I went accordingly to the Place appointed, over against the *Horshoe-Tavern* in *Drury-lane*, and a Footman came, and Mr. *Hill* and he bid me drive down lower. So I drove to my Lord of *Clare's* Door, or thereabouts; and there was some Soldiers that would have had me go in, and smoke and drink with them: I told them, I did never smook, and I did not care for drinking any thing at that time. With that, my Lord *Mobun* and Mr. *Hill* came into the Coach, and, as they bid me, I carry'd them into *Norfolk-street*, below the Watch-house that stood there; they bid me turn about, and stand there; and then they went to the *White-Horse* Tavern, so I did turn about, and stay'd as they bid me, and they carry'd a pretty while before they came again, and then they bid me drive back to the Place from whence I came, so I drove into *Drury-lane*, and they bid me stop next to my Lord *Craven's* Houfe, this was about ten a Clock, and it being so late, I went Home, and sent a Postilion down, to take care of the Coach, so that what pass'd afterwards, I cannot tell.

L. H. Stew. What Day or Night, was all this you speak of?

Dixon. Truly my Lord, I cannot tell what Day it was, it was in *December*, as I take it, the 9th, and it was *Friday* I believe, I do not know justly.

L. H. Stew. Did you hear of the Death of Mr. *Mountford*?

Dixon. Yes, I did.

L. H. Stew. Was it the same Day that you heard Mr. *Mountford* was killed?

Dixon. No, I did not hear it till the next Morning.

Mr. Att. G. You say, you went with my Lord *Mobun* and Mr. *Hill* into *Norfolk-street*, and there you stay'd for them, whilst they went elsewhere?

Dixon. Yes, I did so.

Mr. Att. G. Do you know to what Houses they went?

Dixon. They went to the *White-Horse* Tavern, to the hithermost Houfe on this Side the *Strand*, and they went below to a Door on this Side of a Houfe that is not finished yet.

Mr. Att. G. Did you hear them use any Expressions there?

Dixon. I heard *Hill* say to my Lord *Mobun*, I think there is a Man and a Maid talking, it was at the Corner Houfe; saith *Hill*, We are betray'd, Damn me, saith he, my Lord, let us go and thresh him.

Mr. Att. G. What did they do then?

Dixon. I did see them do nothing

Mr. Att. G. Whither did you carry them from thence?

Dixon. To the Place from whence they came, in *Drury-lane*.

L. H. Stew. Will your Lordship say any thing to this Man?

L. Mobun. I desire he may be asked, Whether he had not Orders to go out of Town with

us, as soon as Mrs. *Bracegirdle* was put into the Coach.

Dixon. If it please you, Sir, I had Order thus, That when we were to go out of Town, I must drive down into the *Strand*, and then round about any way that was readiest and clearest to get to the Pound; that Order I had, and no other Order I had.

L. H. Stew. Who is your next Witness?

Mr. Att. G. My Lords, the next Witness we shall call, will give you an Account what was done in *Drury-lane*, upon their endeavouring to carry her away, and for that we have here Mrs. *Bracegirdle* her self.

L. H. Stew. What is this Gentlewoman's Name?

Mr. Att. G. Mrs. *Ann Bracegirdle*.

(Then she was sworn.)

Mr. Att. G. Mrs. *Bracegirdle*, Pray give my Lords an Account of the Whole of your Knowledge of the Attempt that was made upon you in *Drury-lane*, and what followed upon it.

Mrs. Bracegirdle. My Lord, I was in *Prince's-street* at Supper at Mr. *Page's*, and at ten a Clock at Night, Mr. *Page* went home with me; and coming down *Drury-lane*, there stood a Coach by my Lord *Craven's* Door, and the Boot of the Coach was down, and a great many Men stood by it; and just as I came to the Place where the Coach stood, two Soldiers came and pulled me from Mr. *Page*, and four or five more came up to them, and they knocked my Mother down almost, for my Mother and my Brother were with me. My Mother recovered, and came and hung about my Neck, so that they could not get me into the Coach, and Mr. *Page* went to call Company to rescue me. Then Mr. *Hill* came with his Sword drawn, and struck at Mr. *Page* and my Mother; and when they could not get me into the Coach, because Company came in, he said, he would see me home, and he led me by one Hand, and my Mother by the other. And when we came home, he pulled Mr. *Page* by the Sleeve, and said, Sir, I would speak with you.

Mr. Att. G. Pray, Mrs. *Bracegirdle*, did you see any body in the Coach, when they pulled you to it?

Mrs. Bracegirdle. Yes, my Lord *Mobun* was in the Coach; when they pulled me to the Coach, I saw my Lord *Mobun* in the Coach. And when we came Home, *Hill* pulled Mr. *Page* by the Sleeve, and he said, He would speak with him. As they led me along *Drury-lane*, my Lord *Mobun* came out of the Coach, and followed us, and all the Soldiers followed them; but they were dismissed, and, as I said, when we came to our Lodging, then *Hill* pulled Mr. *Page* by the Sleeve, and said, He would speak with him. Saith Mr. *Page*, Mr. *Hill*, another time will do, to Morrow will serve; with that, when I was within Doors, Mr. *Page* was pulled into the Houfe, and Mr. *Hill* walked up and down in the Street with his Sword drawn. He had his Sword drawn when he came along with me.

Mr. Att. G. Did you observe him to say any thing whilst he was with you?

Mrs. Bracegirdle. As I was going down the Hill he said, as he led me, He would be revenged.

Mr. Att. G. Did he say of whom he would be revenged?

Mrs. Bracegirdle. He did not name of whom then, but when I was in the Houfe, several Persons went to the Door, and afterwards Mrs.

Brown went to the Door, and spoke to them, and asked them, What they staid and walked there for? at last, they said, They staid to be revenged of *Mr. Mountford*; and then *Mrs. Brown* came in to me, and told me of it.

L. H. Stew. Who said that?

Mrs. Bracegirdle. *Mr. Hill.*

Mr. Att. G. Were my Lord *Mobun* and *Mr. Hill* both together when that was said, that they staid to be revenged of *Mr. Mountford*?

Mrs. Bracegirdle. Yes, they were. And when *Mrs. Brown* came in, and told me, I sent my Brother and the Maid, and all the People we could, out of the House to *Mrs. Mountford*, to desire her to fend, if she knew where her Husband was, to tell him of it, and she did. And when they came in a Doors again, I went to the Door, and the Doors were shut, and I listened to hear if they were there still; and my Lord *Mobun* and *Mr. Hill* were walking up and down the Street; and by and by, the Watch came up to them, and when the Watch came, they said, Gentlemen, Why do you walk with your Swords drawn? Says my Lord *Mobun*, I am a Peer of *England*, touch me if you dare.

L. H. Stew. Repeat that again, for I could not well hear you: Do you speak of what you heard from *Mrs. Browne*, or what you observed yourself?

Mrs. Bracegirdle. My Lord, I was within Doors, but I was listening at the Door, and heard this my self? they came up to them, and said, Gentlemen, Why do you walk with your Swords drawn?

L. H. Stew. Who asked that Question?

Mrs. Bracegirdle. The Watch; and says my Lord *Mobun*, I am a Peer of *England*, touch me if you dare. Then the Watch left them, and they went away, and a little after, there was a Cry of Murder, and that is all that I know, my Lord.

L. Mobun. My Lord, I desire this Witness may be asked, How long after this Passage that she speaketh of, was it that she heard Murder cried in the Street.

L. H. Stew. You hear the Question, *Mrs. Bracegirdle*; What say you to it?

Mrs. Bracegirdle. My Lord, I believe it was about a quarter of an Hour after, to the best of my Memory.

L. H. Stew. What do you mean, a quarter of an Hour after the Watch asked the Question?

Mrs. Bracegirdle. Yes, my Lord.

Then the Earl of Mulgrave stood up.

L. H. Stew. My Lord *Mulgrave*.

E. of Mulgrave. My Lord I desire to ask this Witness a Question. If I heard her aright, I think she said, They threatened to be revenged of *Mr. Mountford*, I desire to know of her, whether my Lord *Mobun* did threaten him?

Mrs. Bracegirdle. I do not know indeed; but when *Mrs. Browne* asked them, What they staid there for? They said, To be revenged of *Mr. Mountford*. I did not hear them my self, but *Mrs. Browne* came in and told me so.

Mr. Att. G. *Mrs. Bracegirdle*, I think, If I did not mistake, you said, When the Watch came up they asked them, Why their Swords were drawn?

Mrs. Bracegirdle. Yes, and my Lord *Mobun* made Answer, He was a Peer of *England*, and bid them touch him if they durst, and they went away.

Mr. Att. G. My Lord, the next Witness

that we call, shall be *Mr. Gawen Page*, at whose House *Mrs. Bracegirdle* supped that Night.

(He was sworn.)

Mr. Att. G. *Mr. Page*, I suppose you remember the Night, when *Mrs. Bracegirdle* supped at your House?

Mr. Page. Yes, my Lord.

Mr. Att. G. I pray give an Account of your whole Knowledge about this Matter, what happen'd that Night.

Mr. Page. About ten a Clock at Night, on *Friday* the ninth of *December* last, going down *Drury-lane*, with *Mrs. Bracegirdle*, whom I led just against my Lord *Craven's* House —

L. H. Stew. Pray, Sir, speak out, and tell us what time it was.

Mr. Page. About ten a Clock at Night, on *Friday* the ninth of *December* last, going down *Drury-lane*, and leading *Mrs. Bracegirdle*, right against my Lord *Craven's* Door, flood a Coach, where two Soldiers pressed in between me and *Mrs. Bracegirdle*, and parted us: I asked what that was for? But they took hold of *Mrs. Bracegirdle*, and immediately they would have forced her into the Coach; *Captain Hill*, whom I saw there with his Sword drawn, made several Blows at me.

L. H. Stew. Who would have forced her into the Coach?

Mr. Page. The Soldiers would.

Mr. Att. G. Pray go on, Sir, what follow'd after that?

Mr. Page. I say, *Captain Hill* made several Blows at me, and cry'd, You Villian, Stand. I received many of them upon my Cane, but there was none that hurt me; then I got Help, and they were prevented of carrying *Mrs. Bracegirdle* away. My Lord *Mobun* was in the Coach; I saw him in the Coach.

Mr. Att. G. Did you see any Arms in the Coach?

Mr. Page. I saw no Arms, but I saw a Bundle in the Coach, tho' I could not tell what it was; and there was one in the Coach, that I saw was my Lord *Mobun*. So when we had got Help, we went down the Lane to convey her Home, and *Captain Hill* was with us, and my Lord *Mobun* followed at a Distance. *Captain Hill* said to the Soldiers, *Be gone, I have nothing more to do with you now.* When we came to the House, and *Mrs. Bracegirdle* was entering in, *Captain Hill* pull'd me by the Sleeve, and said he would speak with me. Said I, To Night is not a fit time, to morrow is better, therefore pray stay till to morrow Morning. But said he, *God damn me, you will not go home to Night.*

L. H. Stew. You speak so low, that I cannot tell what you say; I did not hear that last that you said.

Mr. Page. My Lord, I say, when *Captain Hill* pull'd me by the Sleeve, and said he would speak with me, I told him that, Night was not a fit time, to morrow would do better: Well, saith he, *To morrow then; but, God damn me, you will not go out to Night:* I went in a Doors, and there my Lord *Mobun* and he staid for an Hour and a half, as I was told; I saw them not my self: But *Mrs. Browne* came in and said, that they said they waited to be revenged.

Mr. Att. G. Whom did they mean, yourself that they would be revenged of?

Mr. Page. *Mrs. Browne* said, they waited for *Mr. Mountford*.

Mr. *Att. Gen.* Did you continue in that House till after the Murder was committed?

Mr. *Page.* Yes, Sir, I did.

L. *H. Stew.* How long after you came into the House was the Fact done?

Mr. *Page.* About an Hour and an half.

L. *H. Stew.* Did you yourself hear or observe any thing to be said or done, from the time you came into the House, to the time the Fact was committed?

Mr. *Page.* No, my Lord, I was in the Back-Room of the House.

Mr. *Att. Gen.* Pray, Mr. *Page*, did you see Mr. *Mountford* after he was wounded?

Mr. *Page.* Yes, I did.

Mr. *Att. Gen.* Then give my Lords an Account of what passed at that Visit.

Mr. *Page.* Upon the Out-cry of Murder, I came into the Street, where I found my Lord *Mohun* just surrendring himself to the Constable; and immediately I went to Mr. *Mountford's* House, and I found him lying all along in his Blood upon the Floor; he seeing me, desired me to lift him up, which I did, and thinking he had been dying, I ask'd him whether he knew me. He said, Yes. Said I to him, Had you time to draw your Sword in your Defence? He said, *He was barbarously run through before he could draw it.*

Mr. *Att. Gen.* Is this all you have to say, Sir?

Mr. *Page.* Yes.

L. *H. Stew.* Will your Lordship ask this Witnesses any Questions?

L. *Mohun.* My Lord, I desire he may be ask'd whether my Sword was drawn when I surrendred myself to the Constable.

Mr. *Page.* No, my Lord, your Sword was in the Scabbard when you surrendred yourself, but I cannot say whether your Sword was drawn before, or not.

Mr. *Att. Gen.* The next Witnesses that we desire to call, is Mrs. *Page.* (*She was sworn.*)

L. *H. Stew.* What is the Name of this Witness?

Mr. *Att. Gen.* Mrs. *Mary Page.* Pray Mrs. *Page*, do you remember the Night when Mrs. *Bracegirdle* supped at your House, and Mr. *Mountford* was killed? Acquaint my Lords with all you did observe that Night.

Mr. *Page.* Mrs. *Bracegirdle* supped at my Lodging, and my Husband went home with her, and staying something longer than ordinary, I sent my Servant to know what was the Reason of it: He brought me Word back, that my Husband had like to have been murdered, and Mrs. *Bracegirdle* carried away. With that I went down myself towards Mrs. *Bracegirdle's* Lodgings, and there I found my Lord *Mohun* and Mr. *Hill* walking, Mr. *Hill* with his Sword drawn, before Mrs. *Bracegirdle's* Door; my Lord *Mohun's* not. So I went in, into the House; and after I had staid a while there, Mrs. *Browne* came out to them, and asked them, Why they staid there? They made Answer, they staid for Mr. *Mountford.*

Mr. *Att. Gen.* Who made that Answer?

Mr. *Page.* Mr. *Hill.*

Mr. *Att. Gen.* Who was with Mr. *Hill* at that time?

Mr. *Page.* My Lord *Mohun.*

Mr. *Att. Gen.* Was there any body besides those two that you observ'd?

Mr. *Page.* No, there was no-body else that I saw.

Mr. *Att. Gen.* Were their Swords drawn?

Mrs. *Page.* Mr. *Hill's* then was, my Lord *Mohun's* at that present was not: But Mrs. *Bracegirdle* hearing that they waited for Mr. *Mountford*, desired me to go over to Mrs. *Mountford's* House, and speak to her to send to her Husband, and desire him to keep where he was, or come home with a good Guard. Whilst I was telling Mrs. *Mountford* what I was desired to tell her — But I should have told your Lordships, that when I came out to go to Mrs. *Mountford*, my Lord *Mohun* had then his Sword drawn.

Mr. *Att. Gen.* Where they there when you went out of Mrs. *Bracegirdle's* Lodgings?

Mrs. *Page.* Yes, they were.

Mr. *Att. Gen.* And are you sure, that at that time when you went out of Mrs. *Bracegirdle's* House, my Lord *Mohun* had his Sword drawn?

Mrs. *Page.* I am sure of it, that when I went out, my Lord *Mohun* had then his Sword drawn; that was the second time.

L. *H. Stew.* Out of whose House was that you went?

Mrs. *Page.* Out of Mrs. *Bracegirdle's* Lodgings.

L. *H. Stew.* Where were they when you saw his Sword drawn?

Mrs. *Page.* They were walking before Mrs. *Bracegirdle's* Door, from one End of the Street to the other.

Mr. *Att. Gen.* What Street is that?

Mrs. *Page.* *Howard-Street.*

Mr. *Att. Gen.* Pray describe to my Lords that Street.

Mrs. *Page.* They that stand in that Street, can see who goeth down to Mr. *Mountford's* House, and who goeth up *Surrey-Street.*

Mr. *Att. Gen.* Well, now go on.

Mrs. *Page.* Whilst I was desiring Mrs. *Mountford* to send away to her Husband, I heard Murder cried out; immediately I open'd Mr. *Mountford's* Door, and he came in, and fell with his Arms round about my Neck to support himself, I suppos'd; and he said, *Hill* had murder'd him. I help'd him as far as the Parlour-Door, and there down he fell. I went up the Street and called out *Murder*, and my Lord *Mohun* came to me, and bid me take notice, he had no Hand in the Murder, for his Sword was not drawn. I told him, I could not tell that, for to my Knowledge he had been in Mr. *Hill's* Company with his naked Sword just before.

Mr. *Att. Gen.* Call Mrs. *Browne.*

L. *H. Stew.* You have nothing to say to that Witnesses, my Lord; have you?

L. *Mohun.* No, my Lord.

Mr. *Att. Gen.* Is this all you have to say, Mrs. *Page*?

Mrs. *Page.* After this, my Lord *Mohun* resign'd himself up to the Constable; the Constable standing by me, I bid him secure my Lord *Mohun*, which he did.

L. *Mohun.* My Lord, I desire to ask this Witness, whether I surrendred myself, or made Opposition, or offered to run away?

Mrs. *Page.* No, my Lord, the Constable laid hold on you.

L. *H. Stew.* What Answer do you make to my Lord's Question?

Mrs. *Page.* I say, my Lord, the Constable laid hold upon my Lord *Mohun.*

L. *Mohun.* I desire to ask her, whether I did not surrender myself?

Mrs. Page. Not till I had desired the Constable to secure your Lordship.

L. Mobun. Did I make any Opposition, or offer to run away?

Mrs. Page. No, for the Constable presently took hold of your Lordship.

L. Mobun. I desire she may be asked whether Hill run away.

Mrs. Page. That I know not; I suppose he was gone away out of the Street before I came forth.

Mr. Att. Gen. Swear Mrs. Browne.
(Which was done.)

Mr. Att. Gen. Mrs. Browne, you are upon your Oath, pray declare to my Lords what you know happen'd upon that Night that Mr. Mountford was kill'd.

Mrs. Browne. If it please your Lordships, when Mrs. Bracegirdle came Home, I found her crying; I asked her what was the Matter? She said, My Lord Mobun and Mr. Hill, had run her into a Coach, with six or seven Soldiers, and lifted her into the Coach, and she said they were at the Door. Upon which, I went to the Door, and saw my Lord Mobun and Mr. Hill walking along. Said I, are you the Gentlemen that have uted Mrs. Bracegirdle in this Manner? my Lord Mobun answered; Madam, said he, *I protested her; if it had not been for me, the Rabble would have torn her a Pieces; for if we had a mind to carry her away, we had six or seven Pistols charged in the Coach, and could easily have suppressed the Tumult.*

L. H. Stew. I do not hear what the Witness saith, she speaketh so low.

Mrs. Browne. My Lord Mobun said, they had six or seven Pistols in the Coach, and could easily have suppressed the Rabble, if they would have carried her away; but he had no Design upon her for his own Part, but only to serve his Friend; and that Mr. Hill's Design was to take her out of Town, and keep her a Week, and see if he could persuade her to marry him; and saith Mr. Hill, *I shall light upon this Mountford.* Why said I to him, What hurt hath Mr. Mountford done you? Saith he, *I have been abused, and I will be revenged.*

L. H. Stew. That was Hill that said so.

Mrs. Browne. Yes. So I went and told Mrs. Mountford of it.

Mr. Att. Gen. Pray acquaint my Lords what my Lord Mobun said to you about this Matter.

Mrs. Browne. My Lord Mobun said, he protected her, for if it had not been for him, the Mob had torn her in Pieces; but if they had a mind to carry her off, they could easily have suppressed the Mob, for they had six or seven Pistols in the Coach: But, saith my Lord, *I had no Design upon her myself, but only to serve my Friend.* So saith Mr. Hill, *I shall light upon this Mountford.* Why, said I, what hurt hath Mr. Mountford done you? Saith he, *I have been abused, and I will have my Revenge.* So I went and told Mrs. Mountford of it. About half an Hour after, or more, Mr. Mountford came down, and when he came down, I saw him a little before he came to them, and went to him, and would have fain have spoke to him, but he would not stay to let me speak what I had to say to him, but going on, presently he met my Lord Mobun. Saith he, *Your humble Servant, my Lord.* Saith my Lord again, *Your Servant, Mr. Mountford.* Saith my Lord, *I have a great Respect for you, Mr. Mountford, and would*

have no Difference between us; but there is a Thing fallen out between Mr. Hill and Mrs. Bracegirdle. Saith Mr. Mountford, *My Lord, has my Wife disoblighed your Lordship? if she has, she shall ask your Pardon; but as for Mrs. Bracegirdle, she is no Concern of mine; and I hope your Lordship will not vindicate such an ill Man as Mr. Hill in such a Matter as this.* Upon that I heard Mr. Hill bid Mr. Mountford draw, Mr. Mountford said, *That I will;* and drew his Sword; but whether he received his Wound before he drew his Sword, or after, I cannot tell.

L. H. Stew. Speak that last again.

Mrs. Browne. Mr. Mountford and my Lord met; saith Mr. Mountford, Your Servant, my Lord; saith my Lord, Your Servant Mr. Mountford, I have a great Respect for you, and would have no Difference be between us; but here has been a thing fallen out between Mrs. Bracegirdle and Mr. Hill: Saith Mr. Mountford presently again, Has my Wife disoblighed your Lordship? If she has, she shall ask you Pardon. But Mrs. Bracegirdle is no Concern of mine: I know nothing of this Matter, I come here by Accident.

Mr. Att. Gen. Who said they came there by Accident?

Mrs. Browne. Mr. Mountford said, I know nothing of this Matter, I come here by Accident. But, I hope your Lordship will not vindicate Hill in such Actions as these are: Upon that, I heard Mr. Hill bid Mr. Mountford draw; Mr. Mountford said he would, and drew his Sword; but whether he received his Wound before or after, I cannot tell; it was in the Night.

Then the Lord Godolphin stood up.

L. H. Stew. My Lord Godolphin.

L. Godolphin. My Lord Steward, I desire this Witness may be ask'd, Whether my Lord Mobun's Sword was drawn when he talk'd with Mountford, because the Council opened it before, that the Watch came to them, and saw them with their Swords drawn when they were walking in the Street.

L. H. Stew. Mistress, you heard my Lord's Question: Was my Lord Mobun's Sword drawn whilst he talked with Mountford, or no?

Mrs. Browne. I do not remember I did see my Lord Mobun's Sword drawn.

Mr. Att. Gen. Were they near together?

Mrs. Browne. They were near together.

L. Mobun. I desire she may be asked whether I went up the Street to meet Mr. Mountford, or he came down to me?

L. H. Stew. You heard the Question, Mistress, what say you?

Mrs. Browne. Mr. Mountford came down to him.

L. Mobun. I desire she may be asked whether she did not go to hinder Mr. Mountford from coming that way?

Mrs. Browne. Yes, I did go to speak to him, but he did not hear me speak, or did not hearken to me; I took him by the Hand, and told him I would speak with him, but he did not hear me, but went on.

Mr. Att. Gen. You did not tell him upon what account you would have spoke with him?

Mrs. Browne. No, I had no time.

L. Mobun. I desire she may be asked, whether Mr. Mountford's Sword was within his Arm, or by his Side.

Mrs. Browne. I believe it was by his Side.

L. Mohun. I desire she may be asked one Question more, whether he could not have went home, without coming to Mr. Hill and me?

Mrs. Browne. He did come out of his way; his way was not by my House; he did come down the Street towards them.

L. Mohun. I desire your Lordships to take notice, that he came out of his way to me. I desire to ask her: Did he come as if he was going to his own House, or yours?

Mrs. Browne. As if he was coming to mine.

L. Mohun. I desire to ask her, Whether I had any hand in killing Mr. Mountford, or went to hold him, or meddled with him?

Mrs. Browne. Not that I did see.

L. H. Stew. Have you any more to say to this Witness?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Nor your Lordship?

L. Mohun. No, my Lord.

Mr. Att. Gen. Then the next Witness we desire to call, is Richard Row. (*Who was sworn.*)

Mr. Att. Gen. Richard Row, where do you live?

Row. In *Surrey-Street*.

L. H. Stew. Where doth he live, saith he?

Mr. Att. Gen. In *Surrey-Street*, my Lord. Pray how near is that to the Place where Mr. Mountford was kill'd?

Row. About ten or twelve Pole.

Mr. Att. Gen. Did you observe my Lord Mohun and Mr. Hill that Night, and where were they?

Row. All that I can say to the Matter in that Case is, I was in my own House about a quarter after Ten a Clock, and I heard a Noise in the Street, and I went out, and saw two Gentlemen and two Lads about the Middle of the Channel; one of the Lads had one of the Gentlemen by the Arm, just by the Channel, and said, *Pray my Lord, good my Lord, don't do it, alter your Resolution.* There was an Answer made, that they would be revenged that Night, or To-morrow.

Mr. Att. Gen. Do you know who the Boy was that used that Expression?

Row. No, my Lord, it was very dark.

Mr. Att. Gen. Do you not know neither who returned the Answer?

Row. No indeed.

Mr. Att. Gen. But you are sure you heard those Words pass?

Row. Yes, indeed, and I went to the Door afterwards, whilst they went to the Upper-end of the Street and returned again; and I saw Capt. Hill's Boy following him. My Lord, I knew Capt. Hill, though he was not in the Cloaths he formerly used to come to my House in, and the Boy I knew to be his Boy.

Mr. Att. Gen. Were those Persons together that you heard speaking so?

Row. Yes, all four together, in a Confusion they seemed to be, for they were pushing to and again, and the Boy had hold of one of the Gentlemen's Arms when he bid him alter his Resolution.

Mr. Att. Gen. Repeat those Words again that you heard him say.

Row. *Pray my Lord, good my Lord, do not do it, alter your Resolution.*

L. H. Stew. Has your Lordship any thing to ask this Witness?

L. Mohun. No, my Lord.

Row. I spoke of this same afterwards, and so they have brought me here to give Evidence: That is all that I can say. I cannot swear to my

Lord Mohun, that he was one, I do not know that ever I saw him to my Knowledge in my Life.

E. of Mulgrave. My Lord Steward, I desire he may be asked, whether he knoweth who that Boy was that made that Answer.

Row. There was no Answer made by any Boy, but begging and praying, *That my Lord would not do it.*

E. of Mulgrave. Do you know who that Boy was?

Row. No, I do not know what Boy it was. But when I heard Mr. Mountford was killed, and my Lord Mohun was concerned, I told what I had heard and seen, and so they bring me here to evidence it. That is all I can say to the Matter.

Mr. Att. Gen. My Lord, we desire next to call some of the Watch, and shall begin with Merry. (*Who was sworn.*)

L. H. Stew. What is his Name?

Mr. Att. Gen. William Merry. Mr. Merry, I think you are Beadle of the Parish.

Merry. Yes, I am.

Mr. Att. Gen. Pray acquaint my Lords what you observed that Night Mr. Mountford was killed, when you saw my Lord Mohun and Mr. Hill, the first time; and the second time, when my Lord Mohun was taken.

Merry. When I first came down the Street, walking the Rounds between Eleven and Twelve a Clock, as I turned at the Corner out of *Surrey-Street* into *Howard-Street*, I saw my Lord Mohun and Capt. Hill walking, that is, upon the paved Stones; my Lord was walking towards me, and I asked, Who comes there? Saith my Lord, A Friend. Said I, What is the meaning of your Swords being drawn? Return your Swords, and stand off. With that, he returned his Sword immediately. Saith he, *I am a Peer of the Land; here, will you have my Sword?* and he proffered me his Sword; but the Constable was not there then, and I did not take his Sword; but, said I, God bless your Honour, my Lord, I know not what you are, but I hope you are doing no Harm; No, saith he. With that, the Constable came immediately, and he proffered the same to him; there were two Candles in some Maids or Womens Hands at a Door hard by, and I went to ask them if they knew the Meaning of it; and there being a Neighbour's Man leaning with a Bottle and a Glass against the Wall, whom I knew. I think they told me one of them had a Sweet-heart there; and my Lord said, he was drinking a Lady's Health, and as soon as his Bottle was out, he would be gone. That is all I heard of the Matter.

Mr. Att. Gen. Was Mr. Hill there?

Merry. Yes, he was.

Mr. Att. Gen. Was his Sword drawn?

Merry. Yes, his Sword was drawn, and I asked what made that Gentleman with his Sword drawn? and my Lord Mohun said, he had lost his Scabbard; but seeing this Neighbour's Man stand there, I went to the House.

Mr. Att. Gen. Were both their Swords drawn at first?

Merry. Both their Swords were drawn when I came first into the Street; but my Lord put up his Sword, and the other continued drawn, by reason as they said, he had lost his Scabbard. And so seeing, as I said, my Neighbour's Man standing there, we went to that House to enquire if they knew what their Business was; we

were not got into the House, I am sure not a Stone's cast within the House, but Murder was cried out, and we came back again, and my Master being nimbler of Foot than I, because he was a younger Man, came first into the Place, and seized my Lord before I came; how the Seizing was I do not know.

Mr. Att. Gen. Our next Witness is *Thomas Fennell*. (*Who was sworn.*)

Mr. Att. Gen. *Fennell*, you was one of the Watch that Night when Mr. *Mountford* was killed.

Fennell. Yes, Sir.

Mr. Att. Gen. Give my Lords an Account what you observed that Night, in relation to my Lord *Mobun* and Mr. *Hill*.

Fennell. The Constable and his Watch going the Rounds, divided themselves into two Parts; I went down *Surrey-Street* with one Party; the Constable he went down *Strand-Lane* with the other Party. We were four or five that came down *Surrey-Street*, and when we came down, my Lord *Mobun* and Capt. *Hill's* Swords were both drawn; my Lord *Mobun* put up his Sword just as we came down.

L. H. Stew. Speak out Man, that my Lords may all hear you.

Fennell. I say, the Constable and his Party went down *Strand-Lane*, and another Party down *Surrey-Street*, four or five of us, and my Lord *Mobun* and Capt. *Hill* had both their Swords drawn: When we came down, my Lord put up his Sword just as we came down, but the Constable not being come, I went and called him.

Mr. Att. Gen. You say both their Swords were drawn when you came down?

Fennell. Yes, but my Lord put up his Sword just as we came down.

Mr. Att. Gen. What time of Night was that?

Fennell. It was between Eleven and Twelve.

Mr. Att. Gen. How long before the Murder was committed?

Fennell. A quarter of an Hour.

L. H. Stew. Do you not say, they put up their Swords as soon as you came down?

Fennell. My Lord *Mobun* put up his Sword, but *Hill* said he had never a Scabbard.

Mr. Att. Gen. Did you ask them why they had their Swords drawn at that time of Night?

Fennell. No, I went to call the Constable.

L. H. Stew. Have you any more to ask of this Witness?

Mr. Att. Gen. I have not, my Lord.

L. H. Stew. Nor you, my Lord?

L. *Mobun*. No, my Lord.

L. H. Stew. Pray go on then; whom do you produce next?

Mr. Att. Gen. Our next Witness is *James Bassit*. (*Who was sworn.*)

Mr. Att. Gen. Were you one of the Watch that Night Mr. *Mountford* was killed?

Bassit. Yes.

Mr. Att. Gen. Did you see my Lord *Mobun* and Capt. *Hill* that Night?

Bassit. Yes.

Mr. Att. Gen. Acquaint my Lords where it was, and in what manner you found them.

Bassit. In *Howard-Street*; I came along with the Constable, and I walked before them that went down *Surrey-Street* with my Lanthorn, and there was my Lord *Mobun* with his Sword drawn, and Captain *Hill* with his like: We asked them what they did there? They said they were

drinking of a Bottle of Wine: *Hill* said to me, You may knock me down if you please: Nay, said I, we never use to knock any Gentlemen down, unless there be Occasion; and then we went into *Norfolk-Street* to the Tavern to examine what they were, and what they were doing; and in the mean time the Murder was done.

Mr. Att. Gen. Did you not ask them why their Swords were drawn?

Bassit. Yes, I did.

Mr. Att. Gen. What did they say?

Bassit. *Hill* made Answer, that he had lost his Scabbard.

Mr. Att. Gen. What said my Lord *Mobun*?

Bassit. My Lord *Mobun* had put up his Sword by that time we came up to him: That is all I can say to it.

L. H. Stew. If you have nothing more to ask him, call another.

L. *Mobun*. My Lord, I desire he may be asked whether he came with the Constable when I surrendered myself?

Bassit. Yes, and I took hold of your Sleeve, and you shook, and quak'd, and trembled, as if you would tear it to pieces.

L. *Mobun*. I desire he may be asked, whether my Sword was in the Scabbard when I surrendered myself?

Bassit. Yes, it was, he surrendered it.

L. H. Stew. That was after the Murder was done.

Mr. Att. Gen. With your Lordship's Favour, I desire he may answer my Lord *Mobun's* first Question again, so as to be heard by your Lordships; What was that you were saying when my Lord surrendered himself?

Bassit. I took him by the Arm when he surrendered himself up.

Mr. Att. Gen. What then?

Bassit. Then he quaked, and I had him to the Round-House.

L. H. Stew. Hear my Question; You say you took him by the Sleeve, when he surrendered himself; what do you mean by that? is it that he had surrendered himself before you laid hold on him, or afterwards?

Bassit. I took hold of his Arm, when he surrendered himself.

L. H. Stew. But was it before he surrendered himself to the Constable?

Bassit. No, it was afterwards, my Lord; to have him away.

L. H. Stew. Then you did see him surrender himself to the Constable?

Bassit. Yes, my Lord.

Mr. Att. Gen. Then call Mr. *Charles Knowles*; But he did not appear.

L. H. Stew. Whom do you call next, Sir?

Mr. Att. Gen. My Lords, we call'd Mr. *Charles Knowles*; but they say, he is not come; therefore, with your Lordships Favour, we will call Mrs. *Brewer*. (*Who was sworn.*)

Mr. Att. Gen. Mrs. *Brewer*, I think, you live at the next Door to Mrs. *Bracegirdle's* Lodging?

Mrs. *Brewer*. Yes, I do so.

Mr. Att. Gen. Pray give my Lords an Account what you saw and heard that Night Mr. *Mountford* was kill'd.

Mrs. *Brewer*. I was at Mrs. *Bracegirdle's* House, and I went to the Door with them; and just as I went to the Door, my Lord *Mobun* came up to me; just as he came to the Door, Mr

Mountford came down the Street, and my Lord went to him, and imbraced him, and said, Mr. *Mountford*, Your humble Servant, I am glad to see you. Who is this, said Mr. *Mountford*, my Lord *Mobun*? Yes, said my Lord. What makes your Lordship here at this time a Night, said Mr. *Mountford*? Saith my Lord again, I suppose, Mr. *Mountford*, you was sent for. Sent for, for what, said he? You have heard of the Business of Mrs. *Bracegirdle*, I suppose, said my Lord: No, my Lord, said he, I come by Chance.

Mr. *Att. G.* Who said that?

Mrs. *Brewer.* Mr. *Mountford*, Sir.

Mr. *Att. G.* Well, go on, and speak aloud.

Mrs. *Brewer.* My Lord, Mr. *Mountford*. — *And there she hesitated, and seemed to be in a Confusion.*

Mr. *Att. G.* She is not used to such publick Examinations: If your Lordships will please to allow her to begin, because she is in some Confusion, she will be the better able to give you what Account she can of this Matter.

L. *H. Stew.* Let her recollect herself, and begin again.

Mrs. *Brewer.* When Mr. *Mountford* came down the Street, I stood at the Door, and my Lord *Mobun* was come to the Door, and my Lord *Mobun* went to him and said, Mr. *Mountford*, your humble Servant, I am glad to see you, and embraced him. Saith Mr. *Mountford*, *Who is this, my Lord Mohun? Yes, said he, it is. What maketh your Lordship here at this time of Night?* said my Lord *Mobun*, *I suppose you are sent for*, Mr. *Mountford*. No indeed, said he, *I came by Chance*. Saith my Lord, *You have heard of the Business of Mrs. Bracegirdle*. With that, after he had said this, Mr. *Hill* cometh up, and said, *Pray, my Lord, hold your Tongue, this is not a convenient Time to discourse this Business*, and would have drawn my Lord away. Saith Mr. *Mountford*, *I am very sorry my Lord, to see that your Lordship should assist Capt. Hill in so ill an Action as this; pray let me desire your Lordship to forbear*. Upon this, as soon as he had said so, Mr. *Hill* came up and struck Mr. *Mountford* a Box on the Ear. Saith Mr. *Mountford*, *Damne, what's that for?* And with that, he whipped out his Sword, and made a Pass at him, and I turned about and cry'd out *Murder, Murder*.

Mr. *Att. G.* But you say, you saw *Hill* draw his Sword, and make a Pass at him?

Mrs. *Brewer.* No, his Sword was drawn before; but he, immediately after the Box on the Ear, made a Pass at him, and I turned about and cry'd *Murder*.

Mr. *Att. G.* Had Mr. *Mountford* his Sword drawn at that Time?

Mrs. *Brewer.* No, he had not.

Mr. *Att. G.* Are you sure he had not?

Mrs. *Brewer.* Yes, I am sure he had not, for as soon as he struck the Blow, he made a Pass at him.

Mr. *Att. G.* Was my Lord present at that Time?

Mrs. *Brewer.* He stood just by on the Right-hand.

Mr. *Att. G.* How near to them?

Mrs. *Brewer.* They were all close together, as well as I could discern.

L. *H. Stew.* My Lord, have you any mind to ask this Witness any Questions?

L. *Mobun.* No, my Lord.

L. *H. Stew.* Have you done with her?

Mr. *Att. G.* Yes, my Lord. The next Witness we desire to call is Mr. *Davenport*, the Constable. (*Who was sworn.*)

L. *H. Stew.* Well, what said this Man?

Davenport. The Ninth of *December* last at Night, as I was walking my Rounds between eleven and twelve a Clock, I divided my Watch into two Parts, one was to go down one Street, and the other another, and coming into *Howard-street*, my Beadle happened to be there before me, and he had spied them, as he told me, with their Swords drawn: As soon as I came up, my Lord *Mobun* very civilly (his Sword not being then drawn) proffered to surrender his Sword to me, and said, he was a Peer of the Realm. I asked the other Man what he did with his Sword drawn? and he made answer, he had lost his Scabbard in *Drury-lane*. With that I found them very civil, and I heard some Women at the Door, and they said, they were Serenading them with a Bottle of Wine. There was a Drawer there that I knew, who formerly lived over-against me, and then lived at the *White-horse* Tavern; so I left them (finding them very civil) and went to the *White-horse* Tavern to examine what the Business was; they told me, they were there a drinking, and before I had spoken three Words almost to the Man of the House, the Watch was called, and when we came, Mr. *Hill* had made his Escape, and so I secured my Lord *Mobun*.

Mr. *Att. G.* What was the Occasion of calling the Watch?

Davenport. They cried out *Murder* in the Street; So I took my Lord *Mobun*, and carry'd him to the *Round-house*, where we kept him all Night.

Mr. *Att. G.* I think you say, when you first came my Lord *Mobun*'s Sword was not drawn.

Mr. *Davenport.* It was put up then, but the Beadle said they were both drawn before.

Mr. *Att. G.* You did not see them so soon as your Beadle?

Davenport. No, he was there before me.

Mr. *Att. G.* Then acquaint my Lord what was done, after you had secured my Lord *Mobun*.

Davenport. After I had taken him, I carried him to the *Round-house*, and when we came there, he asked me, If *Hill* was taken? I said no; and said I, My Lord, this is a bad Misfortune you are happen'd into; and he said, *God Damn me, I am glad he is not taken, but I am sorry he has no more Money about him; I wish he had some of mine; and, I do not care a Farthing if I am hang'd for him.*

L. *Mobun.* My Lord, I desire he may be asked whether I offered to fly?

Davenport. No, my Lord, I do not say you did, but you know, my Lord, you said this to me.

L. *H. Stew.* But, Mr. *Davenport*, did not my Lord surrender himself to you?

Davenport. Yes, my Lord, mighty civilly.

Mr. *Att. G.* Did my Lord say any thing to you about changing of Coats?

Davenport. He said, they had changed Coats three or four several times that Day, and at the same time he had *Hill*'s Coat upon his Back; and I asked him, If he knew where *Hill*'s Lodging was? and he told me; and I went to his Lodging with my Watch; and when we came there, we searched the House, but did not find him there; but Captain *Hill*'s Boy came in whilst we were there; so with that, I secured the Boy, and searched

searched him, and found Gunpowder and Ball about him; and I have *Hill's* Sword in the Court, and Mr. *Mountford's*, and my Lord's.

L. Mobun. I desire he may be asked, whether *Mountford's* Sword was not broke in the Street, or whether he carried it away.

Davenport. I took up a Piece my self, and a Servant Maid took up another in the Street.

L. Mobun. I desire he may be asked, whether Mr. *Mountford's* Sword, when it was found, was in the Scabbord or not?

Davenport. No, it was not; I saw no Scabbord.

L. H. Stew. My Lord, you ask the Questions so fast, that we do not hear the Answers. Was not your first Question, whether *Mountford's* Sword was not broken?

L. Mobun. Yes, my Lord.

L. H. Stew. What Answer giveth he to that?

Davenport. I do not know when it was broken; but by the Report of People that were there by, it was said, Mr. *Mountford* made a Pass, and at the first Pass, his Sword was broken? and I went with a Lanthorn, and according as they said, I found a Piece of a Sword, and I took it up my self.

L. H. Stew. What is your next Question, my Lord?

L. Mobun. I would ask him in what Part of the Street he found the Piece of the broken Sword.

L. H. Stew. You heard the Question, what say you?

Davenport. It was in the High-way in the Street.

L. H. Stew. My Lord *Mobun*, what do you mean by that Question?

L. Mobun. Whether it was in the Middle of the Street towards *Surry-Street* or *Norfolk-street*, or near Mrs. *Braccgirdle's* Lodging, or upon the Pavement?

Davenport. It was over against the Door where you stood.

L. Mobun. How far might it be from where I stood? I desire he may be asked that.

L. H. Stew. You hear my Lord's Question, answer it.

Davenport. He was walking up and down when I came to take him; and I took the Piece of the Sword up in the High-way; he was walking on the Pavement, the broad Stones.

L. H. Stew. Have you done with that Witness?

Mr. Att. G. Yes, my Lord. Is Mr. *Charles Knowles* come? (*He did not appear.*)

Mr. Att. G. Then we desire to call Mr. *Bancroft* the Chyrurgeon, and Mr. *Hunt*.

L. H. Stew. Who do you examine first?

Mr. Att. G. We begin with Mr. *Bancroft*.

(*Who was sworn.*)

Mr. Att. G. You attended upon Mr. *Mountford*, Mr. *Bancroft*, when he was wounded?

Bancroft. Yes, my Lord.

Mr. Att. G. Pray acquaint my Lords what you know of this Matter.

Bancroft. My Lord, upon the ninth of *December* last at Night, between the Hours of twelve and one, I was knocked up to go to Mr. *Mountford*, whose Servant came for me, and told me he was a dying of a Wound he had received. So I came to his House, and found him very desperately wounded; it went in and out by his Back-Bone, behind his left Side. I told him what he must expect, that he was a dead Man. I attend-

ed him that Night, till about four a Clock in the Morning, and then I took my Leave of him, and went home: About eight a Clock in the Morning I came thither again, and met Mr. *Hobbs* there, and he was of the same Opinion. He lived till about one, and then he died.

Mr. Att. G. What Discourse had you with Mr. *Mountford*?

Mr. Bancroft. About ten a Clock I was sent for by the Constable to come to *Hicks's*-Hall, to be examined there before the Justices; and being then with Mr. *Mountford*, and some Company being there, Mr. *Powell* (as I take it) was one; I said to Mr. *Mountford*, I suppose where I am going, I shall be asked some Questions about what you may have said to me, you are now upon the Brink of Eternity, and pray answer me truly, who gave you this Wound, was it Mr. *Hill*, or my Lord *Mobun*? Said he, *My Lord Mohun offered me no Violence, but whilst I was talking with my Lord Mohun, Hill struck me with his left Hand, and with his right Hand ran me through before I could put my Hand to my Sword.*

Mr. Att. G. Did he tell you his Sword was drawn?

Bancroft. He did not say, it was or not, but that *Hill* struck him with his left Hand, and, at the same Time, run him through with his Right, before he could put his Hand to his Sword.

Mr. Att. G. Did he tell you my Lord *Mobun's* Sword was drawn?

Bancroft. The Words were these, as near as I remember, My Lord *Mobun* offer'd me no Violence, but whilst I was talking with him, *Hill*, with his Left-Hand, struck me, and with his Right run me through, before I had time to put my Hand to my Sword.

Mr. Att. G. Did he tell you he had his Sword drawn at all afterwards?

Bancroft. No, not a Word of that, that I heard.

L. H. Stew. My Lord *Mobun*, have you any thing to say to him?

L. Mobun. No, my Lord.

(*Then Mr. William Hunt was sworn.*)

Mr. Att. G. Mr. *Hunt*, you have heard what Mr. *Bancroft* was examined to, do you give an Account what you know in relation to this Business.

Hunt. I was sent for to Mr. *Mountford* when he lay very ill; and I then asked him the Manner of his being hurt, he said, *My Lord Mohun spoke to me, but Hill run me through before my Sword was drawn.* I asked him, Whether he had time to draw his Sword? And he said, *Hill was in me, and was through me, before my Sword was out;* and this he repeated again about twelve a Clock, about half an Hour before he died the next Day.

L. H. Stew. Will you ask him any thing else, Mr. Attorney?

Mr. Att. G. We shall ask him no more Questions, my Lord.

L. H. Stew. Will you ask him any, my Lord *Mobun*?

L. Mobun. No, my Lord.

L. H. Stew. Then have you any more Witnesses?

Mr. Att. G. My Lord, I do not hear that Mr. *Knowles* is come yet; and if he be not come, we have no more Witnesses to examine; if he does come, we must beg Leave that we may examine him.

L. H. Stew. You know that the Court cannot

Day; for after you have done on both Sides, my Lords are to withdraw, and we are not to sit here in Expectation of your Witnessess.

Mr. *Att. Gen.* My Lord, we do not expect that; if my Lord *Mobun* please to examine any Witnessess on his Part, and it happen that the Witness should come before my Lord has made an End, we hope your Lordships will favour us so far, as that we may examine him.

L. *H. Stew.* My Lord *Mobun*, if you have any Witnessess to be examined, now is your time to call them.

L. *Mobun.* I desire first, Mr. *Hill's* Foot-Boy may be called.

L. *H. Stew.* Name him. (*He came to the Bar.*)

L. *Mobun.* My Lords, if you please, I desire Mr. *Brereton* may be called first, because I would prove to your Lordships, and shew you I had no Malice to Mr. *Mountford*.

L. *H. Stew.* I thought you had called that Boy first.

L. *Mobun.* That was a Mistake, my Lord, this Gentleman Mr. *Brereton*, I desire may be first examined.

Mr. *Brereton.* My Lord, I know nothing as to this Matter of Fact, for I had not seen my Lord *Mobun* of two or three Days before.

L. *H. Stew.* What do you examine this Witness to, my Lord?

L. *Mobun.* To shew that I had no Malice against Mr. *Mountford*, but spoke kindly of him several times.

Mr. *Brereton.* I had not seen my Lord *Mobun* for two or three Days before this Fact was committed, and therefore can give no Account of what happened then; but the *Friday* before, the Play of *Alexander the Great* was acted, and my Lord *Mobun* and I were at the *Play-house*, and he and I went to Supper together, and we were talking of the Play, and he said it was a good Play, and commended several Parts in it, and particularly the Acting; and he commended Mr. *Mountford's* Acting extremely: I said, I thought he never acted so well in his Life before; but my Lord spoke particularly very kind Things of Mr. *Mountford*, that he thought him a very good Actor. I answered, as to Comedy he did use to act very well, but I thought he would never make so good a Tragedian as Mr. *Betterton*, or some others. But my Lord before this, had used to commend Mr. *Mountford* and speak kindly of him: And he said, that several of the Players had been very rude to him, more than their Business did require of them; but Mr. *Mountford* had been more civil than any of the rest. Upon this, my Lord *Mobun* was pleased to ask me, Whether I was acquainted with Mr. *Mountford*? I told him, I never was in his Company but once with Mr. *Bludworth*. Saith, my Lord, I have a great mind to drink a Bottle of Wine with him. Said I, I do not think him worth your Acquaintance, but you may do what you will. Several Things more my Lord said, and spoke more kindly of him than any of the rest of the Players; but there was no Time fix'd for drinking with him. Upon *Tuesday* after my Lord *Mobun* came to my Lodgings, and told me, Mr. *Mountford* had been very civil to him the Night before at the *Play-house*, when the rest were very rude to him; and he had a mind to drink a Bottle of Wine with him. Saith he, I am going about some Business to *Kensington*, but

within a Day or two you shall certainly hear of me, and we will fix a Time for it, and if I do not like his Company, I will never trouble you, nor my self more with it.

L. *H. Stew.* When was this, Sir?

Brereton. This was the *Tuesday* before; the first Discourse was upon the *Friday* before.

(*Then the Boy was examined.*)

L. *Mobun.* Was you along with me and Mr. *Hill*, that Night Mr. *Mountford* was killed?

L. *H. Stew.* My Lord, you must propose your Questions to me, and I will ask them.

Mr. *Att. Gen.* I desire to know what the Boy's Name is, and who he is?

L. *Mobun.* His Name is *Thomas Lake*, and he was Mr. *Hill's* Foot-Boy.

L. *H. Stew.* What do you ask him, my Lord?

L. *Mobun.* Pray, my Lord, ask him, if he was with Mr. *Hill* and me that Night that Mr. *Mountford* was killed.

L. *H. Stew.* You hear the Question; what say you to it?

Boy. Yes, my Lord.

L. *H. Stew.* I do not hear you what you say.

Boy. I was with them, my Lord, and all I heard was, they had a Design to take away the Woman, Mrs. *Bracegirdle*, and they had provided Night-Cloaths and a Coach for her, to go to *Totteridge*, which was the Place where they designed to carry her.

L. *H. S.* I do not hear one Word this Boy saith.

L. *Mobun.* My Lord, shall I repeat to your Lordship what the Boy saith?

Lords. No, no, no.

L. *H. Stew.* No, my Lord, you are not to repeat what your own Witness saith.

Boy. They had a Design to carry away the Woman Mrs. *Bracegirdle*.

L. *H. Stew.* I do not hear one Word. That Boy can speak out, if he pleaseth; I warrant him, he would make Noise enough if he was in another Place. Speak out, that my Lords may all hear you.

Boy. I cannot speak any louder than I do; I say, they had a Design to carry away the Woman.

L. *H. Stew.* I may as well be at the other End of the Town, as in this Place, as for hearing what he saith. Some-body should repeat what he saith.

L. *Mobun.* If your Lordship please to allow it, that one of the Officers of the Court may come down to the Bar, and repeat from his Mouth to the Court what he saith.

Lords. Ay, ay.

L. *H. Stew.* Mr. *Walker*, Then do you go and stand by him, and tell us what he saith.

Mr. *Walker* the Clerk went and stood by the Boy at the Bar, and repeated his Evidence aloud.

Mr. *Walker.* My Lord, he saith, they had a Design to take away the Woman, and they had Night Cloaths in the Coach for the Woman to put on, and they enquired at the Woman's Lodging where she was, and there they were told, that she was at Mr. *Page's* at Supper, and her Brother came to the *Horshoe* Tavern and drank with them, and he was to go to tell them when she came out, and which way she was to go Home; and there was a Man that was to give Notice, and they went down before her, and the Coach stood almost at the lower end of *Drury-lane*, where there were some Soldiers to

put her in, and the Soldiers went and took hold of her.

L. H. Stew. Is this my Lord *Mobun's* Witness?

Mr. Walker. Yes, my Lord; and he saith, when they went to take hold of her to put her in, *Mr. Page* struggled with them, and would not let them, and she cryed out, and was very much troubled at it.

L. Mobun. My Lord, I desire he may be asked, Whether he was in *Howard-street* when *Mr. Mountford* was wounded, and what passed in *Howard-street* before *Mr. Mountford* was wounded?

Mr. Walker. He saith, he was in *Howard street*, and saw *Mr. Mountford* come down in *Norfolk-street* towards them, and turn into *Howard-street*, but out of his way to his own House; He saith, he came down, and there met my Lord *Mobun* and his Master, *Mr. Mountford* did; and he came to my Lord *Mobun*, and bowed to him, and said, *He had a Kindness for bis Lordship.* And my Lord *Mobun* replied, *He had a Kindness for him.* My Lord *Mobun* said to him, *He hoped he was not come to vindicate any thing of Mrs. Bracegirdle.* *Mr. Mountford* said *Not*, and asked if his Wife had done any thing to him, and said, *He was very sorry bis Lordship should have any thing to do to vindicate Mr. Hill in such Rudeness.* He saith, *Captain Hill* was at the lower end of the Street, and *Captain Hill* heard him say so, and came up and said to him, *Mr. Mountford, if you have any thing to say to me, I can vindicate myself, and pray now draw;* and he went into the Street, and *Mr. Mountford* drew and met him, and made three or four Passes, and in the Passes, the Sword was broke. He cannot tell which Sword it was that was broke, he supposeth it hit against the Hilt, and snapped in two.

L. Mobun. I desire he may be asked, where I was when they fought?

Mr. Walker. My Lord stood upon the flat Stones, he saith, by the House Side all the while, and they were in the Middle of the Street.

L. Mobun. My Lord, I desire he may be asked, Whether *Mr. Mountford* had his Sword by his Side, and where it was, and whether I meddled with him?

Mr. Walker. He saith my Lord *Mobun* did not meddle with him, but stood upon the flat Stones, nor did offer to draw his Sword, and when *Mr. Mountford* came down, he carried his Sword in his Hand.

L. Mobun. My Lord, I desire he may be ask'd, Whether *Mr. Hill* did not stay in the Street to ask *Mrs. Bracegirdle's* Pardon?

Mr. Walker. He saith he desired to see *Mrs. Bracegirdle*, and to beg her Pardon, and as soon as he had seen her, he would be gone?

L. H. Stew. How can he tell that? Where was he?

Mr. Walker. He was just by my Lord *Mobun* and *Mr. Hill* in the Street, and *Mr. Hill* said, He would but stay and beg *Mrs. Bracegirdle's* Pardon for what he had done, and he would go Home.

L. Mobun. I desire he may be asked, Whether I offered to fly when his Master went away?

L. H. Stew. What is it you ask, my Lord?

L. Mobun. Whether I offer'd to run away, or make my Escape?

Mr. Walker. He saith, my Lord did not offer to run away, but stood still and said he had done no Hurt, nor drawn his Sword.

L. Mobun. I desire to ask him, Whether I

could not have run away as well as *Mr. Hill*, if I had had a mind?

Mr. Walker. He saith, He might have run away as well as his Master *Mr. Hill*, but he stood still a great while, till the Watch came and took him, and he gave himself up.

Mr. Att. Gen. My Lord, before the Boy goeth away, I desire to know of him whether he has not been already examined upon his Oath elsewhere?

Mr. Walker. Yes, my Lord, he was examined at *Hicks's Hall*, and was kept in Prison two Days.

Mr. Att. Gen. Were you examined before the Coroner?

Mr. Walker. He saith, He was examined before the Coroner.

Mr. Att. Gen. Which was the first Place he was examined at?

Mr. Walker. He saith he was examined at *Hicks's Hall* first.

Mr. Att. Gen. When he was examined before the Coroner, did he give the same Evidence as he does now?

Mr. Walker. He gave the same Evidence before the Coroner that he doth now, as near as he can remember.

Mr. Att. Gen. When you did make Oath before the Coroner, was it read to you what you swore?

Mr. Walker. He saith, his Evidence was not read to him.

Mr. Att. Gen. Did you subscribe the Evidence you gave before the Coroner yourself?

Mr. Walker. Yes, he did.

Mr. Att. Gen. Did not you write your Name yourself?

Mr. Walker. Yes, he saith.

Mr. Att. Gen. Did you not know what it was you subscribed your Name to?

Mr. Walker. He saith, It was not read to him afterwards, he knoweth what it was he gave in.

Mr. Att. Gen. Are you sure it was not read to you?

Mr. Walker. He saith, He is sure it was not read to him.

L. H. Stew. Was it not read to him before he subscribed it?

Mr. Att. Gen. That I did ask him, my Lord.

Mr. Walker. He doth not remember that it was read to him at all.

L. H. Stew. Can he read himself?

Mr. Att. Gen. He writes a very good Hand, my Lord.

Mr. Walker. He saith, They bid him put his Hand to it; and as soon as he had put his Hand to it, they put him out, and bid him call another Woman.

Mr. Att. Gen. I would have him consider of it, before he makes Answer; because there are several Persons present here, who were present when it was read to him before he subscribed it.

Mr. Walker. He cannot remember that it was read to him.

Mr. Att. Gen. Do you remember you swore at that Time, That when *Mr. Mountford* and *Mr. Hill* were pushing at one another, my Lord *Mobun* said, He would stand by his Friend, and *Mr. Hill* was his Friend?

Mr. Walker. He saith, my Lord said, He would not go, he would stay by his Friend, for *Mr. Hill* was his Friend.

E. of Carlisle. My Lord Steward.

L. H. Stew. My Lord of *Carlisle*.

E. of Carlisle. I desire that he may be asked, Whether he was the Boy that said to my Lord *Mohun*, Pray, my Lord, good my Lord, do not do it, alter your Resolution.

L. H. Stew. Call the Boy again (*which was done*); Was you by when those Words were spoken; Pray, my Lord, will you repeat your own Question?

E. of Carlisle. Whether he was the Boy that said to my Lord *Mohun*, Pray, my Lord, good, my Lord, do not do it, alter your Resolution, or defer it to another Day?

Boy. No, my Lord, I did not hear him.

L. H. Stew. Did not you say so your self?

Boy. I said no such thing, nor heard no such thing said by any body.

L. H. Stew. Do you bring any more Witnesse, my Lord.

L. Mohun. Yes, my Lord, Mrs. *Elizabeth Walker*, Mrs. *Bracegirdle's* Maid.

Elizabeth Walker. Here, my Lord, I am she.

Mr. Att. Gen. My Lord, before my Lord *Mohun* proceedeth to examine any other Witnesse, I have one thing humbly to offer to your Lordships.

[*Then Proclamation was made for Silence.*]

Mr. Att. Gen. Of what Consequence it will be to my Lord *Mohun*, I must submit to your Lordships when you have heard it; that is, whether it may not be proper now since this Boy has given an Evidence, so very different from what he gave upon his Oath before the Coroner, to have his Deposition that he made before the Coroner, read in his Presence.

L. Mohun. My Lord, I think I ought to conclude, and give all my own Evidence before Mr. Attorney maketh his Remarks.

L. H. Stew. Then reserve that till the last, Mr. Attorney.

Mr. Att. Gen. My Lord is certainly in the right of it, there ought to be no Observations made upon his Evidence, and we shall be sure to keep exactly to the usual Method in this Matter; but I take it to be the Course of Evidence, where there is an Objection to what the Witnesse delivers now, which does arise from what the same Witnesse has sworn before, it is proper to make the Objection, as soon as he has delivered such Evidence, whilst the Matter is fresh in your Lordships Memories.

L. H. Stew. Mr. Attorney, let the Boy stay, he shall be called upon afterwards; but let my Lord go on now with the rest of his Witnesse.

L. Mohun. Here is *Elizabeth Walker*, my Lord.

L. H. Stew. What is that Woman's Name?

L. Mohun. *Elizabeth Walker*; did you live with Mrs. *Bracegirdle*?

Elizabeth Walker. Yes, I did my Lord.

Mr. Att. Gen. This Person has conceal'd her self, we have been endeavouring to find her out all this while, but could not.

L. H. Stew. What do you ask her, my Lord?

L. Mohun. I desire the may be asked, Whether she lived with Mrs. *Bracegirdle*, and what she saw and observed that Night Mr. *Mountford* was killed.

El. Walker. If it please you, I lived then with her.

L. H. Stew. I cannot hear what she said; Mr. *Walker*, I think you must go thither again; speak out, Woman.

El. Walker. I was her Servant at that time,

when Mr. *Mountford* was killed. And, may it please you, my Lord, that Night, old Mrs. *Bracegirdle* and her Daughter, were invited to Supper at one Mrs. *Page's* in *Drury-lane*, and coming Home about ten or eleven a Clock out of *Drury-lane*, my Mistres desired me to go to Mr. *Mountford*, to see if Mr. *Mountford* was come home. I went, and they said, He was not come home: She desired me then to go again, and tell Mrs. *Mountford*, that if he was not come home, she should send to see where he was, and desire he would not come home without a good Guard, for my Lord *Mohun* and Captain *Hill* were walking about the Street, and she did not know their Design, by reason Mr. *Hill* had his Sword drawn in his Hand, out of the Scabbord. I asked the Reason why he had his Sword drawn, and the Answer was made; He had lost the Scabbord in a Skirmish in *Drury-lane*; but that I know nothing of. Mrs. *Mountford* said, She would send her Maid to see where her Husband was, and I told her, if my Mistres would give me leave, I would go along with her, to bear her Company. And when I returned to my Mistres, she did give me leave, and I went along with her to several Places; but we could not find Mr. *Mountford*; so coming home, I went to my Mistres, and I saw them two stand at the Door, and they staid there above an Hour, and in the mean time our Landlady, Mrs. *Browne*, heard the Watch come into the Street, and she said, she would go to the Door, and bid the Watch seize them; and she did go out, and I was kept within Doors, and heard her talk to the Watch, but what she said, I cannot tell; but presently the Watch went away and left them. And I stood at the Door, and heard Mrs. *Browne* say, There cometh Mr. *Mountford*, and she would go speak with him; and with that, she went as fast as she could to meet him, and came to him a good way before he came down to them, and took him by the Arm thus, to stay him, and she said, Captain *Hill* and my Lord *Mohun* was walking in the Street, and Captain *Hill* had his Sword in his Hand drawn, and she did not know what their Design was.

L. H. Stew. Indeed she must speak louder, or I cannot tell what she saith.

El. Walker. My Lord, I say Mrs. *Browne* when I was at the Door, said, Yonder cometh Mr. *Mountford*, and she said, she would go and meet him, and away she went as fast as she could towards him; and when she came up to him, she took him by the Arm thus, and desired him that he would not come down that Street, but go to his own House, for there were Captain *Hill* and my Lord *Mohun* walking in the Street, and she did not know what their Design was, but Captain *Hill* had his Sword drawn in his Hand. If it please you, my Lord, Mr. *Mountford* did not answer her a Word; but pressed forward to meet my Lord *Mohun* and Captain *Hill*. If it please you, my Lord, they met one another, and my Lord *Mohun* and Mr. *Mountford* complimented one another very lovingly, and said, They were glad to see one another; and Mr. *Mountford* said to my Lord, He had a great Respect for his Lordship, and my Lord replied to him again, By my Honour, I have the like for you, Mr. *Mountford*, and with that, they embraced one another. I am sure this is the Truth, for I followed Mrs. *Browne* out, and stood by when

it was done. Mr. *Mountford* told my Lord, it was a Dishonour to him to keep Company with Captain *Hill*. I will not take my Oath that Captain *Hill* did hear him say so, but he might have heard him, and it may be he did too; and that might occasion the Quarrel; but I will not take my Oath of that: It came just in my Head after this was said, that our Door was open, and I turned my Back to hear and look who was at our Door, and I heard Mrs. *Browne* say, that Captain *Hill* and Mr. *Mountford* were going to Fight: I saw them Fighting, making Passes at one another, I saw them engaged, I never saw Men naked fighting so in my Life.

At which there was a great Laughter.

El. Walker. My Lord, I do not understand these Matters, I tell you as well as I can, they were fighting with naked Swords, Mr. *Mountford's* Sword was upon Mr. *Hill* hereabouts, and Mr. *Hill's* Sword was upon Mr. *Mountford* hereabouts; and after they had made two or three Pushes at one another, Mr. *Mountford* said, he was kill'd, and threw down his Sword thus, and I took it up, and there was a good Piece of the Sword broken off. I turned me about thus, towards our own Hatch at our Door, and there stood two or three People, I cannot say who they were, but I gave them the Sword, and I turned my Face towards *Surry-street*, and saw Captain *Hill* making his Escape, running up *Surry-street*; and, if it please you, my Lord, Mr. *Mountford* was the Friend I had most Respect for; and I saw him, as fast as he could, going towards his own House, and my Lord *Mobun* stood in the same Place that he was in, when he and Mr. *Mountford* were embracing one another, and I did not see my Lord *Mobun* stir from that Place; but when they fought, they were engaged in the middle of the pitched Stones, were there was a Place made for the Water to run along the Street like a Channel; and to my Knowledge, I did never see my Lord *Mobun* off of the Paved Stones, on the Side. I cannot say he was never off, when my Eye was turned another way; but to my Knowledge, I never saw him off of those Stones. If it please you, my Lord, the next thing that I saw, was this, After Captain *Hill* run up *Surry-street*, and Mr. *Mountford* did go home, I saw my Lord *Mobun* walking up to the End of the Street, where the Watch were coming, and when the Watch came, I see him deliver himself up to the Watch; but I think one of the Watch said, he must have his Sword, and he did deliver up himself and his Sword to the Watch. And he bid me take Notice, Bear Witness, said he, I have no Hand in the Death of Mr. *Mountford*. Said I, No, my Lord, I think you have not. The next thing I remember, was Mrs. *Page* came and said Mr. *Mountford* was killed, upon which, said my Lord *Mobun* to her, Bear Witness, I had no Hand in his Death. Said she, You were in his Company, therefore seize him, and carry him to the *Round-house*; and the Watch did secure him; and my Lord answered, As he was a Gentleman, he desired to be used like a Gentleman; and they did carry him away to the *Round-house*. This is the Thing that I did say, as near as I can remember, to the Justices; but I have been very much abused and distracted amongst them, and therefore to a Word I cannot say; but as near as I can remember, being abused at the rate I have been, this I did then say, and it is the Truth.

L. Mobun. I desire she may be asked, whether

she was not examined before the Justices at *Hicks's-hall*, and whether she was not then Mrs. *Bracegirdle's* Maid.

L. H. Stew. Truly, my Lord, I have heard very little of what she has said, but I hope my Lords that have been nearer have observed it.

El. Walker. If it please you, if you ask what was done at *Hicks's-hall*, I will tell you just as it was, what happened there, and so proceed on to tell you how I have been abused.

L. H. Stew. My Lord, what would you have her asked more?

L. Mobun. I desire to ask her, Whether she was not Mrs. *Bracegirdle's* Servant when she was examined at *Hicks's-hall*, and whether she swore the same there, as she saith here, and what was done to her since, or what they would have done, and whether they did not try to make her speak what they would, and to put her out?

El. Walker. If it please you, my Lord, that next Morning, there came several of the Players to me, to ask me what I knew of the Death of Mr. *Mountford*, and I told them; but they did not like what I said, and they seemed discontented at me. And when they were to go to *Hicks's-hall*, they said, they had no need of my Evidence, they could do without me. So Mrs. *Browne* and her Maid they went away, and left me at Home; what they did, or where they staid, I do not know; but about two or three Hours after, a Messenger came and said, my Mistress and I must go to *Hicks's-hall* to be examined before the Justices; and we went, and when we came there, all were examined, and I was examined in the last Place; where, my Lord, I gave in the same Evidence that I do now, as near as I can speak. I do verily believe it to be the same, but I have had so much Trouble with their abusing me, that I cannot speak to every Word or particular Thing. For my Mistress stood before me, and said, They brought Evidences that confounded themselves; and another said, Hang her a Jade, pull her by the Coat. I turned me to the Justices, and said, I hoped I might speak now I was there; but it may be for fear of my Mistress, I did not then speak all that I have done now, because I have called more since to my Remembrance. And there is one particular Thing that I call to mind now; I remember that in our Parlour, as soon as they came home out of *Drury-lane*, there was a Discourse between my old Mistress, and my Young, that Captain *Hill* waited at the Door to see my Mistress, and that if he might but have Leave to see her, and to beg her Pardon, they would be gone thence to their own Lodging; and I said to my Mistress, If she would give me leave, I would go out to them, and demand Captain *Hill's* Sword, and then he might come in.

L. Mobun. I desire she may be asked, Whether she was not turned away and threatened?

El. Walker. I am going on to tell my Lord what happened in our House that Night. I told my Mistress, If she would give me leave, I would undertake to get Captain *Hill's* Sword from him, and then she might let him come in and see her, and beg her Pardon, and I thought it would prevent a great deal of Danger that might follow else. And my Mistress said, I was a prating Slut; and my young Mistress said, If he begged her Pardon upon his Knees never so, she would never forgive him, nor see him more.

My

My Lord, there was another Discourse in the Street, that Captain *Hill* had made a Vow that he would kill himself that Night, and that my Lord *Mohun*, having a Respect for him, watched to prevent him from doing himself a Mischief. That was discoursed in the Street, but I cannot say it was so of my own Knowledge.

Then another Proclamation for Silence was made.

L. Mohun. I desire she may be asked, whether she was not turned away, and whether she was never threatened.

Eliz. Walker. If it please you, my Lord, that Night that I gave in my Evidence at *Hicks's-Hall*, by their talking, I knew before I went from Home what a Life I should have with my Mistress, for I knew they did not like my Evidence, and I was afraid of coming Home, and went and staid with my Sister; but notwithstanding I went Home about nine a Clock, and they were very inverte against me, and I told one of them, I had witnessed the Truth, and nothing but the Truth, and that I would stand by. If it please you, my Lord, the next Morning there was this *Ann Jones* that lay with me that Night, and she told me that in the Morning they threatened, and intended to fetch me to Mrs. *Mountford* to rattle me for what Account I had given in, and she giving me this Item, I got up, and went to dressing my Dinner, and Mrs. *Mountford* sent a Man, that I know by Sight, I think it was one *Roberts*, I believe that was his Name; whereupon he came and asked me where was Mrs. *Bracegirdle's* Maid; I said, I was she, and then he said Mrs. *Mountford* desired me to come to her. I said, I had given in my Evidence where I ought to do it, and I had nothing to do with her; but it was upon this account, not that I had any Antipathy against Mrs. *Mountford*, but only as *Ann Jones* had given me that Item of a Design to send me to her, to rattle me for the Evidence I had given in, and I did not know what might come of it, or what their Design might be.

Mr. Att. Gen. My Lord, I would not interrupt any Witnesses, but because she speaks of what was said by *Jones*, and Mrs. *Bracegirdle*, I desire they may be by to hear what she saith.

L. Mohun. My Lord, I desire my Witnesses may not be hared.

L. H. Stew. This is not haring of Evidence, my Lord.

L. Mohun. My Lord, I desire I may go on with my Evidence without Interruption.

L. H. Stew. My Lord, this is no Interruption.

Mr. Att. Gen. Pray, my Lord, let Mrs. *Mountford* be called in to hear what she saith of her; I desire she may be by.

L. Mohun. My Lord, I have no more to say to her.

Mr. Att. Gen. But then, my Lord, before she goeth away, I have two or three Questions to ask her.

L. H. Stew. What do you ask her, Mr. Attorney?

Mr. Att. Gen. She saith she was examined at *Hicks's-Hall*, I desire to know if ever she was examined before the Coroner.

Eliz. Walker. If it please you, my Lord, I was not, and I will give you the Reason.

Mr. Att. Gen. Ay, pray let us hear it.

Eliz. Walker. Why you have not heard how badly they used me after this.

Mr. Att. Gen. But pray, Mistress, answer my Question.

Eliz. Walker. But, my Lord, if it please you, I went to my Sister, and staid with her till eight or nine, and my Aunt told me there had been a Porter to enquire for me, to go to the Jury; I was sorry I was not at Home, but I took a Neighbour with me to go to Mrs. *Mountford's*, to see if the Jury were not gone; and I knowing how they had threatened me, I desired him to leave me at a Victualling-House by *Temple-Bar*, and go and tell them, if the Jury were not gone, I was ready to wait upon them; he went, and I remained at the Victualling-House, and he came again, and told me, Mrs. *Mountford* said they had done without me; but he was a little surprized.

Mr. Att. Gen. My Lord, she maketh a long Answer to a short Question. I would ask her another Question presently; but by the way, as to this Examination at *Hicks's-Hall*, I would observe that it is a very unusual, and, I think, under Favour, a very unwarrantable Thing for Justices of the Peace, to take upon them, under a Presence of considering, in order to bail a Person charged with Murder, to enter into a particular Examination of every one of the King's Witnesses, as if they were either a Grand Inquest, charged upon Oath for finding a Bill of Indictment, or Coroners to take an Inquisition of the Murder, both the Grand Jury and the Coroner are upon their Oaths to keep the King's Evidence secret; but this is to make it publick by an indirect way by a Justice of Peace's examining, in order to the Bailing of an Offender. But I would observe this Woman goeth away from her Mistress, and continueth away, and concealeth herself; she was not to be found to be examined before the Coroner, the proper Officer, nor are we able to tell where she has been; I desire some account may be given, in whose Hands she has been all this time.

L. Mohun. My Lord, I desire your Lordship's Opinion, whether this may be permitted, that he should talk thus.

L. H. Stew. What do you say, my Lord?

L. Mohun. My Lord, I desire to know whether he may interrupt me in my Evidence thus: All this Matter is foreign to the Business before your Lordships.

Mr. Att. Gen. If you please, I would ask her this one Question.

Lord — Under Mr. Attorney's Pardon, I think the Prisoner, or his Witnesses, ought not to be interrupted; but if he have any Remarks upon the Evidence, when they have gone thro' he may call them again, and ask them any Questions, or make any Remarks upon them.

Mr. Att. Gen. My Lord, I would ask her but one Question.

L. H. Stew. What is it, Mr. Attorney?

Mr. Att. Gen. If she heard Mrs. *Browne* say to Mr. *Mountford* that she would not have him come forward, because my Lord *Mohun* and Mr. *Hill* were there, and she did not know what their Design was?

Eliz. Walker. If it please you, my Lord, I did hear them, and I was just by them; and there was none but she and I.

Mr. Att. Gen. She upon her Oath saith, she did not tell him any thing more, than that she would speak with him; but he did not hear her, or hearken to her: But, my Lord, I have no more Questions to ask her.

L. H. Stew.

L. H. Stew. Have you any more to ask this Witness, my Lord?

L. Mobun. No, my Lord.

L. H. Stew. Who is your Lordship's next? Pray call your Witness.

L. Mobun. I desire *Ann Jones* may be examined. *(She came to the Bar.)*

L. H. Stew. What doth your Lordship examine her to?

L. Mobun. I desire she may be asked what she knoweth of what passed that Night *Mr. Mountford* was hurt, and tell the whole Story.

Jones. First, I saw *Mrs. Bracegirdle* coming home with her Mother and *Mr. Page*, about ten a Clock at Night, and there were *Captain Hill* and my Lord *Mobun* with them when they came home, but they did not come in with them, but walked in the Street about an Hour and an Half; and after they came in, *Mrs. Browne* sent to *Mrs. Mountford*, for she said *Captain Hill* had some Design, and my Lord *Mobun*, upon *Mr. Mountford*, but *Mr. Mountford* not being at home, they sent to all the Taverns thereabouts, but could not find him; they came home again, and told *Mrs. Mountford* and *Mrs. Bracegirdle*, they could not find him, and there my Lord *Mobun* and *Captain Hill* walked to-and-fro about the Street for an Hour and Half in all; about an Hour after they had been to look for *Mr. Mountford*, or about three Quarters of an Hour, *Mr. Mountford* came down, and I saw my Lord *Mobun* and *Captain Hill* at this Door.

L. Mobun. At whose Door, I desire she may be asked.

Jones. At this *Mrs. Browne's* Door, and *Mr. Mountford* coming down, my Lord *Mobun* met him, and embraccd him, and said, He had a great Honour and Friendship for him, and *Mr. Mountford* said, he had a great Honour and Respect for his Lordship. Saith my Lord *Mobun*, *Mr. Mountford* I suppose you are sent for. No not I, upon my Honour, said he. Upon that he up and told him how they had like to have got *Mrs. Bracegirdle* into a Coach, and carried her away, but were prevented. Saith *Mr. Mountford*, as to *Mrs. Bracegirdle*, I have nothing to do, she is no Concern of mine, if my Wife have offended your Lordship, she shall beg your Pardon. Said *Mr. Mountford* again, I hope your Lordship will not vindicate *Mr. Hill* in any such Action as this. With that *Captain Hill* came up and hit *Mr. Mountford* a Box on the Ear, and bid him draw. And, said *Mr. Mountford*, Damn ye, What is that for? And thereupon he drew; and I tell you what I saw, they both came off from the paved Stones into the Middle of the Highway, and made two or three Passes at one another; at the second Pass *Mr. Mountford's* Sword broke, and he stung down his Sword, and run away, and said he was a dead Man; *Mr. Mountford* went one way, and *Mr. Hill* another.

L. Mobun. I desire she may be asked, If I did meddle with *Mr. Mountford* at all, or helped *Mr. Hill* whilst they fought, and where I stood all the while?

L. H. Stew. What say you? answer all those Questions my Lord asked you.

Jones. If it please your Lordship, he stood upon the Causey, the paved Stones, in the same Place where he was all the time.

L. H. Stew. Did my Lord meddle at all?

Jones. No, I did not see my Lord *Mobun* meddle.

L. H. Stew. Was my Lord's Sword drawn?

Jones. I did not see it drawn.

L. Mobun. I desire she may be asked, Whether I run away, or whether I did not surrender my self to the Watch.

Jones. If it please your Lordship, I did not see my Lord run away; But I did see him surrender himself.

L. Mobun. I desire she may be asked, if she was not examined at *Hicks's-hall*?

Jones. Yes, my Lord, I was.

L. Mobun. And whether she did not there declare the same upon Oath, that she doth now?

Jones. Yes, my Lord, I did.

L. H. Stew. Have you any thing to say to this Witness, Mr. Attorney?

Mr. Att. Gen. My Lord, I would only ask her this Question: She saith my Lord *Mobun* was upon the Pavement, or Causey, as she calleth it, all the while; I desire to know whether the Scuffle did not begin upon the Pavement?

Jones. Yes, it did upon the Causey.

Mr. Att. Gen. I desire to know, whether she saw any Blood upon that Causey the next day?

Jones. No, I saw none.

L. Mobun. I desire she may be asked, Whether they did not fight in the Middle of the Street?

Jones. Yes, and please your Lordship, I did see them make Passes at one another in the Street.

L. Mobun. I desire she may be asked, Whether the Sword was not broken there in the Middle of the Street, and whether *Mr. Mountford* did not then cry out, I am killed?

Jones. His Sword was broken in the Middle of the Street; but I did not hear *Mr. Mountford* say he was killed, but he stung down his Sword, and run away, and said, I am a dead Man.

L. H. Stew. Have you done with this Witness, my Lord?

L. Mobun. Yes, my Lord.

L. H. Stew. Have you any more to say to her, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Then who is your next Witness, my Lord *Mobun*?

L. Mobun. *Edward Warrington*, my Lord.

(Who came to the Bar.)

L. H. Stew. What say you to him, my Lord?

L. Mobun. I desire to ask him where he liveth? Whether he be not a Neighbour to *Mrs. Bracegirdle*? and what he saw that Night *Mr. Mountford* was killed? I desire he would give his whole Evidence.

Warrington. I live, if it please your Honour, over-against *Mrs. Bracegirdle's* House, at the *White-swan*, on the other Side of the Way.

L. Mobun. I desire he would tell all that he saw that Night.

Warrington. All that I can say, is, About nine or ten a Clock, as near as I can guess, I heard a Disturbance at *Mrs. Browne's* Door, where *Mrs. Bracegirdle* lodgeth, and looking out, I saw there were two Gentlemen talking to old *Mrs. Bracegirdle*, and *Mrs. Bracegirdle* and some People went into the House, and when they were gone into the House, I saw the two Gentlemen walk about the Street, one's Sword I saw was drawn.

L. H. Stew. Whose Sword was that was drawn?

Warrington. *Captain Hill's*, as they say; for my part, I did not know either of them; they walked there for the Space of an Hour and a Half, I saw

saw them oppose no body. But as they came along, I heard them ask a Gentleman that came towards them, Whether he would not drink a Glass of Wine or not?

L. Mohun. My Lord, I desire he may be asked, what he saw afterwards of fighting?

Warrington. For fighting, I saw Mr. *Mountford* come down *Norfolk-street*, and I saw him turn at the Corner with his Sword in his Hand in the Scabbord, to the best of my Knowledge, and seeing some People there, as I suppose, went towards them, and came up to them; and I saw my Lord *Mohun*, to the best of my Knowledge, lay his Hand upon his Shoulder, and embraced him, and complimented him; but I cannot be certain what the Words were that passed between them.

L. H. Stew. Did you see them fight?

Warrington. If it please your Honour, I did see their Swords both drawn, Mr. *Mountford* and he that they said was Captain *Hill*; there were some Women about them, so that I could not so well discern when they drew their Swords, or who began the Quarrel. *Hill*, they said, had no Scabbord to put his Sword in; my Lord *Mohun* stood by, and laid his Hand upon Mr. *Mountford's* Shoulder.

L. H. Stew. Was that before the Fighting, or at the time of the Fighting?

Warrington. It was before their Fighting, at their first Meeting.

L. Mohun. I desire your Lordship would please to ask him, In what Part of the Street they fought, and whether I was near them then?

Warrington. When first I saw their Swords drawn, it was upon the flat Stones of the Pavement; and I saw Mr. *Hill* come off of the Stones and Mr. *Mountford* with him. Mr. *Hill* was, I think, the first, and they came both up together with their Swords drawn in their Hands, they were not a Sword's Length off from one another; and they passed at one another, and I run into our House to fetch a Paring-Shovel, with an Intention to part them; but before I could get out of Doors with the Paring-Shovel in my Hands, the one was gone one way, and the other the other way; and I saw no body in the Street to ask any Questions of, but my Lord *Mohun* at the Corner, three or four Doors above this Place. And I came out, and asked which way they were gone, my Lord *Mohun* turned about, and I was a little afraid of him at first; but, said he; Here am I, I did not offer to oppose or draw my Sword; you all know it; and immediately, if it please your Honour, the Watch came in; that is all I know.

L. Mohun. I desire he may be asked, Whether I did not go towards the Watch, and surrender my self.

Warrington. I cannot say that, but the Watch came in a Minute. My Lord turned about, and said, Here am I, I did not oppose or draw my Sword, you all know.

L. Mohun. Pray my Lord, let him be asked, Whether I did offer to fly? - And whether I had not as much time to fly, as Mr. *Hill*?

Warrington. I cannot say that, my Lord. I suppose he might have gone away as well as Mr. *Hill*, for they were both together.

L. Mohun. My Lord, I desire he may be asked another Question, Whether, when Mr. *Mountford* came into *Howard-street*, he did not come out of his way to his own House, to come towards us?

Warrington. My Lord, if it please your Honour, it was out of his way; but whether he did it on purpose, or because he saw People there, I cannot tell.

L. Mohun. I desire he may tell you where Mr. *Mountford's* House is.

Warrington. Mr. *Mountford's* House is in *Norfolk-street*, two Doors in the Corner out of the Cross Street; and this was done in *Howard-street*.

L. H. Stew. I would ask you a short Question, Whether that was the way to his House that he went?

Warrington. No, it was not the way, my Lord; for he turned on the Right-Hand, and he should have kept straight along.

L. Mohun. I desire he may be asked, Whether he was not sworn at *Hicks's-hall*, and whether he gave not the same Evidence there, that he doth now?

Warrington. I was sworn there, and did, to the best of my Knowledge, give the same Evidence I do now.

L. H. Stew. If I understand you aright, you say both the Swords were drawn of *Mountford* and *Hill*?

Warrington. Yes, my Lord, I did.

L. H. Stew. Can you say whether *Mountford's* Sword was drawn before he was hurt, or not?

Warrington. If it please you, my Lord, I cannot tell that, I cannot be positive whether it was or no, for there were Women about them, I say, at first, and I could not discern the Beginning; and I did not stand to see them push, for as soon as I saw their Swords drawn, and they come off the Pavement to fight, I run into the House to fetch a Paring Shovel.

L. Mohun. Now, my Lord, I will call another Witness.

L. H. Stew. Mr. Attorney, have you any Questions to ask this Witness?

Mr. Att. Gen. No, my Lord.

L. Mohun. Then, my Lord, I will call another Witness to shew you the Reason why Mr. *Hill* and I stayed in the Street, and what was the Business we stay'd for. I desire *Ann Knevit* may be examined. (*She came to the Bar.*)

L. H. Stew. What do you ask her, my Lord?

L. Mohun. I would ask her where she liveth, and what she knoweth of this Business?

Knevit. My Lord, I live in *Howard-street*, exactly against Mrs. *Bracegirdle's* Lodging, and my Lord *Mohun*, as he gave his own Name to be, to the Watchmen, and another Man that they called Captain *Hill*; for so he gave his Name to be; they came down with Mrs. *Bracegirdle*, both the Mrs. *Bracegirdles*, into the Street, and came to their Door, and old Mrs. *Bracegirdle* put her Daughter in at the Door, and then she stood still and talked with the Gentlemen, and asked them their Business. They said, They wanted to beg the young Woman's Pardon for what they had done, and then they would be gone. She said she thought they came to rob her. They said, No, they came upon a very honourable Design. She said, Then they might have come at a more seasonable time; but she believed they came to rob her.

L. Mohun. What time of Night was it?

Knevit. It wanted a Quarter of Ten, I believe, or it was about Ten, a Quarter over or under; I cannot exactly tell. They said, If she would give them leave but to speak to her, and beg her Pardon

Pardon for what they had done, they would go home immediately. She said, she would not, they should not see her any more that Night: Then one of the Gentlemen, I know not which of them it was, said, They would walk a little while in the Street: she did see them walk very quietly, but she made a great Noise herself; and at last she went in, and shut the Door, and the Gentlemen walked quietly up and down, and by and by, they went to the Door again, and desired to be admitted to speak with young Mrs. *Bracegirdle*, that they might beg her Pardon for some Affront that they had put upon her, I suppose, and she still refused them, and would not let them speak with her; and several times they called and knocked at the Door, and still desired but to speak with her, and beg her Pardon, and they would be gone home, but she every time refused it.

L. H. Stew. Woman, I do not hear you, you must speak louder.

L. Mobun. My Lord, I desire your Lordships will let one of the Clerks come and take the Evidence, and report it to you.

L. H. Stew. If it be material, another must report it; for I have not heard one quarter of it.

L. Mobun. It is very material, my Lord, to shew the Reason why we stayed there.

Knevit. My Lord, I will repeat it over again if you please.

L. H. Stew. Then pray speak so loud that I may hear.

Knevit. My Lord *Mobun* is a perfect Stranger to me, I only tell you what I saw and heard. At the first beginning of all, two Gentlemen, and two Women, came to a Door over against our Door, and at that House Mrs. *Bracegirdle* and her Daughter lodged, the Gentlemen gave their Names to the Watch afterwards to be my Lord *Mobun* and Captain *Hill*: So when they came there, the old Woman put her Daughter in at the Door, and when she had pulled off her Hood and Scarf, she came to the Door, and asked them their Business; and they told her, they wanted to beg her Daughter's Pardon for what they had done; but she abused the Gentlemen mightily, and gave them very ill Words, and said, She believed they came to rob her Daughter; they said, No, they came upon a very honourable Design; then she said, They should have come honourably at a seasonable time; they said, It was not an unseasonable time, for she was out of Doors herself at that time. So she stood there a little, and then at last she went in a Doors, and shut the Door, and some of them opened the Door again, and they were walking upon the Causey, and came up to the Door, and still desired the same thing, to speak with the young Gentlewoman to beg her Pardon for what they had done, and they would go home for that Night. One of them, I think it was Mr. *Hill*, said, He had given her an Affront, and he desired to beg her Pardon; but still they said, he should not be admitted to speak with her. Then one of them, I think it was Mr. *Hill*, desired she would be pleased to come but to the Hatch, that he might see her, and beg her Pardon, and he would not desire to come in, but that would not be permitted. So one of them made Answer, That they would not stir till they did see her, and they would walk there all Night.

L. H. Stew. Cryer, call for Silence, and pray, my

Lord Great Chamberlain, take some Order with those People behind there, for they cannot hear themselves what the Witnesses say, and therefore they are resolved we shall not hear them neither.

(Proclamation was made for Silence.)

L. H. Stew. Now go on, Woman.

Knevit. They said they would stay in the Street all Night, unless they did speak with her: But if she would give them leave to speak with her, they would depart to their own Lodgings immediately; but they were denied to be admitted to speak with her. Whereupon one of them called unto his Boy, to bring him his Cloak; but then he said, He would not have his Cloak, he would walk without it, because they had not both of them Cloaks; by and by they sent for a Bottle of Wine, and there they drunk her Health, and took several Turns, and after they had drunk off the Bottle, or some part of it, they went to the Door again, and knocked at the Door, and some body answered from within, for they were not at the Door, what they would have? They said the same thing as before, that they desired only to see her, and beg her Pardon, and they would go home; for it was a very cold Night, and it was not convenient to walk there; but they still refused to let them in: By-and-by the Watch came down, and asked, Who was there, and what was their Business? and one of the Gentlemen made Answer, and said, He was a Peer, and his Name was *Mobun*, the other said, his Name was *Hill*. So the Watch went by, and said no more, but some Body made Answer, and said, There was a Gentleman had a Sweet-Heart in that Street, and he wanted to speak with her. Just at that Time, I went up Stairs to warm a Bed in our House, and whilst I was warming the Bed, I heard a little Bustle in the Street, and running to the Window there I saw a Sword in a Man's Body, I could not tell who the Man was, nor who put the Sword there, but the Man that drew out the Sword, run away as hard as he could, and the Man in whose Body the Sword was, went as fast as he could the other way. And my Lord that gave his Name to the Watch to be *Mobun*, stood on the farther Side of the Street, and said, I have done no Hurt to any Body, and I will not stir. And there was a Woman that called out to the Watch to seize him; but who the Woman was, I cannot tell, but he stood still between Mrs. *Bracegirdle's* Door, and the next Neighbour's, one that is called *Nuttall*, I think, and never stirred till the Watch came to him, and the rest went to Mr. *Mountford*; he said there was no Occasion to lay Hands upon him, for he would not stir from them.

L. Mobun. I desire to ask her if Mr. *Mountford* did not say, I am killed, after the Sword was broke?

Knevit. Yes, he did say he was a dead Man.

L. H. St. What, after his Sword was broke?

Knevit. After the Sword was drawn out of his Body, his Sword was in his own Hand, I squalled out when I saw the Sword in his Body, and had like to have gone out of the Window, and some Body said to me, when I told them why I cry'd out, Will you break your Neck for that Reason? it may be it is one of the Watchmen. No, said I, it is not a Watchman.

L. Mobun. I desire she may be asked where Mr. *Mountford* and Mr. *Hill* fought, whether it was not in the middle of the Street?

Knevit.

Knewit. My Lord, it was exactly in the Middle, as near as I can guess, rather on our Side of the Way, with his Arms spread, and his Sword in the Scabbord.

L. H. Stew. Have you any more to ask this Witness?

L. Mohun. No, my Lord.

L. H. Stew. Have you any thing to say to her, Mr. Attorney?

Mr. Att. G. I would ask her where she liveth?

Knewit. I live in *Howard-Street*.

Mr. Att. Gen. With whom there?

Knewit. At one Mrs. *Brewer's*.

Mr. Att. Gen. What Employment is your Mistress?

Knewit. My Mistress keepeth a Coffee-house.

Mr. Att. Gen. Do you live near Mrs. *Browne's*?

Knewit. I know not any of that Name there; but I live over against Mrs. *Bracegirdle's* Lodgings.

Mr. Att. Gen. Do not you know the People of that House?

Knewit. No, upon my Word, I do not know their Names that keep the House.

Mr. Att. Gen. Let me ask you another Question: You speak of many Messages sent backward and forward, and that they said Mrs. *Bracegirdle* should not be spoken with while my Lord staid there; I desire to know if you can tell who any of the Persons were that brought those Messages?

Knewit. It was the Man that called himself my Lord *Mohun*, and the other that called himself *Hill*, they spoke themselves.

Mr. Att. Gen. But who was it that came to them so often, to tell them they should not speak with her?

Knewit. It was old Mrs. *Bracegirdle*.

Mr. Att. Gen. You are sure of that.

Knewit. Yes, Sir.

Mr. Att. Gen. I would ask you one Question more: When the Watch came up to them, did my Lord tell the Watch his Name was *Mohun*, or only that he was a Peer of *England*?

Knewit. He said first, He was a Peer of the Land, and then he said, his Name was *Mohun*, and the other said, his Name was *Capt. Hill*.

Mr. Att. Gen. You are sure both of them told their Names to the Watch?

Knewit. Yes, I am sure I heard them say so.

L. H. Stew. Have you any more Witnesses to call, my Lord?

L. Mohun. No, my Lord, I could call some as to *Sandys's* Reputation, but I do not think it at all material.

L. H. Stew. Have you any thing, Mr. Attorney, to say to the Boy that was set by? Will you have him called again?

Mr. Att. Gen. My Lord, I did propose that the Boy should hear the Information read which he gave in to the Coroner.

L. H. Stew. Will you have him called again?

Mr. Att. Gen. Yes, if your Lordships please.

L. H. Stew. Well, then call him again.

(The Boy came to the Bar, and his Deposition before the Coroner was shewed to him.)

Mr. Att. Gen. Look upon that Paper, is that your Name, and of your Writing?

Boy. Yes.

Mr. Att. Gen. Was it true you then swore before the Coroner?

Boy. Yes, it was true.

L. H. Stew. Read it.

(It was taken by the Clerk, and read at the Table.)
Clerk of Crown. Reads,

Middlesex. The Information of *Thomas Leake*, Servant to *Richard Hill*, Gent. taken upon Oath the twelfth Day of *December*, 1692. before me.

HE saith, That on Friday Morning last, about nine of the Clock, 'twas agreed betwixt my Lord *Mohun* and *Capt. Hill*, to seize Mrs. *Bracegirdle* with some Soldiers, and carry her away in a Coach about nine Mules off, and about ten of the Clock at Night my Lord *Mohun* and *Captain Hill*, with about six Soldiers, did seize her, and endeavour to put her into a Coach; but she refused to go, and they led her down into *Howard-street* to her Lodging, and then said, they would walk an Hour under Mrs. *Bracegirdle's* Window, and another under Mrs. *Barry's*; and about an Hour and an Half after, Mr. *Mountford* came down the Street, and Mr. *Mountford* and my Lord *Mohun* saluted each other, and my Lord *Mohun* said, he hoped Mr. *Mountford* was not come to vindicate Mrs. *Bracegirdle*; and Mr. *Mountford* hoped my Lord did not come to vindicate the *Rudness* done to Mrs. *Bracegirdle*; by Mr. *Hill*; and then Mr. *Hill* said, He was able to vindicate himself, and bid Mr. *Mountford* to draw, and they both pushed at each other with their Swords, and my Lord said, He would stand by his Friend, and Mr. *Hill* was his Friend: and during the Time that Mr. *Hill* and Mr. *Mountford* fought, my Lord *Mohun* did not endeavour to part them.

Jo. Cooper, Coroner.

Thomas Leake.

Mr. Att. Gen. My Lords, as to this last Witness, I would desire some of the Watch may be asked, because the saith my Lord told them his Name was *Mohun*, and *Hill* told them his Name was *Hill*, whether it was so or not.

L. H. Stew. Who would you call?

Mr. Att. Gen. Merry, my Lord, if you please.

L. H. Stew. Call him.

Lord Mohun. I desire the Constable may be called. [*Merry did not presently come in.*]

Mr. Att. Gen. My Lord, I think it is not so material, as to desire your Lordships should stay for him. But as to that one Witness that entertained your Lordships so long, Mrs. *Bracegirdle's* Servant, I desire, that the being here, may give your Lordships an Account what became of this Servant of hers.

Mrs. Bracegirdle. My Lord, she went away from me on the *Sunday*.

L. H. Stew. Who did?

Mrs. Bracegirdle. My Maid that was then, and I sent to her Aunt's the Weck after to seek for her, but she could not be found; where she was I cannot tell; nor could not hear of her from that time to this.

Lord Mohun. I desire she may be asked whether she did not discharge her, or pay her her Wages.

Mrs. Bracegirdle. I did not.

Lord Mohun. Did not you or your Mother?

Mrs. Bracegirdle. My Mother, my Lord, did; she was not my Servant, my Mother hired her, my Lord.

L. H. Stew. What doth she say? were her Wages paid, and she discharged?

Mrs. Bracegirdle. They were paid because she would not stay with me, my Lord; I desired her to stay, and she would not, and then she demanded her Wages, and my Mother paid her.

L. Mohun.

L. Mobun. My Lord, I desire you would ask the Maid the Reason why she would not stay.

El. Walker. If it please you, my Lord, the Reason was this. When I came from *Hicks's-Hall* Mrs. *Mountford* the next Day sent for me, and I lying with this *Ann Jones* that was here, she told me that I should be sent for, and they would rattle me off for my Evidence that I had given at *Hicks's Hall* for the King; my Lord, I having such an Item from *Ann Jones*, and they being all Players, I was afraid, because Players have a worse Reputation than other People.

Mr. Att. Gen. My Lord, we shall not trouble your Lordships with any more Witnesses.

L. Mobun. My Lord, I desire she may be asked if there were not Bailiffs sent to take her, and she threatened to be arrested.

L. H. Stew. What say you to that?

El. Walker. If it please you, my Lord, I cannot swear it, but I will tell you, as near as I can, how it was; I had not Time to look over my Cloaths, being in Haste when I went, and for fear I should have mistaken any Thing, the next Day I went to look over my Cloaths, whereupon I found I had mistook, and taken one of my Mistress's Aprons, and left one of my own for it, and knowing their great Suspicion and Inveteracy against me, I went the next Day to my Uncle's, a Porter's, and desired him to carry it to them; but when I had delivered it to him, he would not let me stay to speak much, for he said there had been three Bailiffs to take me, and I having no Friends, was much affrighted, and run crying up and down, and did not know where to fly, for fear they might lay me in a Prison; and having no Friends, therefore I was forced to fly, and so I went to a Justice of Peace, and there I gave him an Account of the Business. But he said he must have nothing to do with it, I must go again to proffer my Service to my Mistress; but I was not willing to proffer my Service again to her, so I kept away ever since.

L. H. Stew. If you have done with the Evidence on both Sides; what have you more to say, my Lord?

L. Mobun. My Lords, I hope it will be no Disadvantage to me, my not summing up my Evidence like a Lawyer, being a young Man; I think I have made it plainly appear that there never was any former Quarrel or Malice between Mr. *Mountford* and me; I have also made appear the Reason why we staid so long in the Street, which was for Mr. *Hill* to speak with Mrs. *Bracegirdle*, and ask her Pardon, and I staid with him as my Friend, so it plainly appeareth I had no Hand in the Killing of Mr. *Mountford*, and upon the Confidence of my own Innocency, I surrendered myself, and I commit my self to this Honourable House, where I know I shall have all the Justice in the World.

L. H. Stew. Has your Lordship no more to say?

L. Mobun. No, my Lord, but I am innocent of the Fact, and leave my self wholly to your Lordships.

Mr. Sol. Gen. * May it please your Lordships, according to my Duty, I am to repeat the Evidence to your Lordships on the Behalf of the King.

My Lord, the Evidence hath been very long, both that on the Part of the King, and that

on the Part of the Prisoner, and I know your Lordships have given Attention to it with very great Diligence. I cannot pretend that my Memory will serve me so well, as to repeat the Circumstances of this so long Evidence; but that which has been material, I shall crave leave shortly to mention to your Lordships.

My Lords, I know a great many Things may slip my Notice and Repetition, but nothing can slip your Lordships Observation: So that though I should not lay a due Weight upon the Evidence for the King, yet your Lordships will let nothing pass without giving it its just Consideration, and will give Judgment according to the exactest Justice.

My Lords, the Evidence for the King doth consist first of Facts precedent to the Killing of Mr. *Mountford*, and next what happen'd at that Time.

As to what preceded this Fact thus committed, there were two or three Witnesses called, and the first of them is Mr. *Hudson*, the next is Mr. *Powel*, and they give you an Account that Mr. *Hill* had made his Applications in the Way of Courtship to Mrs. *Bracegirdle*, but that he had an Apprehension that Mr. *Mountford* was an Obstruction to him in that Matter, and therefore he did declare several Times, that he would be revenged of him. And one Time (which I think was two or three Days before the Fact was done) my Lord *Mobun*, the Prisoner at the Bar, was at Dinner with *Hill*, when *Hill* had this Discourse concerning *Mountford*, and said he would be revenged of him. My Lord *Mobun* was by, they both say, when such Discourse was used by *Hill*, but they cannot tell what Notice he took of it.

My Lords, after this, the Day that this Fact was committed, your Lordships have heard how my Lord *Mobun* and *Hill* hired a Coach and six Horses in order to seize Mrs. *Bracegirdle* and carry her away by Force, and that is proved most fully, both upon my Lord *Mobun* and *Hill*, that they were both concerned in that Design, and actually engaged in it; there can be no Dispute of that. Accordingly they dined together that Day, and at Dinner there arose a Discourse in relation to Mrs. *Bracegirdle*. And at that Time my Lord *Mobun* said it would cost *Hill* 50 l. to carry her off. And *Hill* said, if the Villain resisted he would stab him. And my Lord *Mobun* said, He would stand by his Friend. This Declaration was made at Dinner, on the Day this Fact was committed; and then they appointed to meet at the Play-House at six o' Clock in the Evening, expecting Mrs. *Bracegirdle* would be there; and accordingly the Coach was ordered to be ready at that Time in *Drury-Lane*.

My Lords, in pursuance of this Design, they both came to the Play-House at six o' Clock; this is prov'd by two or three Witnesses. When they came there, they inquired for Mrs. *Bracegirdle*, but she was not there at that Time. And then not finding Mrs. *Bracegirdle* there, your Lordships have an Account from the Coachman, to what Places he carried them from thence. First to *Drury-Lane*, there they staid some Time and not finding her there, he drove them into *Norfolk-street*, near the Place where she lodged, and there a Man and a Woman being discoursing together, gave them Occasion to say, they thought they were betray'd. And *Hill* said, My Lord, let us go and cut that Fellow's Throat, or Words to that Effect.

Then, my Lords, they drove back from that Place, into *Drury-Lane* again, and ordered the Coach to stop over-against my Lord of *Clare's* House. There it happen'd that Mrs. *Bracegirdle* came from Mr. *Page's* House, where she had supped. At that Time there were present her Mother, her Brother, and Mr. *Page*, and Mr. *Page* led her along. *Hill* came up with seven or eight Soldiers, and forced her out of Mr. *Page's* Hand, and endeavoured to thrust her into the Coach. In that Coach my Lord *Mohun* was, that is agreed upon on all Hands, the Coach Door was open, and my Lord *Mohun* was there in it with seven or eight Pistols.

It happening they could not carry her off, but the Matter taking Air, People came in to their Assistance, and the Design being prevented, *Hill* would needs go home with her to her Lodging in *Howard-street*, and my Lord came out of the Coach and went along with him. When they were come to the Lodging, the Witnesses tell your Lordships, that at that Time, when Mr. *Page* was going into the House, *Hill* would have had some Discourse with Mr. *Page*, and desired to speak with him, but Mr. *Page* said it was not a convenient Time, but to Morrow would do better, and so went into the House, and the Door was locked.

My Lord *Mohun* and *Hill* continued walking about the Streets for about two Hours before Mr. *Mountford* was killed, and now your Lordships will observe what Transactions there were during the Time that they continued walking in the Streets.

Then there was an Interruption for about a Quarter of an Hour, occasion'd by a Lady's falling into Fits in one of the Galleries; but she being removed, and Proclamation made for Silence, the Court proceeded.

L. H. Stew. Pray, go on, Sir.

Mr. Sol. Gen. My Lords, I was observing to your Lordships, that Part of the Evidence which related to what happen'd after the Time that Mrs. *Bracegirdle* was in her Lodging. And, my Lord, your Lordships hear from the Witnesses, that my Lord *Mohun*, and this *Hill* continued in the Street, where Mrs. *Bracegirdle* lodged, and walk'd up and down for near two Hours before Mr. *Mountford* came.

During that Time, the Constable and the Watch-men have told your Lordship upon their Oaths, that my Lord *Mohun's* and Mr. *Hill's* Swords were both drawn. And the Constable swears expressly, That he ask'd my Lord *Mohun* what he did with his Sword drawn, and that my Lord answer'd, he was ready to put it up, and told him withal, he was a Peer of the Realm; the Constable then ask'd, why the other Gentleman's Sword was drawn, and my Lord *Mohun* made answer that his Scabbord was lost.

But your Lordships observe, that before the Watch came, Mrs. *Browne* (as she her self hath sworn) came out of the House where Mrs. *Bracegirdle* lodged, and desired to know what they did there, and then *Hill* said, he should light upon *Mountford* one Time or other; saith Mrs. *Browne* to him, Why, what hath he done to you? to which he replied, He hath affronted me, and I will be revenged upon him; and this was said in the Presence of my Lord *Mohun*, he being just by.

My Lords, after this, in a very short Time, Mr. *Mountford* came down, and Mrs. *Browne* tell-

eth your Lordships, that they were so much aware of this Matter, that my Lord *Mohun* and *Hill* staid to do *Mountford* a Mischief, that there were Persons sent to Mrs. *Mountford* to give her Notice of it, and she sent Messengers to find out her Husband, to prevent his coming in their Way, but they could not find him.

Upon Mr. *Mountford's* coming down, Mrs. *Browne* seeing him, steps up towards him, to tell him that my Lord *Mohun* and *Hill* were in the Streets with their Swords drawn, and she was afraid they had some ill Design against him; but she sweareth she did not, nor could not tell him this, he was in such Hast; but one of the Witnesses for my Lord contradicts her in this, and says, that she did tell him, but whether the one Witness sweareth true, or the other Witness saith true, must be left to your Lordships Judgment.

But Mr. *Mountford* came down immediately, and as he came down, he met my Lord *Mohun*, and they did salute one another (for I would not injure my Lord in mistaking the Evidence, as near as I can) but your Lordships will observe the Witnesses say, that presently my Lord *Mohun* asked Mr. *Mountford*, whether he was not sent for, and said, I suppose you have heard what happen'd to the Lady this Night, and I hope you do not come to vindicate Mrs. *Bracegirdle*. And Mr. *Mountford* replied, I hope your Lordship doth not come to vindicate Mr. *Hill* in such an Action.

Thereupon *Hill* stepped up, and struck Mr. *Mountford* a Box on the Ear, and at the same Time, with his Right Hand, pass'd at him, and run him through, before his Sword was drawn. This two of the Witnesses for the King say Mr. *Mountford* told them upon his Death-Bed, and it was very probably so; because your Lordships observe by all the Evidence, *Hill's* Sword was ready drawn in his Hand.

There being some Noise, Proclamation was made for Silence.

Mr. Sol. Gen. My Lords, I was observing that it was immediately, and at the same Time that he struck him, and run him through, and it is very likely it was so, as Mr. *Mountford* said when dying; for several of the Witnesses for the King do swear, that the Box on the Ear, was before his Sword was drawn, and *Hill's* Sword was ready in his Hand. So Mr. *Mountford* said when he was expiring, and what regard your Lordships will have to the Declaration of a dying Man, we must submit to your Lordships Judgment; and Mrs. *Browne* who was there and saw the Fact, sweareth the same Thing, that it was done before Mr. *Mountford* could have Time to draw his Sword.

If that be so, it is very plain it was Murder in Mr. *Hill*, and your Lordships will please to observe another Piece of Evidence that came from the Mouth of a Witness, examined for the Noble Lord the Prisoner at the Bar, and that is *Leake* the Boy, he was examined before the Coroner; indeed he was not called now for the King, and your Lordships may see some Reason why he was not; but your Lordships have had his Deposition before the Coroner read, and by that your Lordships may observe, how different his Testimony then was, from what he now giveth. And whether your Lordships will believe what he then said upon his Oath, or what

what he now saith, is left to your Lordships Consideration. He saith, when he was examin'd upon his Oath, soon after the Fact, that my Lord *Mobun* was by, when *Hill* did wound *Mountford*, and that my Lord *Mobun* said, that he would stand by his Friend, and that *Hill* was his Friend, and that my Lord *Mobun* did stand by, and did not offer to part them. Though he hath something varied from this in his Testimony now, yet he still affirms what he there swore to be true.

But further, my Lords, your Lordships will consider what the Constable swore my Lord *Mobun* said after he was taken, and when he was in Custody at the *Round-boufe*. Whether he did surrender himself or no, we must leave to your Lordships, upon the Evidence that hath been given on the one Side, and on the other. But when he was in Custody (as I said) my Lord *Mobun* asked whether *Hill* was taken, and being answered No, he said he was glad of that; but he was sorry he had no more Money about him, and wished that he had that Money which he himself had, and that he would be willing to be hang'd for him. So great a Kindness he expressed for *Hill*, and said, he had changed Coats with him, and then had *Hill's* Coat on his Back.

This, my Lords, is the Substance of the Evidence on the King's Part, and upon the whole of it, it is plain, with humble Submission to your Lordships, that here was a premeditated Malice in *Hill*, by his own Declarations preceding, by what was done at the time of the Fact committed, and by stabbing him before his Sword was drawn.

The Question will be, whether, my Lord *Mobun* the Prisoner at the Bar, was privy to this Design of *Hill's*, and did so far agree in it, as to keep him Company to assist and encourage him. For if he was privy, and knew of *Hill's* Design, and staid there for that Purpose, to give him Assistance in it, with humble Submission to your Lordships Judgment, he will be as much guilty of the Murder, as *Hill* that actually killed him: That therefore will be the Question before your Lordships, for your Judgment upon the Consideration of what has been prov'd in this Case.

My Lords, the Prisoner my Lord *Mobun*, has called and produced several Witnesses to your Lordships, in Defence of himself. The first Witness was called to this Purpose, to shew that my Lord had no Malice to *Mountford*, but that they were very good Friends but two or three Days before; that he spoke of him with a great deal of Kindness, and desired to drink a Bottle of Wine with him.

Now for this, I would observe to your Lordships, that it is not the Question, whether my Lord *Mobun* had any direct or express Malice against *Mountford*; but if *Hill*, who was so great a Friend of my Lord *Mobun's*, had a Malice against *Mountford*, and my Lord *Mobun* had so great a Kindness for *Hill*, as to accompany and assist him in taking his intended Revenge (whether it was so or no, your Lordships are to judge) it will be as much Murder in Law, as if my Lord had himself had a Hand in it.

For the other Witnesses that have been called for the Prisoner, I must leave the Consideration of what they say, to your Lordships. They are

not upon their Oaths, but yet they are to be believed so far, as your Lordships shall judge what they say credible, upon Consideration of all that you have heard. But for the Boy, who hath contradicted his own Evidence, which he gave upon Oath before the proper Officer, but acknowledged what he swore then, was true, what Credit is to be given to him, will deserve your Lordships particular Consideration. How he has been prevailed upon to change his Evidence, I cannot tell, nor what Weight it will have with you.

My Lords, I will not spend more of your Lordships Time; I know you very well remember, and will carefully recollect all the Evidence, both for the King and for the Prisoner, and your Lordships will consider that it is a Case of Blood, and if your Lordships think him Guilty, tho' he be one of your own Body, you will adjudge him so, if not, you will acquit him; and therefore I leave the Matter to your Lordships just Determination.

L. H. Stew. My Lords, I think now, having heard the Evidence on all Sides, your Lordships will think fit to adjourn to the House of Lords. Is it your Pleasure to adjourn?

Lords. Ay, Ay.

L. H. Stew. This House is adjourned to the House of Lords.

Then the Lords returned to their own House, in the same Order as they came into the Court.

After some Debate amongst themselves in their own House, they adjourn'd till the next Day, and order'd the Prisoner, Council and Witnesses to attend in the Court.

Die Mercurii Primo Februarii 1692.

The Lords sate all Day in their own House, debating amongst themselves in the Absence of the Judges, who were in the Court, and about eight o' Clock in the Evening, the House of Lords adjourn'd till the Friday following, the Thursday being Candlemas-Day, and no Law-day.

And the Prisoner, Council, and Witnesses were order'd to attend in the Court on Friday Morning.

Die Veneris Tertio Februarii 1692.

ABout the Hour of Four in the Afternoon, the Lords (who had till then been debating amongst themselves in their own House) came in the same Order as the first Day into the Court in *Westminster-Hall*, except only that the Judges were a great Part of the Day waiting for them in the Court.

The Lords being seated on their proper Benches, and his Grace the Lord High Steward in the Chair before the Throne, Proclamations were made for Silence, and for the bringing the Prisoner to the Bar in usual Manner; and the Prisoner coming to the Bar, and having saluted his Grace the Lord High Steward, and the Peers, and being resaluted by them, the Court proceeded in this Manner:

L. H. Stew. My Lord *Mobun*, My Lords have heard the Evidence on both Sides, for and against you; and upon that Evidence some Questions have arisen in Point of Law, in which
some

some of my Lords are doubtful. I am therefore by their Lordships Command to propose to your Lordships, my Lords Chief Justices and the rest of the Judges here, to have your Opinions upon a Case stated by their Lordships; and it is this:

In a Case where a Man shall murder another, Whether all those that are in his Company at the Time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person so as in some Cases to be found guilty of Manslaughter?

To this, my Lords expect you the Judges should give your Resolutions severally one after another, and therefore it is to begin with you, my Lord Chief Justice.

L. C. J. Holt. My Lord, the Question is pretty long; and I desire, that I may not be mistaken in the Opinion I shall give, that I may have it in Writing, and that I may have a little Time to consider it, because it hath been a Question framed upon very great Consideration and Deliberation: Therefore I would be very well advised before I give an Answer to such a Question, because it is of so great Importance.

L. H. Stew. You must speak out, my Lords; for else I am at such a Distance that I cannot hear a Word you say.

L. C. J. Treby. My Lords, I make the same humble Request: The Question propounded is long, and the Fruit of great Deliberation among your Lordships: I desire therefore my Answer may be such as becometh me to it, and to that Purpose, that I may have a Copy of it, and some Time to consider of it.

L. H. Stew. I have it here in Writing, and will give it you, if that will serve the turn.

The Paper was brought by the black Rod from his Grace to the Judges.

L. C. J. Holt. My Lord, we desire your Lordships will give us Time to withdraw, and consider of it among our selves.

L. H. Stew. Your Lordships hear the Motion of my Lord Chief Justice; the Judges desire your Leave to withdraw, and consider of the Question among themselves.

Lords. No, no, no.

Then the Judges sitting upon the Wool-Packs, conferred for a little time privately with one another; and then the Earl of *Rocheſter* stood up.

E. of Rocheſter. My Lords.

L. H. Stew. My Lord of *Rocheſter*, What say you?

E. of Rocheſter. My Lords, the Prisoner doth desire to have a Copy of this Question, it being a Question in Point of Law, that his Council may see it.

Lords. Ay, ay, he ought to have it.

A Copy was carried by one of the Clerks to the Bar, and delivered to the Prisoner, and he gave it to Sir *Thomas Powis*, who with Mr. *Harvles* and Mr. *Price*, before assigned of Council for my Lord *Mohun* in Matters of Law, stood by him at the Bar.

L. Mohun. My Lords, I desire to know whether my Council may speak to this Case before the Judges give their Opinions, it being a Matter of Law, and the Judges superior to my Council?

L. H. Stew. My Lord, they may be heard to any Matter of Law that is Law singly, the

Council on either Side may be heard to any Thing that is a Point of Law only.

L. Mohun. My Lord, I conceive this to be so.

L. H. Stew. My Lord, it is agreed to be so: But, my Lords, I must desire your Lordships leave to go down to the Wool-Pack, or I shall not be able to hear what is said.

Lords. Ay, ay.

Then his Grace came down and seated himself on the Wool-Pack.

Sir *T. Powis.* May it please your Lordships, I am of Council—

E. of Devonſhire. My Lords.

L. H. Steward. My Lord Steward.

E. of Devonſhire. I think your Lordships have not yet resolved that the Prisoner's Council shall be heard before the Judges; therefore I desire they may not begin.

Lords. Yes, yes, it was agreed above.

L. H. Stew. My Lord, it must be either then, or not at all; and I understand the Resolution of the House to be so.

Lords. Ay, ay.

L. H. Stew. Go on, Sir.

Sir *T. Powis.* May it please your Lordships, I am of Council assigned by your Lordships for this Noble Peer that is now a Prisoner at the Bar: The Question your Lordships are pleased to propose is this:

In a Case where a Man shall murder another, Whether all those who are in his Company at the Time of the Murder, are so necessarily involved in the same Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, with humble Submission to your Lordships, I take it there are many Cases where a Person that is present when a Murder is committed by another Man, shall be equally Guilty of that Murder; and there are many Cases where a Person that is present when a Murder is committed by another Man, shall be guilty only of Manslaughter: And there are many Cases where a Person that is present when a Murder is committed by another Man, shall not (with humble Submission) be Guilty of any Crime at all.

For the first, there is no Question but if two Persons or more do meet together with Malice premeditated to kill another, and one of them killeth him, and the rest do aid and assist him in doing of it, though the mortal Wound is only given by one, there is no Question but they are all equally guilty of the Murder with him that gave the Mortal Wound: And it is also as clear, if two Persons meet together to commit an unlawful Act, and during the Execution of that unlawful Act, one of them doth kill another Man, the other will be involved in the Guilt of it.

But, my Lords, if several Persons do meet together to commit an unlawful Act, and the Design of the Act is totally over, so that the Prosecution of it is quite left off—

There being some Noise and Disorder about the Court, Proclamation was commanded to be made, and was made again for Silence.

Sir *T. Powis.* My Lords, I say in the second Instance that I was offering to your Lordships; If two Persons or more meet together to do an unlawful Act, but are either disappointed in it,

or have totally desisted from it; and afterwards these same Persons having quitted their Design, are together, and a third Person coming into their Company, though there were Malice between one of those Persons, and that third Person, and upon Words, or some other Occasion or Accident, there should be Quarrelling and Fighting between those two Persons that bore Malice to one another, and one of them is killed, and he that before had joined in the Design of committing an unlawful Act, be only there in the Company, if he doth neither aid nor abet, nor any ways agree to the doing of the Thing, the Authorities are it will neither be Murder nor Manslaughter; and of this I would, with your Lordships Favour, put some Instances.

If two Persons agree together, (as the Case is put in that which goeth by the Name of my Lord *Dacre's* Case) to enter into another Man's Park and steal his Deer, this is an unlawful Design; and if one of them kill the Keeper, and the other no way at all act in the doing of it, yet it will be Murder in the Person that did go along with that other in that unlawful Act: But the Lord *Dacre's* Case was accompanied with further Circumstances; for there it did appear that the Lord *Dacre's* had agreed before hand to kill any Person that should oppose them; there was that particular Circumstance in that Case.

But, my Lords, I take it, with Submission, to be very clear, that if two such Persons who made such an Attempt to rob or steal Deer in a Park, should be disappointed, and should leave the Park, and afterwards go to a Tavern, or an Ale-house, or any Place to drink, having quitted that Design, and some Hours afterwards, a Person cometh in that was not expected, or thought of, and a Quarrel ariseth between one of those two Persons who were before together, and the Man that so came in, and he shall be killed, I take it that the other Person who was present will not be guilty of the Murder, unless he aided, or assisted, or acted in it.

My Lords, I would speak to your Lordships in a Case of this Nature with as good Authority as I could, besides my own poor Reason to prove to your Lordships that there may be many Cases where a Person may be present at the Time when another is murdered, and yet he shall be guilty of only Manslaughter, and in some Cases shall be guilty of no Crime at all.

The Case that I shall cite is out of a Treatise of a very Great and very Learned Man; it is the Book that goeth under the Name of Sir *Matthew Hales's Pleas of the Crown*; the Case is this, You will find in that Book under the Title of *Murder*, Fol. 51. If *A.* and *B.* having Malice prepenfed, meet and fight, and *C.* the Servant of *A.* not acquainted therewith, take Part with *A.* his Master, and kill *B.* this is Murder in *A.* but only Manslaughter in *C.* So here is an Instance where one is guilty of Murder, and the other only guilty of Manslaughter, when both are present at the Time of the Fact committed. The same Law, saith he, it is, if *C.* came in suddenly, and took part with *A.* and killed *B.* In this Case it is Murder in *A.* if there was Malice prepenfed between him and *B.* but only Manslaughter in *C.* who came in suddenly, and actually killed *B.*

My Lords, He goeth further, and saith, if one come by chance where one is killed, and doth

not abet, he is neither Principal nor Accessory to that Murder or Manslaughter; so that here are Cases where it is Murder in one, and Manslaughter only in the other; and here are Cases where it is Murder in one, and not so much as Manslaughter, or any Crime at all in the other.

These that I have cited are Cases where one has Malice against another, and he that joineth in the Quarrel doth not know it. But I will put the Case now, That a Person hath Malice against another, and one happeneth to be in his Company that knoweth he hath Malice against that other Person; if those two that had Malice against one another, do fight, and the one kill the other, yet he that is present will not be guilty of Murder or Manslaughter. For if the Law should be, that Men are involved in the Guilt of Murder whenever they are present at a Time when one that beareth Malice against another killeth his Enemy, Conversation in the World would be very dangerous: For, my Lords, we know the World is too full of Malice, and there are few Men but have Acquaintance with such as bear Malice to others; but if so be that no Man that is acquainted with one that bears Malice to another, may be in his Company but at the Peril of his Life; if his Enemy come in his way, and he happen to kill him in his Presence, then no Man that is ever so innocent can be safe.

For I would put this Case to your Lordships: I am walking with a Friend, or an Acquaintance, that I know hath Malice against another, and that other Man cometh in the way, and they fight, and my Friend killeth that other Man, and I am no way aiding or assisting in it, if that should involve me in the Crime, surely the Law of *England* would be the most unreasonable and dangerous Law to live under in the World. No doubt but in such a Case the Person that is so present is unfortunate, but he is innocent, is not guilty.

For to make one guilty of Murder where Murder is committed, it must be either that he doth aid or abet, or some way assist in the killing of the Man, or he must have before that time agreed and confederated with the Person that killed him, that he would join therein at that Time, and he must be there for that End and Purpose: For if he never engaged or agreed to the Killing of him, nor was there for that Purpose, nor at the Time did any way act, or join, or assist, in the doing of it; in those Cases he is certainly not guilty.

My Lords, I dare not apply any of these Things to the present Case, because I suppose your Lordships only propounded this as a Question of Law, and not of Fact; your Lordships are the great Judges both of the one and the other: But what in the Argument or Resolution of this Case, your Lordships will find agreeable to the present Case of my Lord now before you, I submit to your Lordships Judgment.

Mr. *Hawles.* My Lords, I will not repeat what has been offered, the Distinction is certainly true that has been made, that there are Cases and Instances in Law where a Man may be guilty of Murder, when he is present where Murder is committed, and he may be guilty of Manslaughter only, where another is guilty of Murder; and a Man may be present where Murder is committed, and be innocent both of the one and the other. But this I do venture to say,

That

That there is no Authority in our Law, that saith a Person present, when a Murder is committed, must be guilty either of Murder or Manslaughter, it must be according to the Circumstances of the Thing, either that he intended to aid or assist in the Killing, when he was there by Agreement before-hand, or must actually aid or assist by some Action or Encouragement.

But, with Submission, the Authority of Law is very plain upon this Question proposed by your Lordships, That one Person may be guilty of Manslaughter, and another of Murder at the same time. The Case that hath been put out of my Lord *Hales*, was, upon his Account, Authority sufficient to quote, if we would only rely on him: But, my Lords, with Submission, the Authority goeth a little higher yet; *Stamford* putteth the Question before the Justices; *A.* that is, the Master, fighteth with *B.* and *C.* the Servant taketh Part with his Master, and killeth *B.* *A.* is guilty of Murder, and *C.* only of Manslaughter.

And that Authority is followed afterwards in the Case of *Salisbury*, in *Plowd. Com.* Fol. 100. *B.* with the Resolution of all the Judges in that Case, That one Man may be found guilty of Murder, and another of Manslaughter, as to the same Fact; and *Stamford* doth expressly say, as my Lord Chief Justice *Hales* quotes it out of him, that if a Man be present, but do not abet or assist, or contribute to the Thing, he is totally innocent, and neither Principal nor Accessory to the Murder or Manslaughter.

My Lords, We do not find that our Law hath any way prohibited a Man to keep Company with one that oweth another a Spleen; sure there should be some Warning given about it, if that was the Law in such a Case. The Law goeth no farther than to caution a Man, that he take care he doth not break the Law himself, that he doth not transgress the Bounds set him by the Law.

And it were a very hard Case upon a private Person, if it should be otherwise; for no Law compelleth a private Person to part two that are fighting; if he doth attempt it, he doth it at his own Peril, as in that Case of *A.* the Master fighting with *B.* and *C.* the Servant taking part with his Master to part them, if *B.* be killed, *C.* is guilty of Manslaughter, though his Design was only to part them, because the Law putteth it not upon a private Person to do it; if it did, the Law would protect him for what he did in Obedience to it.

The Law is otherwise in the Case of a Magistrate, or a Constable, who endeavoureth to part any Persons fighting, and to keep the Peace; if he happen so to kill a Man, he is totally innocent; but a private Person shall answer for it.

My Lords, I will not trouble your Lordships further; I hope it is plain, that Malice is absolutely necessary to make a Man guilty of Murder, and there is no such thing in this Case stated by your Lordships; and therefore I submit the Matter to your Judgment.

Mr. *Price*. My Lords, I am of Council for this noble and young Lord the Prisoner at the Bar: I shall not trouble your Lordships so far as to make any Repetition of what has been said by those Gentlemen that went before me.

But there was a Case in *Plowden* that was cited by Mr. *Hawles*, by the Name of *Salisbury's* Case; and I would crave leave to cite the Case that is next precedent; it is in that Book Fol. 98. There, my Lords, was an Indictment for Mur-

der against several, and, among the rest, against two, one for giving the Wound, and the Stroke, and the other for being present, and aiding the other; and they tell you how he was an Aider and an Abetter because he was present, and put the Man upon whom the Assault was made in Terror, which Terror was the Occasion that he could not defend his Life; and made him full as much a Principal as the other that gave him his Death's Wound. And there, my Lords, he citeth another ancient Record, which is *Quarto Libro assisarum Placito* 25. of an Appeal of Murder by a Woman for the Death of her Husband against Sixteen; four whereof were Principals, and the other Accessories, where the Words are *Presence, Force* and *Aid*.

How that will come up to this Case now before your Lordships, I am not to trouble you with the Consideration of, you who have heard the Evidence, are best able to judge of it.

My Lords, by the same Reason and Rule that one Man may be found guilty of Murder, and another of Manslaughter; one may be found guilty, and the other not guilty. As for Example, if *A.* commandeth *B.* to kill *C.* and afterwards it repenteth him of this Command, and he countermandeth it: yet notwithstanding *B.* doth kill *C.* now *B.* that killed *C.* is guilty of Murder; but *A.* that countermanded it, is not guilty as Accessory; for his Malicious Intent did not continue till the murdering Stroke was given, and to make Murder, there must be a continuing Malice till the mortal Wound given. Cases to this Purpose many might be cited; but for a full Authority there is my Lord *Coke* in his Pleas of the Crown, Fol. 51.

My Lords, I have no more to say, but that by the same Rule, that one may be found guilty of Murder, and another of Manslaughter for the same Fact, by the same Rule, (as Circumstances may be,) the one may be found guilty of Murder, and the other not guilty at all.

L. H. Stew. Have you any more to say that are of Council for the Prisoner?

Sir Tho. Powys. No, my Lord, I have nothing further to offer to your Lordships.

L. H. Stew. Have those who are of Council for the King any thing to reply to this that is said by the Council for the Prisoner?

Mr. *Att. Gen.* May it please your Lordships, the Question that is proposed, is this,

In a Case where a Man shall murder another, Whether those who are in his Company at the Time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, that which, with all Submission, we would offer to your Lordships is this; We are intrusted by their Majesties, to prosecute for the Death of one of their Subjects; there hath been a Case stated to your Lordships by the Evidence which hath been given before you; That which is mentioned in this Paper has nothing certain in it, we are to imagine a Case, and suppose Facts, and then to argue what will be the Law upon those Facts supposed. When your Lordships are pleased to let us know what it is which your Lordships take to be the Fact of the Case before you, we shall be ready to speak to the Law upon that Case, as it becomes us, and as

it is our Duty to do; but till the Fact be so stated by your Lordships, and declared to be that which your Lordships take to be the Fact of my Lord *Mobun's* Case, we think it not consistent with our Duty to enter into a Debate upon Suppofals, or upon other Cafes than that which is in Judgment before your Lordships.

L. H. Stew. Will your Lordships then please that the Judges give their Opinion?

Mr. Sol. Gen. My Lords, not to trouble your Lordships with any Repetition of what hath been said, it is my Opinion, as Mr. Attorney General has declared his, That, as this Case is stated, we are bound not to give any Answer to it, unless your Lordships will please to tell us what the Case is upon the Evidence that hath been given before you.

Mr. Serj. T'houpston. My Lords, I desire to be heard one Word in this Case. I take it for granted, that your Lordships here are Judges both of Fact and Law in this Case, and you are so entirely Judges of it, that no Body can interpose in giving their Opinions in relation to your Judgments, what the Fact is, and from the Fact the Law ariseth. We, that are of Council for the King, must needs prejudice him as to the Evidence of the Fact that we have given, except we argue that which is the Fact of this particular Case, and the Law arising thereupon together; which is not necessary here, where your Lordships are Judges of both; and since you are better Judges of them than any one else can be. Therefore we do not think it our Duty to argue upon a Case put *ad dextra*, and *obiter*; and hope your Lordships will excuse us from answering what hath been said by the Council for the Prisoner; tho' I think it might be easily answered in every Point; but I shall not enter upon the debating of it. For your Lordships see what Caution we ought to have in relation to our Duty to the Government, which your Lordships will always expect we should perform as exactly as we can. When the Fact that hath been proved in this Case is stated, your Lordships then are the proper Judges what it amounteth to in point of Law, or if your Lordships desire that Council should argue it, we shall be ready to do it.

L. H. Stew. Then my Lords the Judges, what say you to it? my Lords here expect your Opinion in this Case.

L. C. J. Holt. If your Lordships please, I will repeat the Question; which is this:

In a Case where a Man shall murder another, whether those who are in his Company are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, I shall not enlarge upon the Matter, but humbly offer my Opinion to your Lordships as generally as the Question. I am of Opinion, that the Crime of those who are in the Company at the Time of the Murder committed, may be so separated from the Crime of the Person that committeth the Murder, as in some Cafes they are only to be found guilty of Manslaughter. I suppose your Lordships do not expect that I should argue the Case, or explain my Opinion upon so general a Question, by particular Instances, or run into a Consideration

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of the different Cafes that may be put upon it, therefore I only deliver this as my Opinion.

L. C. J. Treby. May it please your Lordships, I am of the same Opinion; I think the Import of your Lordships Question is, Whether there may be a Case in which it is possible that one Person, who is in the Company of another at the Time that he committed Murder, may be guilty of Manslaughter; and, my Lords, I think a Case may fall out, and may be so circumstanced, as that it may be possible, that he who did accompany the Murderer, may be guilty only of Manslaughter. Your Lordships only expect our Opinion, and therefore I will not go about to argue it.

Mr. J. Nevil. My Lords, I shall not spend your Time to repeat the Question, it hath been so often repeated; but I am of the same Opinion with my Lords Chief Justices: I must concur with them in it, that there may possibly be such a Case, as that when Murder is committed where others are in Company, he that doth the Thing will be guilty of Murder, and those that were in Company, guilty but of Manslaughter. There may be such a Case.

Earl of Carlisle. My Lords, to save your Lordships Time, unless the rest of the Judges differ from those that have spoken their Opinion, I think you need not trouble them to speak to it severally.

Mr. B. Turton. We are all of the same Opinion, my Lords; we cannot differ in Opinion upon such a Case.

Earl of Monmouth. My Lords, I humbly beg your Lordships leave to propose a Question to my Lords the Judges for their Opinions.

Lords. Ay, ay,

L. H. Stew. What is your Question, my Lord of Monmouth?

Earl of Monmouth. My Lords, the Question is this,

A, conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; whether A, without any Malice to C, or any actual Hand in his Death, be guilty of Murder?

L. H. Stew. Pray, my Lord, be pleased to hand up your Paper, that my Lords the Judges may see it.

Earl of Mulgrave. My Lords.

L. H. Stew. What saith your Lordship, my Lord of Mulgrave?

Earl of Mulgrave. I only desire, that the Prisoner at the Bar, if he hath a mind to it, may have his Council speak to this Question, before the Judges answer it, as was done in the other Case.

L. Mobun. I desire, my Lords, my Council may have the Question in writing.

L. H. Stew. Make my Lord a Copy of it. One Copy was delivered by the Clerk to the Prisoner, and by him to his Council, and another to the King's Council; and the Original was delivered to the Judges.

L. Mobun. Is it your Lordships Pleasure that my Council may be heard to this Question?

Lords. Ay, ay.

Sir. T. Powys. My Lords, the Question that this noble Peer hath been pleased to propose, is this:

A, conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; whether A, without any Malice to C, or any actual Hand in his Death, be guilty of Murder?

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My Lords, with humble Submission to your Lordships, I take it in this Case the Law is very clear, That as this Case is put, he that was in Company when the Murder was committed, under these Circumstances, is not guilty of any Crime: But without question he is not guilty of Murder.

My Lords, Malice is so absolutely necessary to Murder, either express, or that which the Law calleth Malice implied, that there can be no Case where Murder can be committed without it; no Indictment can ever be good, unless *Ex malitia sua preovigitata* be alledged in it; because this is absolutely essential to Murder.

But, my Lord, if so be a Man that is present, not desiguing, or foreseeing that unhappy Accident that doth fall out between his Friend with whom he is in company, and another Person that came accidentally to them, tho' Malice was between those two, God forbid he should be guilty, if he did neither foresee it, nor any way acted in it.

He that is present must be involved in the Crime, either by some way aiding, abetting, or contributing to the Death of the Man, or there must be some precedent Combination and Agreement to do that Act which at that time was done; and that must be plainly and clearly proved: For his acting, his standing by innocently and harmlessly, is so great an Evidence of his not concurring, that it must be a mighty Proof of Malice that must convict that Man of a preceding Agreement to do the Fact; and if it doth not appear plainly and manifestly, that he agreed before-hand, or acted then, and abetted and contributed to the Thing; I say, unless this be clear and manifest, it is no Question, but in Law, he is innocent of the Murder.

For in such a Case it is plain he never had pre-pensed Malice express, nor is there any Evidence of that which the Law calleth Malice implied; which is when a Man killeth another without Provocation, that is, when he that doth the Act, had no Provocation, or killeth an Officer in the Prosecution of his Office, That the Law calleth Malice implied. But then that is never but in the Person that did the Act, and not in the Persons who were present at that time, unless before-hand they had agreed to do that Act; and therefore they cannot be guilty of Murder.

And this, my Lords, is what I humbly offer to your Lordships Consideration, in relation to the Case put by that Noble Lord.

Mr. Hawles. Will your Lordships please to favour me with a Word on the same side with Sir *Tho. Poveys*, and I shall be very short in the matter.

The King's Council did complain that the last Case was not fully stated, and therefore they could not speak to it; my Lords, with Submission, this Case is fully stated: there was nothing in the other Case said of Malice between him that was murdered, and him that killed him; but here it is said, That the Person present was not conscious of any Malice, nor had any manner of hand in the doing of it: And then, with Submission, my Lords, upon the Question, Whether he was not guilty of Murder? If this was a special Verdict found by twelve Men, and referred to the Judges, I do not at all doubt but their Judgment would be, That he was not guilty. For tho' in a Special Verdict, where Malice is not found, the Prisoner would be acquitted;

yet if it be expressly found in the Verdict that he did not know of any Malice between them, then, with Submission, there would be no Colour to find him guilty of any thing.

A Lord interrupted him, and said, The Case was put of one conscious of the Malice.

Mr. Hawles. My Lords, I beg your Pardon, I confess it is so, I did mistake it; but, with Submission, that will not much alter the matter. If he was conscious, that will not make him guilty; for that Consciousness of his is no matter of Crime: if he did not act any thing, or agree to do any thing before hand, but only was in Company with the Person that had Malice against another, that will not make him guilty of any Crime whatsoever.

Mr. Price. My Lords, I shall speak but one Word to it; I observe the great Stress of the Case lieth upon the Word being conscious of the Malice between B and C. Now as to that, with Submission, I conceive, and am of Opinion, that as this Case is, A is not guilty of Murder, and for Authority, I shall rely upon the Cases in *Stampford's Pleas of the Crown, Fol. 40.* And my Lord *Coke's Pleas of the Crown, Fol. 51.* The Case is this, If a Man happen to be in Company where Murder is committed, or Felony, and he cometh not there on purpose, or by confederacy to do it, in that Case, tho' Murder be committed, and he doth not endeavour to part them, this is no Murder in him, for he is punishable by Fine and Imprisonment, if not an Infant; but if he was an Infant, he is not punishable at all, for he is not Consant of the Law in such a Case. But in this Case, except Malice pre-pensed, express, or implied, be proved, without doing any thing or abetting, he is not guilty of Murder.

L. H. Stew. Gentlemen, you that are of the King's Council, have you any thing to say to this Question?

Mr. Att. Gen. My Lords, here is a Case put which I hear from the Council on the other side, is certainly enough stated. My Lords, if this be stated to us, as that which is agreed to be the Fact of the present Case, we are ready to speak to it; but if this be not taken by your Lordships, to be my Lord *Mohun's* Case, and as such stated to us, then we must humbly beg to be excused. I know your Lordships will be tender in this matter, and as well pleased that we hold to that which we conceive to be our Duty in reference to that Station in which we serve the King, as with any Forwardness in us to answer Questions: And therefore we beg your Lordships Excuse for saying nothing more to it.

Earl of Monmouth. My Lords, I did not propose it as a Case stated and agreed by your Lordships, it is only a Case particularly stated for my own Satisfaction.

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave.*

Earl of Mulgrave. If your Grace please, let the King's Council know, that they are not to ask you the Question, Whether the Lords are agreed what the Case is? They are to answer such Questions as are proposed, and not to ask any such Question.

Mr. Att. Gen. My Lords, with that noble Lord's Pardon I did not ask any Question; all that I said was, That when a Case is agreed to, and stated by your Lordships to be the present Case,

Case, we would be ready to speak to it, and till we receive that Intimation from your Grace, we shall think our selves excused from giving any Answer to other Questions.

L. H. Stew. My Lords, I think we must go on, and if any Lord has any more Questions to propose, he may propose them.

E. of Nottingham. My Lords.

L. H. Stew. My Lord of Nottingham.

E. of Nottingham. Your Lordships will not certainly require of the King's Council to answer any Questions that they think improper for them to speak to; but when a Question hath been proposed by any noble Lord, to which the Council for the Prisoner hath been heard, and the King's Council think not fit to speak to it, there is nothing more requisite, but that in the Presence of the Prisoner (as the Law requireth it should be) you do demand the Opinion of the Judges.

L. H. Stew. What say you to it, my Lord Chief-Justice?

L. C. J. Holt. If your Lordships please, I will repeat the Question.

A, conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; Whether A, without any Malice to C, or any actual Hand in his Death, be guilty of Murder?

And, my Lords, as this Case is stated, I do conceive, that *A* is not guilty of the Murder, for it appeareth the Meeting was casual, and there was no Design in *A* against *C*, and therefore tho' *A* did know of the Malice between *B* and *C*, yet it was not unlawful for *A* to keep Company with *B*, but he might go with him any where, if it was not upon a Design against *C*.

Therefore I take it as this Case is put, that *C* came accidentally into the Company where *A* and *B* were, and then, without any Design in *A*, *B* killeth *C*. This is not Murder, indeed no Offence in *A*.

L. C. J. Treby. If it please your Lordships, as this Case is put, I think it is not an Offence of Murder or Manslaughter in *A*; it dependeth upon the Words as the last Question did. For the former Question was put generally, Whether there might not be a Case found or framed, wherein one might be guilty of Murder, and the other of Manslaughter? So here it dependeth upon the Word [*Happeneth*], which I take to signify, (as my Lord doth) a casual coming into, or being in the Company.

Now, my Lords, when *B* had communicated to *A* this malicious Purpose to kill *C*, it stood uncertain, whether he to whom *B* had communicated it did consent; if he had any way declared his Consent, that he would go to such a Place, and stay there with *B* for such a Purpose, then it had been Murder in both; but if he merely was silent, and only kept *B* Company, perhaps with an Intent to dissuade him from it, or possibly without any Consideration at all, and then the Person intended to be killed accidentally came by, and is killed by *B*, *A* doing nothing towards it: In that Case, it is neither Murder nor Manslaughter in *A*.

Mr. J. Nevil. My Lords, as this Case is, it seemeth to be meer accidental the coming of *C* into their Company, for it is said, *Happeneth to come*; and so though *A* did know that there was an Animosity between *B* and *C*, yet declaring no Intent of going with *B* to that Purpose, but

coming with *B* into a Place where *C* accidentally came or happen'd to be, between whom and *B* there is a Quarrel, and *C* is killed; I do not take it at all that *A* is concerned, but merely as any other Person that accidentally was there, and in that Case he cannot be guilty of Murder or Manslaughter, or any other Crime.

E. of Devon. My Lords.

L. H. Stew. My Lord Steward.

E. of Devon. If the rest are of the same Opinion, you need not give them any farther Trouble, I think.

Judges. We are of the same Opinion.

E. of Scarborough. My Lords.

L. H. Stew. My Lord of Scarborough.

E. of Scarborough. I humbly beg your Lordships Leave, that I may offer a Question to your Lordships, to be proposed to the Judges, and the Question is this.

Whether if A heard B threaten to kill C, and some Days after A shall be with B upon some other Design, where C shall pass by, or come in the Place where A and B are, and C shall be killed by B; A standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's Part against C; whether A will be guilty of the Murder of C?

L. H. Stew. Pray, my Lord, give your Paper to the Clerk. (*Which was done.*)

L. H. Stew. My Lord *Mobun*, doth your Lordship desire that your Council may have a Copy of this Question, and be heard to it?

L. Mobun. Yes, my Lord, if you please.

Then a Copy was given to him for his Council, and another to the King's Council, and a third the Judges had.

Sir Tho. Powis. Will your Lordships please to favour me with a few Words, and I shall trouble your Lordships very little, because I have said that already to your Lordships which will be an Answer to a good Part of this Case: The Case is this:

Whether if A heard B threaten to kill C, and some Days after A shall be with B upon some other Design, where C shall pass by, or come in the Place where A and B are, and C shall be killed by B; A standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's Part against C; whether A will be guilty of the Murder of C?

My Lord, with humble Submission, we do take it, that the Law in this Case is likewise very clear, that *A* is not guilty of Murder: For as this Case is put, there doth not appear (nay, the contrary doth appear) that he had any manner of Malice to this Man that was killed, nor any Hand in the Killing of him: And, as I said before to your Lordships, (and I hope the Judges will verify us in that, and your Lordships will be of the same Opinion) there can be no Case wherein a Man shall be guilty of Murder, but where there is Malice against the Person so murdered, or some way abetting and assisting in the Killing of him, or what the Law calleth *Implied Malice*.

But in this Case that is now put, there is neither express Malice, but the contrary appearing, nor any implied Malice, which is by Construction of Law; the Person that was by, and heard *B* threaten *C* before, yet doth no way aid or assist to the Killing of him; and therefore I think,

with Submission, the Law, and all our Law-Books, and Reason itself, are clear for the acquitting of *A* in this Case.

Mr. *Hawles*. My Lords, I think the Resolutions that have been given in the Cases before, will warrant us in our Opinions in this, that *A* is not guilty of Murder in this Case: For I think it was said by the Judges, That notwithstanding a Man knew another had a Design upon a third Person, yet it was lawful to keep Company with him, if he did not join with him in the Design. Now here it doth appear, that *A* keepeth *B* Company, but not upon that Design, for he had no Malice to *C* nor had any Hand in his Death, and *C* cometh in by accident into the Company or Place where they are: With Submission, my Lords, *A* is totally not guilty, for there was no Malice in him; and though he was there, he was there upon his lawful Occasions; and if they two fight, the best Courſe he can take is to stand still and do nothing; and therefore he cannot be guilty of Murder or Manslaughter.

Mr. *Price*. My Lords, I have but this Word to say, His being there was lawful, *C* cometh there but by accident, and when they two do fight, his not parting of them doth not make him guilty of the other's Death; here is no Malice, therefore he is not guilty of Murder, and he hath done nothing towards the Fact, therefore he is not guilty of Manslaughter.

L. H. Stew. Will you say any Thing to this Question, you that are of the King's Council?

Mr. *Att. G.* My Lords, we are ready to speak to the present Case, when we receive Intimation from your Lordships that what is put is the present Case.

Mr. *Serj. Thomp.* My Lords, if they put a Case of Fact to be argued as a Case of Law, and from time to time alledge Facts which are not in the Case before us, we cannot speak to them.

Mr. *Att. Gen.* My Lords, we are ready to argue the Case of the Prisoner at the Bar when it is stated; but till then, we humbly beg your Pardon: We think we are not bound to speak to other Cases.

L. H. Stew. My Lord Chief-Justice, What say you to it?

L. C. J. Holt. If your Lordships please, I will put the Question:

Whether if A heard B threaten to kill C, and some Days after A shall be with B upon some other Design where C shall pass by, or come in the Place where A and B are, and C shall be killed by B; A standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's Part against C; whether A will be guilty of the Murder of C?

My Lords, I am of Opinion that *A* in this Case will not be guilty of Murder or Manslaughter: For it doth not appear by the stating of the Case, that *A* did consent to the Design, or in any wise contribute to the Fact.

L. H. Stew. My Lord Chief-Justice *Treby*.

L. C. J. Treby. My Lords, I take this Question to be the same in Substance as to the Point in Law with the last; and am of Opinion that *A* is not guilty of Murder or Manslaughter.

Mr. *J. Nevil.* I am of the same Opinion.

L. H. Stew. If all the rest of you are of the same Opinion, you may spare your selves the Trouble of delivering it particularly.

Judges. We are all of the same Opinion.

[Then there was a little Pause; and afterwards the Earl of Kingſton stood up.]

Earl of Kingſton. My Lords, I desire for my own private Satisfaction to know,

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of that Design is present) be guilty in Law of the same Crime with the Party who had the Design and killed him, though he had no actual Hand in his Death?

L. H. St. My Lord, I must crave your Excuse, there is another Question to precede this.

E. of Devon. My Lords, I had a Question to ask; but it being much to the same Purpose with the two last, I think it better to wave it, for there hath been given an Answer to it already.

L. H. Stew. Then, my Lord of *Kingſton*, will you be pleased to deliver up your Paper to the Table? [Which was done]

L. H. Stew. My Lord *Mohun*, Do you desire your Council may have a Copy of this Question?

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave*.

Earl of Mulgrave. I desire your Grace will hear the Question. Pray let it be read, that we may know what it is.

L. H. Stew. Read it.

Cl. of Crown. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave*.

Earl of Mulgrave. I think, my Lords, in a Case of this Nature we cannot be too exact: I humbly conceive that is not a proper Question to be put, therefore I move that we may adjourn to consider of it, whether it shall be put or not, if that Lord do insist upon it.

L. H. Stew. My Lord of *Kingſton*, Doth your Lordship insist on this Question being put?

E. of Kingſton. Yes, my Lords, I do, and I must insist upon it; for I think I cannot give my private Opinion in this Case without Satisfaction in it.

Lords. Then Adjourn, Adjourn.

L. H. Stew. This Court is adjourned into the House of Lords.

Then the Lords went back to their own House in the same Order, and debated this Matter amongst themselves for about an Hour.

Between six and seven in the Evening the Lords returned into the Court in the same Order, and being seated on their Benches, and his Grace in the Chair before the Throne, they proceeded thus:

First, Proclamation was made for Silence.

L. H. Stew. My Lord Chief-Justice and you the Judges —

L. Cornwallis. My Lords.

L. H. Stew. My Lord *Cornwallis*.

L. Cornwallis. My Lord, Before your Grace giveth any Directions, I think you should call the Prisoner.

L. H. Stew. Is not the Prisoner at the Bar?

L. Cornwallis. No, my Lord.

L. H. Stew. Call for the Prisoner.

Then Proclamation was made for the Governor of the Tower to bring forth the Prisoner, and he was brought as before.

L. H. Stew. I am to let you that are of Council for the King and the Prisoner know, That if any Question be put by any of my Lords, which any of you shall not think fit to give an Answer to, my Lords will take it for granted either on the one Part or on the other, that the Reason is, because it is not necessary to give any Answer; and then they will proceed to have the Answer of you, my Lords the Judges. And now for my self, I must desire your Lordships will give me leave to come down again to the Wool-Pack.

Lords. Ay, ay.

Then his Grace came down, and seated himself on the Wool-Pack.

L. H. Stew. My Lord of Kingston, Will you please to propose your Question?

Earl of Kingston. My Lord, my Question is this, which I desire the Judges Opinion in for my own Satisfaction:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord *Mobun*, Do you desire your Council may have a Copy of that Question?

L. Mobun. Yes, if your Lordships please.

L. H. Stew. Read it aloud, and deliver a Copy to my Lord.

The Question was read by the Clerk of the Crown, and one Copy of it delivered to the Prisoner's Council, and another to the King's Council, and a third to the Judges.

L. Mobun. Is it your Lordships Pleasure, That my Council be heard to this Case?

Lords. Ay, Ay,

Sir T. Powis. The Case that is put, my Lords, is this:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design and killed him, though he had no actual Hand in his Death?

My Lords, I shall not insist upon the same Privilege that the King's Council did even now do, to decline speaking to any Case that your Lordships shall put. But I hope your Lordships will permit me to say, That I do not admit this to be the Case of my Lord *Mobun*, and I hope that my speaking to it shall not be taken as any Admission that this is his Case. But as this Case is put with that Allowance, that I speak to it not as his Case, I do take it, that this Person thus present at the Killing of the third Man is not guilty of Murder.

My Lords, there are but two Circumstances in the Case that can draw him into any Danger:

The *First* is, That he knew another Person had a Design to make an Assault upon a third Man. And,

The *Second* is, That he who had the Know-

ledge of this Design, was also present when upon that Assault that third Person happened to be killed.

But, my Lords, I do take it, that in this Case neither of these Ingredients will make this Man guilty of Murder.

As to the *First*, The knowing that a Man has a Design to make an Assault upon a third Person, that taken by it self is no Crime. It frequently happeneth, that a Man heareth what others threaten, that they will assault and beat such an one; I may know that another doth so design, and that he will watch his Opportunity for the doing of it, and yet my meer Knowledge, my meer knowing of it, doth not make me guilty of any Crime, tho' I do not endeavour to prevent it.

I confess, it doth become a good Man upon such Knowledge to do all that he can to prevent such Beginning of Mischiefe, but if he doth not prevent it, that is no Crime.

The *Second Matter* is, That tho' he did know of this Design, he was also so unfortunate as not to prevent it; nay more, he was present when the Assault was made, and that Assault is attended with the Death of the Party assaulted, but he never acted in it, never abetted it. Take all this together, and yet he is not guilty of Murder, nay, perhaps not of any Crime, at most only of a Misdemeanour.

For it is no more than this: I knew another Person did intend to assault a third Man; I was present when he did assault him, but did not prevent it either before he made it, tho' I knew he designed it, nor whilst he was making the Assault upon which the Man is killed. That is all that this Thing doth amount to, and no Man can say, with humble Submission, That this can involve me in the Crime of Murder.

It is true, if I command *A* to beat *C*, and he according to my Command doth fall upon him, and so beat him, that he dieth; this maketh me guilty of his Death, because what is done by that Command of mine is my doing; therefore tho' I only commanded him to beat him, yet he dying upon that beating, which was made pursuant to my Command, I that gave the Command must answer for it, and am guilty of all that followeth thereupon.

But if I only know, that another Person designeth to do such a Thing, and am neither commanding, aiding nor assisting in the doing of it, but only present at the Time, but did not interpose to prevent it; that doth not make me such an Agent in this Matter, as that I should be any ways guilty of his Death if it doth ensue. I take it this Case cometh to no more than this, there is no Malice precedent, no Sort of abetting, aiding or assisting, but a bare declining to prevent the Assault, and that will not amount to any Thing that is Capital; if it be any Offence, it can only be construed as a Misdemeanour, but neither Murder nor Manslaughter.

Mr. Hawles. If your Lordships please to spare me one Word on the same Side: It is no Manner of Crime for a Man to know, that another doth design to lie in wait to murder a third Person, much less to assault him.

There is but one Case that I know of in Law, where the Knowledge of an ill Design, without Discovery and Endeavour to prevent it, is an Offence, and that is in the Case of High-Treason; and yet even there the bare Knowledge doth not
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make a Man guilty of Treason: And it was a hard Case if it should, for it is not in the Power of any innocent Man to say, that he shall not know of an ill Design, either of Murder, or High-Treason.

It is true, in the Case of Treason, if I conceal it, it is a Crime, but it is not Treason, but only Misprision of Treason; which is Forfeiture of Lands, and perpetual Confinement in Prison during my Life: But it doth not extend to any other Matter; for tho' I know, and do conceal it, that is no Manner of Crime at all, tho' that is further than this Case putteth it; for it only goeth to the Knowing, and not to the Concealing.

And, my Lords, with Submission, this would be likewise a hard Case if the Law was otherwise; For sometimes a Man may apprehend he knoweth of a Design, when there is no such Thing designed. Your Lordships know where a certain Gentleman said he would kill any Man that did oppose him, when he neither designed it, nor executed any such Purpose: And in such a Case, tho' it had been well done of the Person that heard of the Design, to have gone and informed the third Person (and if he had, I believe your Lordships would have had no Occasion of a Tryal at this Time, for it might have been determined another Way) yet his not doing it is not a Crime.

Then further, my Lords, a Person's being present at such a Time is his Misfortune, but not at all his Fault; he can no more help the Action, than he could the ill Design, or his own Knowledge of that Design. It is a complicated Misfortune, both to know it, and be present at the Execution of it; but without having any Hand in it, it can be no Offence: For indeed, it is as to him no more than a Man's being present that did not know of such a Design. And if this was a Special Verdict, upon an Indictment for Murder, I doubt not but my Lords the Judges would give their Judgment, that the Defendant was not guilty.

Mr. Price. I have only this Word to add, my Lords; I do take it, That the bare Privy of this Design, with the bare personal Presence of him that was so privy when this Act is committed by another Man, will not amount to make him Principal; and so he will not be guilty of Murder: For we find, that to make a Man Principal in Murder, there must be aiding and abetting, and only being present will not do it. Now the aiding and abetting must be, either by commanding or assisting, or putting the Person assaulted in Terror and Fear, or he must be there ready, and designing to assist in Case of Opposition. These are Facts that the Law requireth to the making a Man Principal in Murder: and bare Privy, with a Mind to assault, and bare Presence, when upon the Assault the Man is killed, will not amount to make a Man Principal, and consequently guilty of Murder.

L. H. Stew. Mr. Attorney, Do you think fit to say any Thing to what the Council for the Prisoner have alledged?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Nor any other of the King's Council?

Mr. Soll. Gen. No, my Lord.

L. H. Stew. Are ye all of that Mind?

Mr. Serj. Tremain. I am of that Mind, my Lord.

Mr. Serj. Thompson. And so am I.

L. H. Stew. Then, my Lord Chief-Justice, what say you to it?

L. C. J. Holt. If your Lordships please, I will repeat the Question:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed (when the Person who knew of the Design is present) be guilty in Law of the same Crime, with the Party who had the Design and killed him, tho' be had no actual Hand in his Death?

My Lords, I am of Opinion this is no Murder nor Manslaughter; he that knew of the Design of assaulting, only happened to be present when the Assault was made, and the Party killed; but if he did not contribute to his Death, he is not guilty of Murder. This Question is much to the same Effect with the Question that was put before: But if the Person that knew of this Design did advise it, or agree to it, or lay in wait for it, or resolved to meet the third Person that was killed, with him that killed him, it would be Murder: But as this Case is put, it is neither Murder nor Manslaughter.

L. C. J. Treby. My Lords, I am humbly of the same Opinion as this Case is put. The Person to whom this Matter of the Design to lie in wait to assault another is communicated, is only passive; he only receiveth the Notice of it, and doth nothing towards the Fact. But if by going to the Place, directing, persuading, promising Assistance, or encouraging, he had discovered his Consent, or had lain in wait himself, then he had been guilty: But if he did nothing, but only receive this Notice, and then the Person assaulted happened to come by, and is killed in his Presence, this is but an Accident, and doth not involve him in the Murder. And I think in Effect, it is the same with the second Question that was proposed. There it was put, of one that had an Animosity against another, here it is put, of one that lay in wait to assault him; There it was put, of accompanying him to the Place where the Party was killed; here it is, of his being killed in his Presence: So that the Resolution must be the same in this Case that was given in that.

Mr. J. Nevill. My Lords, I shall not spend any of your Lordships Time: I am of the same Opinion with my Lords that spoke before, and for the Reasons that they have given.

L. H. St. If they are all of the same Opinion, I suppose your Lordships will not require their particular delivering it.

Lords. No, no.

Judges. We are all of the same Opinion.

L. H. Stew. I am now to know of your Lordships, whether there be any of you that have any more Questions to ask?

E. of Nottingham. My Lord.

L. H. Stew. My Lord of Nottingham.

E. of Nottingham. The Question that I have to propose to your Lordship is the same that hath been already offered to you, but with some little Variation; for I do find, my Lords, the Judges do interpret this Person's being killed in the Presence of another, to be upon an accidental Meeting. I would propose to your Lordships, that the Judges may answer what the Law would be, when a Person, knowing of the Design of another to lie in wait to assault a third Man, accompanieth

companieth him at that Time that that Design is to be executed, Whether it be the same Crime in the one as the other ?

L. H. Stew. If your Lordship have your Question in Writing, pray deliver it in.

Earl of Nottingham. I will immediately, my Lord. (*Then he did put it in Writing.*)

L. H. Stew. Will your Lordship please that it may be handed to the Table? (*Which was done.*)

L. H. Stew. Read it.

Cl. of Crown. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that Time in the Presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord *Mobum*, Do you desire a Copy of this?

L. Mobum. Yes, if your Lordships please.

L. H. Stew. Carry my Lord one.

(*Then Copies were delivered as before.*)

L. H. Stew. Well, Sir, what say you to that Question ?

Sir Tho. Powys. The Case that is now propounded is this :

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that Time in the Presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

My Lords, I shall not, (though I am of Council for this noble Lord) decline or refuse speaking to this Question; still, my Lords, with that Saving which I know your Lordships will allow me, that I am very far from admitting that this which goeth much farther than the last Case, is the Case of my Lord *Mobum*. Whether your Lordships will permit the King's Council, who have declined speaking to any of the Cases hitherto, as not being, as they pretend, my Lord's Case, now to speak to this which we do much less admit to be so, than they did the others, will be in your Lordships Pleasure to determine, but I shall not decline to speak to it with that Saving.

And truly, my Lords, with humble Submission, I do take it, that as this Case is put, the Party who accompanied the other in such Manner as in this Case it is stated, is not Guilty of Murder. I know it was intended by that Noble Lord who proposed the Question, that it should be admitted, that beyond all Doubt the Fact was so as here it is stated; and then the Question is, What the Law will be where the Fact is thus admitted and agreed to on all Sides: And if there was such a Case, (for, my Lords, I speak to this as a Case at large) if there was such a Case where the Fact is beyond all Question made out to be so as it is here stated; yet I take it that in a Case of Life, which is the Case now before your Lordships, the Party will not be guilty of Murder.

My Lords, here is a further Circumstance added in this Case than what hath as yet been inserted into any of the other Cases; that is, That the Party knoweth of the Design of him

that he accompanieth to Assault a third Man, and doth accompany him in his Design, and then is present when the Design is executed; yet all these together, will not, as I humbly conceive, with Submission to your Lordships Judgment, make this to be Murder, because it doth not appear in this Case that he did accompany him with an Intention to execute this Matter, or to aid and assist him in the doing of it: There is no such Circumstance in the Case, and 'tis that which must be the Thing that will draw him in to be guilty of Murder.

For if two Men (to put a Case, which I hope I may do, with your Lordships Pardon, to explain my self) should be travelling upon the Way, and one of the Persons should acquaint the other, that at such an Inn, there is a Servant that he is resolved to beat, and this Person that has this Matter imparted to him, doth accompany the other in the Journey, (which I take it answereth the Knowing the Design, and Accompanying him in the Design) and, when they come to the Inn, the Thing is executed in the Presence of the Party that knew of such a Design, and it doth fall out that Death doth ensue upon it, unless he that did accompany him did some way or other act, contribute, or assist in the doing of it, it doth still remain a thing whereof he had only Privy and Knowledge, which he had done well, especially (in regard of the Consequence of it) to have prevented. And he is highly blameable, that he would accompany a Man who had such a Design to do an unlawful Act, and did not prevent him from executing of it.

All this is blameable in him, but it will not, as I conceive, be Murder in him; for I must insist upon that in Point of Law, that to make any thing Murder, there must be prepered Malice in the Person that is to be found Guilty of it, or some precedent Agreement to do it, or some Act of Aiding or Assisting of the Person who doth it; but as this Case is, here is nothing of Malice doth appear, or that the Person who accompanied the other in his Design had any sort of Malice against the Person assaulted. And it doth not appear that he did any way assist in the doing of it. He was present at the Time when the other executed the Design he had imparted to him, but he never joined in it, nor had any Malice precedent, nor did assist or do any Act at that Time; and therefore I take it in this Case, which (as I said), I am very far from admitting to be my Lord *Mobum's* Case, that the Party who accompanied the other is not Guilty.

Mr. Hawles. My Lords, Though we who are of Council for this Noble Lord, the Prisoner, do not think this Case, that is put, to be his Case, for, with Submission, if the Indictment be looked upon, your Lordship will find—

L. H. Stew. Sir, I must stop you there, you are not to tell my Lords what your Opinion is as to the Fact, for of that my Lords are the Judges, you are to take the Case fairly, as a Case put, and you are to inform my Lords what the Law, in your Opinion, would be upon such Case. It is not before you, but before my Lords only, to consider whether this be applicable to my Lord *Mobum's* Case or not.

Mr. Hawles. If your Lordship please, I shall observe your Directions in that Matter, and, with humble Submission, this is not Murder in him who accompanieth the other, as this Case is put; for
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in every Case of Murder the Indictment must be either, that he actually killed him, or aided and assisted him that did kill him. But, with Submission there is neither of these in this Case.

He did know of the Design, there is no Crime, he did accompany him in it, that is, he bore him Company at that Time; he went with him to the Place where he executed his Design, but he did nothing when he came there to further, promote, or encourage the Execution of it; and therefore it can never make him Principal, nor Accessory to the Murder.

Mr. *Price*. I shall only say this, my Lords, that I take it, that the bare going with him in this Design, without doing any Act, doth not involve him in the Confederacy, as Aiding and Abetting. Something must be done or said, either he must assist or advise, or otherwise he cannot be Principal, and consequently cannot be guilty of this Murder.

L. *H. Stew.* Mr. Attorney, have you any thing to say to this?

Mr. *Att. Gen.* My Lords, we that are of the King's Council do not desire to be heard to this Case neither.

L. *H. Stew.* I do not hear you, Sir, what you say?

Mr. *Att. Gen.* My Lord, we do not desire to speak to it.

L. *H. Stew.* Then, my Lord Chief Justice.

L. *C. J. Holt.* This is the Question:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen, that the third Person be killed at that Time in the Presence of him who knew that Design and accompanied the other in it, be guilty in Law of the same Crime with the Party who had that Design and killed him, though he had no actual Hand in his Death?

My Lords, as for this last, I desire to make some Observations upon the Words, *Had no actual Hand*. By these Words, I suppose, is meant he did not draw his Sword, or lay any Hand upon the Person slain, or give any actual Assistance to the other Person at that time when the Third Person is slain, but was only in Company, and a Looker-on.

E. of Nottingham. My Meaning in those Words is, That with his Hand he gave no Stroke.

L. *C. J. Holt.* That, my Lords, I take to be the Meaning, he did not give an actual Stroke, nor held the Person whilst the other killed him, nor used any Violence.

Now, I am of Opinion, my Lords, that this is Murder in the Person that did accompany the other in the Design. For he being acquainted with the Design, and knowing of the Intention of the Party to commit Murder, or do an unlawful Act, upon which Death might ensue, accompanying him in that Design, he shews an Approbation of it, and gives him greater Courage to put it in Execution. Which is an Aiding, Abetting, Assisting and Comforting, which are the Words used in such Indictments, and so my humble Opinion is, it is Murder in that Person that accompanied the other, as well as in him that did the Fact.

L. *C. J. Treby.* My Lords, as this Case is, I think the accompanying of him in that Design (which are the effectual Words upon which the Question turneth) is Murder.

Here is first of all the Party that designeth the Assault, and he doth, pursuant to that Design,

make this Assault, and thereupon doth kill the Third Man; this undoubtedly is Murder in him, for here was Malice prepensed, and Intent of Bodily Hurt to the Party, and in Pursuance of this Intent, Death ensueth; this is unquestionably Murder in him.

Then the Question is, What Crime it is in him to whom this is made known, and who accompanied the other in that Design, knowing of it? I take this to be a Consent to the Design, and to the Execution of it. It is more than knowing and not revealing of it, though that was his Duty to have done, (and so the Council for the noble Lord did admit, that it was a Misdemeanor in him not to hinder such a Breach of the Peace.)

But here I say is more than that: He goeth with him to the Place, and accompanieth him in order to the executing the Design, and this is an Aiding and Abetting of it. If a Man say to another, I intend to assault and beat such a one; come along with me, stand by me, and see it done; and the other consenteth, and accordingly goeth along with him, and accompanieth him whilst he beats and kills the Man; this is an Approving, Encouraging, and Emboldening of him in his mischievous Purpose, and shews such concurring Malice in that other Person, as renders him guilty of the same Crime with him that with his Hand and Weapon beat and killed the Man.

Mr. *J. Nevil.* My Lords, as this Case is, and as I take the Law to be, this is Murder. It is a Case of one's lying in wait, and another Person doth accompany him in the Design, he that did design the lying in wait having told it to him, and then he is present at the Execution. I take it as Law, if the Party is killed, he that is present, and cometh with the other upon that Design, shall be taken to come to assist or abet the other, or defend him if any thing of Opposition should happen, and that I take to be Murder.

L. *H. S.* Are you all of the same Opinion?

Judges. We are all of that Opinion, it is Murder in both in that Case.

E. of Devon. My Lords.

L. *H. Stew.* My Lord Steward.

E. of Devon. My Lords, I desire they may all give their Reasons, as well as their Opinions, as this Case is.

Mr. *J. Gregory.* My Lords, I am humbly of the same Opinion with my Lord Chief Justice that spoke before me, that this is Murder, and my Reason is this: First, He knew of the Design, which was an unlawful Design; then he accompanied him as this Case is put, not only to the Place, but in the Design, which differs the Case from his being present by Accident; for by his going along with him he doth encourage him to do that, which perhaps singly the other would not venture upon, and going and being present when the Design is executed, upon which the Man is slain; I take it he is as much guilty as the Person that struck the Stroke in Point of Law.

Mr. *J. Eyres.* My Lords, I am humbly of the same Opinion, I take it to be Murder in him that knew the Design, and did accompany the other in it, though he did nothing at all towards the killing of the Man.

For, my Lords, it is the Intention of the Party that diversifieth the Act. If he came there with an ill Intention, and to assist him if need did require, as it is plain he did if he did accompany him in the Design, which is a strong Evidence

dence of the Intention: And, my Lords, Nature hath allowed no Man a Casement into another's Heart, and therefore we can judge of no Man's Intention, but by Circumstances of the Fact appearing without; and then, I say, if the Fact be so apparently from the Circumstances of it, that he knew of the Design, and accompanied him in it, it is a strong Evidence that he came to assist him; and though he doth nothing actually in the Matter, yet being present to assist him if Occasion did require, it is plain he did aid and abet him in the Action, and so it is as much Murder in him, as in the other that gave the Stroke.

Mr. B. *Turton*. My Lords, I am humbly of the same Opinion; the thing that differeth this from the former Case is, That this Person was in the Design with the other; for that, my Lords, I take to be accompanying him in the Design in order to the Execution of it, for bare Privy and Knowledge of the Design would not do it; but if he be with him at the Time, and accompany in order to the Execution, that maketh him as much criminal, as he that did actually occasion the Death of the Person, for he was present in the Company, and ready to assist him in the evil Design, which I conceive is as much Murder as the other.

Mr. B. *Powel*. My Lords, I am of Opinion, as this Case is now put, That this is Murder in both, and my Reason is this: Where one Person is privy to a Design of Felony, or committing some Personal Violence, as this Case is, and is not only privy to it, but goeth along with him, and accompanieth him in putting this Design in Execution, tho' he may not think it will extend so far as Death, but doth only intend Beating, and hath no Personal Hand, or doth otherwise contribute; but by his being with the other Person when he executeth his Design of assaulting, and the Party beaten dieth, they are both guilty of Murder.

L. *Mohun*. My Lords, Will your Lordships give leave, that my Council may answer some things that the Judges have said?

L. H. *Stew*. No, my Lord, you must not Reply after the Judges have given their Opinions. Have any of your Lordships any more Questions to propose?

L. *Cornwallis*. My Lords, I have one.

L. H. *Stew*. My Lord *Cornwallis*.

L. *Cornwallis*. My Lords, I am very sorry to have Occasion to ask any Questions in this Case, but I humbly desire a Question may be answered by the Judges, which is this:

If a Person be by, named William, when Thomas said, he would stab John, upon which William said, He would stand by his Friend, and afterwards Thomas doth actually murder John, and William is present at the same Murder: Whether the Law will make William equally guilty with Thomas, or what Crime William is guilty of?

L. H. S. Pray deliver in your Paper, my Lord. It was deliver'd in, and read by the Clerk of the Crown, and Copies given of it as before.

L. H. *Stew*. What say you to this Question, Gentlemen?

Sir *Tho. Powys*. May it please your Lordships, this Question runneth thus:

If a Person be by, named William, when Thomas said, he would stab John; upon which William said, he would stand by his Friend; and afterwards Thomas doth actually murder John, and William is present at the same Murder:

Whether the Law will make William equally guilty with Thomas; or what Crime William is guilty of?

My Lords, I do not question but many Cases may be put which will be plainly Murder, and if this Case should be attended with Fact equal to the State of this Case, I believe it will amount to Murder. But upon this Difference the Resolution of it will depend, and every Case must stand upon its own Circumstances.

If a Person do generally say, I am fully resolv'd I will stab such a Man, and say so without Condition or Limitation, that he will do it; and another doth declare his Intention to assist and aid him, by saying, I will stand by you in it, and afterwards the thing is executed in his Presence, who so concurred; I do take it, that that is an Evidence that he is equally guilty with the other.

But, on the other hand, if a Man say, I will stab such a one if he oppose me in such a Design, and so maketh his Resolution conditional, and the Person that is present doth say, I will stand by you in it, that is in your doing it, if you are opposed in such a particular Matter; my Lords, with Submission, if he is not opposed in that particular Thing or Design upon which he did say he would stab him, but if he doth afterwards, upon some other Occasion different from the former, and not relating to what he was talking of before, or upon some other Provocation, stab him, and the other Person happeneth only to be present, I take it, that the Words which he spoke with a Limitation to a particular Matter, will not make him liable to the Guilt of the Murder that is committed upon quite another Account.

The Words, *Standing by him*, are capable of two Senses; but I would not, in so serious a Matter as this, offer to put a jocular Sense upon them, as if it was meant he would stand by and not meddle; but I take it, that such a Case as this will turn upon the Manner of the Man's engaging himself; if he engaged to stand by him in a particular Matter, and the other doth stab the threatned Person afterwards, not upon that particular Occasion, but upon another Account, and he happeneth only to be by, these Words will not draw him in, though they should be well proved to be spoken, so as to involve him in the Guilt of that Murder.

For the Law is favourable to a Man in the Case of Life, and will judge according to the Intention of the Party; and he having not abetted or contributed to the Fact, his Words shall not be carried to his Prejudice, farther than his Intention, or farther than the concomitant Circumstances of the Matter, will make them plainly import.

This Case is put generally, and without Restraint; and there is no Question but many Cases may be put that will undoubtedly be Murder; but every Case must, as I said, stand and fall by its own Circumstances.

Mr. *Hawles*. My Lords, I think the Case as it is put single, and upon these Circumstances, would be Murder; and my Reason is this, The Person that saith he will stand by a Man, who saith he will kill or stab another, is as much guilty as that Man himself, and will be thought as malicious; but if it should happen that between the Words pronounced, and the Murder committed, that the Person that saith he will stand by his Friend, cometh to have a Friendship and Kindness for the Party that is threatned

to be killed, and upon meeting him careſſes him extremely, and there being no Malice continuing (as there muſt be to the Time of the Stroke given, to make Murder) but he happeneth to be killed by that other, ſuddenly in his Prefence, thoſe Words will not make him guilty of Murder; but as the Caſe is put, I think it is Murder.

Mr. Price. My Lords, I ſhall not take upon me to trouble your Lordſhips with making a Caſe, but as this Caſe is put without any Condition, or other Circumſtance annexed to it, I think it will be Murder.

L. H. Stew. There will be no need to ask the King's Council upon this Queſtion whether they will ſpeak to it, becauſe the Council for the Priſoner agree it to be Murder; Therefore if your Lordſhips pleaſe, we may now proceed to ask the Judges Opinions; And firſt, What ſay you, my Lord Chief Juſtice?

L. C. J. Holt. My Lords, the Queſtion is this. *If a Perſon be by, named William, when Thomas ſaid he would ſtab John, upon which William ſaid he would ſtand by his Friends, and afterwards Thomas doth actually murder John, and William is preſent at the ſame Murder; Whether the Law will make William guilty with Thomas; or what Crime William is guilty of?*

My Lords, I am of Opinion that this is a great Evidence of Murder in *William*, that was thus actually by. I cannot ſay it is Murder, as the Caſe is put; but upon ſuch an Evidence, Fact is to be left to the Conſcience of a Jury in the Caſe of a Commoner, or the Conſcience of the Peers in the Caſe of a Peer.

For when *William* ſaid he would ſtand by his Friend, who ſaid he would ſtab *John*, That is plainly a Conſent, or at leaſt ſuch an Expreſſion, from which, a Conſent to the Stabbing of him may be inferred.

Then afterwards it ſeemeth *Thomas* actually murdereth *John*, and *William* was preſent. Now if *William* was deſignedly preſent with the other that committed the Murder, then it is plain it will be Murder in *William*, but if there be no Evidence to prove upon what Account he was preſent, it may be preſumed he was preſent in purſuance of his former Agreement, ſo that it may be Murder, or not Murder, as Circumſtances may happen upon the Evidence; if he was preſent in purſuance of his Promiſe, then no doubt it is Murder; But if he did not meet in purſuance of that Agreement, it may not be Murder. But this is all Matter of Evidence, and that reſts upon the Conſciences of thoſe that are to try the Priſoner.

L. C. J. Treby. My Lords, I am of Opinion that this is Evidence, and great Evidence of Murder; the Fact conſiſteth of two Parts:

Firſt, Here was a deliberate Expreſſion of his Intention, that he would ſtand by his Friend *Thomas*, when his Friend *Thomas* had ſaid before he would ſtab *John*, and this I take properly to be interpreted, and underſtood as a Promiſe of Abetting him in the Murder he would commit; for, I preſume, ſtanding by him in this Caſe to be meant in a grave Senſe, ſignifying that he would befriend, and if there ſhould be Occaſion, defend and ſupport *Thomas* in what he reſolv'd to do.

Secondly, He was preſent at the Stabbing, which was before deſigned and ſpoken of. Now I think his being preſent when that Reſolution of his Friend was executed, coupled with his

preceding Declaration of his Intention, is a ſtrong Evidence of Murder.

Mr. J. Nevil. My Lords, the Queſtion I take to be, Whether the Law of *England* ſaith *William* is guilty of this Murder? Truly, my Lords, I muſt ſay as my Lords have ſaid before, that as this Caſe is, This is a very ſtrong Evidence of Murder: For when he doth ſay, That he will murder ſuch a Man, and the other ſaith, he will ſtand by him, in the common Acceptation of thoſe Words, it is taken, that he doth then agree with him in that Deſign, which he declareth to be to ſtab *John*.

But then it ſeemeth to me truly, that this Caſe is not put full, how long it was afterwards that the Fact was done, and what Circumſtances attended it; for if any Circumſtance happened afterwards that did amount to a Countermand of this Promiſe, or any thing interpoſed to interrupt it, that this Agreement was not performed, perhaps the Caſe might not be Murder, but ſtill it is Evidence ſo far as your Lordſhips may judge upon the Circumſtances that attend it, whether it be Murder or no. But to declare a further Opinion, as this Caſe is put, truly I cannot.

Mr. J. Gregory. My Lords, I do upon this Caſe humbly conceive, there is a little Difference from the former, only there it is put poſitively, but here as Evidence. Now, my Lords, I do humbly conceive that in common Diſcourſe, I will ſtand by my Friend, is, I will aſſiſt my Friend. If my Friend ſhould ſay, I will kill ſuch a Man, or I will do any other Act, and I ſay I will ſtand by him, I think the Import of the Words is, I will aſſiſt him in it.

My Lords, As to the latter Part, as this Caſe is put, for I can go no further, it doth not appear, whether when the Man was killed, he came by Accident, or in purſuance of his Agreement, knowing of the Deſign. Now that is but Matter of Evidence, if he came by Accident it will not be Murder, but if he came with Deſign, no doubt it is Murder in one as well as in the other.

E. of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave*.

E. of *Mulgrave*. If any of my Lords deſire that the reſt of the Judges ſhould give their Opinion, it is fit they ſhould be heard; but if no Lord doth deſire it, and they ſay they are of the ſame Opinion without any more to do, becauſe it may ſave a great deal of Time; I deſire your Grace may only ask them, Whether they agree in their Opinions with thoſe that went before?

L. Cornwallis. My Lords, I humbly deſire the Judges, may all ſpeak.

Lords. Go on then.

Mr. J. Eyres. My Lords, I humbly conceive this is a Queſtion of Fact, and not of Law, and it is a very ſtrong Evidence, if a Man hear another ſay he will ſtab ſuch a Man, and he ſaith he will ſtand by his Friend, and accompanieth him at the Time when the Fact is done, it is a ſtrong Evidence, that he came with a murderous Intent with his Friend; and doth as much manifeſt his Intention to commit Murder, as if he had actually given the Wound, and a great Evidence to involve him in the Crime, as much as the Perſon that gave the Stroke.

Mr. B. Turton. My Lords, I am of the ſame Opinion with my Lords and my Brothers that have ſpoken before me; my Lords, I confeſs I do not think it cometh up ſo cloſe to the Matter as the

the Question that was put last before; for this, as my Brother *Eyres* saith, is rather a Question of Fact and Evidence, than Law. But certainly a very strong Evidence it is of the Intention of that Party that was present when the other said he would stab the third Person, and his going away presently, and accompanying him when the Stab was given, and Murder done, I say his Presence after this Determination is a very great Evidence, that it was done in Pursuance of that Agreement: It is a Matter of Fact which your Lordships will determine, according as the Circumstances appear before you, which may vary the Resolution one way or other.

Mr. B. Powell. My Lords, I am of Opinion as this Case is put, that it may be Murder or not Murder, according to the concomitant Circumstances. If a Man say, I will stab such a one, and another say he will stand by him, and afterwards when he is with his Friend, the Man is stabbed, if that is at some Distance of Time from the Words speaking, and the Meeting be accidental, or other Facts happen that may alter the Case, it may receive another Determination. But if after this is said, there be any immediate going to look after this Man, or they be near the way where this Man is to come, and then he is killed; this is a mighty strong Evidence that something was done in Pursuance of this Resolution, and that the one went along with the other to countenance him in the Action.

L. H. Stew. Have any of my Lords any other Questions to propose?

Lords. No.

Earl of Mulgrave. My Lords, If there had been any other Questions proposed by any other Lords, I would have staid till they had all been over; but I see their Lordships are at an End with their Questions: I have one which I think is nearer the Case than any has been yet, and of more Importance to the Matter in Hand, and more fit for the Council to inform you in, and for your Lordships to ask, and the Judges to answer. The Question is this:

If A accompanieth B in an unlawful Action, in which C is not concerned, and C happeneth to come in the Way of B, after the first Action is fully over, and happened to be killed by B, without the Assistance of A; Whether A is guilty of that Man's Murder?

This Question was handed to the Table, read by the Clerk, and Copies given as before.

L. H. Stew. What say you to it, Gentlemen, who are of Council for the Prisoner?

Sir Thomas Powis. May it please your Lordships, I will not trouble your Lordships with the repeating of the Case again, because my Copy is agreeable with what was read at the Table: Nor shall I trouble your Lordships with many Words upon this Case, because I take it, the Law is very plain.

If two Persons accompany each other to do an unlawful Act, and in the Execution of that unlawful Act, one of them doth go beyond what was first designed, and a third Man is killed whilst they are in Execution of that Act, tho' the one did the Fact, and the other did not immediately contribute thereto, yet he being joined with him in the unlawful Action, upon which this doth ensue, he is answerable for all the ill Consequences of it; the Law herein is clear according to the Case that was put at first of two Persons going together to rob a Park and steal Deer.

But if that unlawful Action be executed, or the two Persons who joined in the Design have totally desisted from it, or are disappointed in it, if afterwards when they are together upon some other Occasion, it happeneth that one of them killeth another Man, but his Friend no way aided him or assisted him in the doing of it, your Lordships and the Law will separate these Persons who were at first joined together for another Purpose; and will distinguish between them in this new Matter that is subsequent to the former Agreement, tho' they were in Company together.

Because in the first Case, he that is joined in an ill Action must look to himself, and be answerable for all that followeth thereon: In the second Case, he is in no Fault at all, it is only his Misfortune to be in ill Company if he had no Hand in the Fact. This the Law is very plain in, and therefore I shall not trouble your Lordships further with speaking to it.

Mr. Hawkes. My Lords, I would only add one short Word; There is but this one Difference between an Accessory and a Principal; The Principal is always present, the Accessory is always absent; and I would only put you one Case of an Accessory in Felony out of my Lord *Coke*; he saith, It must be the same numerical Thing in which they are joined, and therefore, if *A* bid *B* rob the Vintner's Boy of Plate as he cometh to a Gentleman's Chamber to bring Wine, but *B* doth not pursue the Instructions, but breaketh into the Vintner's House, and stealeth the Plate there; this is a different Matter, it is not the same Thing wherein *A* and *B* agreed at first, and *A* is no way concerned in it.

The same Law is, if *A* and *B* agree to kill *C*, and *B* killeth *D*; tho' *A* be present, it will not be Murder in *A*; for the Agreement was for the killing of *C*, and not of *D*.

My Lords, as this Case is put, they did agree in the unlawful Act, but that Matter was over, and there is no Agreement as to the other Matter, nor is that pursuant to the Matter agreed upon; and therefore the Presence of the Party that agreed to the unlawful Act doth not make him guilty of Murder, unless he agree to that too.

Mr. Price. My Lords, I have but one Word on the same Side. I take it, that when a Man is doing an unlawful Act, there is an inseparable Incident that doth attend it, which is Malice implied. And this is so inseparable, that when his ill Design is at an End, his Malice is at an End too, and hath no Being, and therefore if he entereth upon an ill Design afterwards, tho' another be present that was joined with him in the former ill Design, yet his Malice who was so joined, being coupled with the ill Design that is over, must be gone too; and there is no Malice in his being barely present. And therefore for that Reason, he that was aiding and assisting before, cannot be Principal in such a sudden Act as this new one is, and consequently cannot be guilty of Murder, or of Manslaughter.

L. H. Stew. Mr. Attorney, Do you or any of the King's Council think fit to say any thing to this Question?

Mr. Att. Gen. My Lords, we that are of the King's Council do not think we have any Occasion to be heard to this Question.

L. H. Stew. Then, my Lords the Judges, what say you to it?

L. C. J. Holt. If your Lordships please, I will again repeat the Question; it is this:

If A accompanieth B in an unlawful Action, in which C is not concerned, and C happeneth to come in the way of B, after the first Action (that is, the unlawful Action, I suppose) is fully over, and happeneth to be killed by B, without the Assistance of A; whether A is guilty of that Man's Murder?

And I do humbly conceive with great Clearness, That *A* is not guilty at all. For here is no Relation to the first unlawful Act that he was engaged in, but that is all over and determined; and then *C* cometh in the Presence of *B*, who killeth him, and of *A* who had no Knowledge of any Malice between them, or any Design of his Death. This is merely accidental, and doth not depend upon the first unlawful Action; and therefore *A* is not guilty.

L. C. J. Treby. My Lords, I think there can be no Difference of Opinions in this Case: For it is plain there was an unlawful Action in which they did agree, (as a Riot or Assault to beat or wound a Man or the like) and if Death had ensued, they both had been guilty of Murder, as well he that looked on, as he that gave the mortal Wound. But then the Question addeth further, That the Action to which they agreed was fully over, and there only happeneth to be a Continuance of their Presence together; and there being an old Grudge between one of the Parties and a third Man, and the Party who had that old Grudge, meeting with his Enemy, executeth it then upon him, and murdereth him; this doth in no Sort affect the other that was present, and had joined in the former unlawful Action that was over. In the former, he did join and concur, and therefore if Death had ensued, they had been both guilty: In the latter, he did not join and concur; and therefore though Murder did happen in his Presence and Company, he is not guilty, but only the Party that actually killed is.

Mr. J. Nevill. My Lords, I am of the same Opinion.

L. H. Stew. If you are all of the same Opinion, I think you need say no more.

Judges. We are all of the same Opinion, my Lords.

L. H. Stew. My Lords, all the Judges are of the same Opinion; and now I think it is your Lordships Resolution to adjourn to the House.

Lords. Ay, ay.

L. H. Stew. This Court is Adjourned to the House of Lords.

And then the Lords returned to their House in the same Order, and there presently Adjourned till the next Morning.

Die Sabbati Quarto Februarii 1692.

ABout four of the Clock in the Afternoon, the Lords came from their House in the former Order into the Court in *Westminster-Hall*: and being seated on their Benches, and his Grace the Lord High-Steward in the Chair before the Throne, Proclamation was made for Silence; and the Judgment of the Peers was demanded, and delivered in this Manner.

L. H. Stew. My Lords, Your Lordships have now heard all the Evidence both against the Prisoner and for him: The next Thing is your Lordships Judgment, and for that the Method is this, Your Lordships Opinions are to be deliver-

ed in the Absence of the Prisoner. The Question that your Lordships are to deliver your Opinion about will be this:

Whether my Lord Mohun be guilty of the Murder of William Mountford, whereof he stands indicted, or Not guilty?

The Order of delivering your Opinions must be, to begin with the youngest Baron, and so upwards; and therefore I must desire your Lordships to allow me to take your Judgments distinctly, and that I may write them down.

Lords. Ay, ay.

L. H. Stew. My Lord *Leinster*, is my Lord *Mohun* guilty of the Murder whereof he standeth indicted, or not guilty?

The Lord Leinster stood up in his Place uncovered, and laying his Right-hand on his Breast, pronounced his Judgment thus:

L. Leinster. Not guilty upon my Honour.

The same Question was severally asked of all the Lords, who in the same Form delivered their Opinions as followeth:

L. Capel. Guilty upon my Honour.

L. Ashburnham. Not guilty upon my Honour.

L. Cholmondeley. Not guilty upon my Honour.

L. Godolphin. Not guilty upon my Honour.

L. Osborne. Not guilty upon my Honour.

L. Arundel of Trerice. Not guilty upon my Honour.

L. Crew. Not guilty upon my Honour.

L. Cornwallis. Not guilty upon my Honour.

L. Granville. Not guilty upon my Honour.

L. Berkeley of Stratton. Not guilty upon my Honour.

L. Lexington. Not guilty upon my Honour.

L. Lucas. Not guilty upon my Honour.

L. Clifford of Lansborough. Guilty upon my Honour.

L. Colpeper. Guilty upon my Honour.

L. Vaughan. Not guilty upon my Honour.

L. Jeremy. Not guilty upon my Honour.

L. Leigh. Not guilty upon my Honour.

L. Lovelace. Not guilty upon my Honour.

L. Brooke. Not guilty upon my Honour.

L. Humdon. Not guilty upon my Honour.

L. Chandois. Not guilty upon my Honour.

L. Willoughby of Parham. Not guilty upon my Honour.

L. Evers. Not guilty upon my Honour.

L. Fitzwalter. Not guilty upon my Honour.

L. Morley. Not guilty upon my Honour.

L. Berkely of Berkely. Not guilty upon my Honour.

L. De-la-Ware. Not guilty upon my Honour.

L. Willoughby of Eresby. Not guilty upon my Honour.

L. H. Stew. My Lord Viscount *Villiers, &c.*

Visc. Villiers. Not guilty upon my Honour.

Visc. Longueville. Not guilty upon my Honour.

Visc. Weymouth. Guilty upon my Honour.

Visc. Newport. Not guilty upon my Honour.

L. H. Stew. Earl of *Warrington, &c.*

Earl of Warrington. Guilty upon my Honour.

Earl of Scarborough. Not guilty upon my Honour.

Earl of Marleborough. Not guilty upon my Honour.

Earl of Mountague. Not guilty upon my Honour.

Earl of Monmouth. Guilty upon my Honour.

Earl of Falconberg. Not guilty upon my Honour.

Earl of Portland. Guilty upon my Honour.
Earl of Abington. Not guilty upon my Honour.
E. of Rochester. Guilty upon my Honour.
Earl of Nottingham. Guilty upon my Honour.
Earl of Radnor. Not guilty upon my Honour.
Earl of Macclesfield. Not guilty upon my Honour.
Earl of Feversham. Not guilty upon my Honour.
Earl of Craven. Not guilty upon my Honour.
Earl of Carlisle. Not guilty upon my Honour.
Earl of Bath. Not guilty upon my Honour.
Earl of Essex. Not guilty upon my Honour.
Earl of Sandwich. Guilty upon my Honour.
Earl of Scarsdale. Not guilty upon my Honour.
Earl of Sunderland. Not guilty upon my Honour.
Earl of Thanet. Not guilty upon my Honour.
Earl of Chesterfield. Not guilty upon my Honour.
Earl of Carnarvon. Not guilty upon my Honour.
Earl of Kingston. Guilty upon my Honour.
Earl of Stamford. Not guilty upon my Honour.
Earl of Rivers. Not guilty upon my Honour.
Earl of Mulgrave. Not guilty upon my Honour.
Earl of Manchester. Not guilty upon my Honour.
Earl of Westmoreland. Guilty upon my Honour.
Earl of Bullingbrook. Not guilty upon my Honour.
Earl of Clare. Not guilty upon my Honour.
Earl of Denbigh. Not guilty upon my Honour.
Earl of Northampton. Not guilty upon my Honour.
Earl of Bridgewater. Guilty upon my Honour.
Earl of Bedford. Not guilty upon my Honour.
Earl of Huntingdon. Not guilty upon my Honour.
Earl of Kent. Not guilty upon my Honour.
Earl of Shrewsbury. Not guilty upon my Honour.
Earl of Oxford. Guilty upon my Honour.
L. H. Stew. My Lord Chamberlain, &c.
Earl of Dorset. Not guilty upon my Honour.
L. H. Stew. My Lord Steward, &c.
Earl of Devon. Not guilty upon my Honour.
L. H. Stew. My Lord Great Chamberlain, &c.
Earl of Lindsey. Not guilty upon my Honour.
L. H. Stew. My Lord Marquis of Halifax, &c.
L. Marquis of Halifax. Not guilty upon my Honour.
L. H. Stew. My Lord Duke of St. Albans, &c.
Duke of St. Albans. Not guilty upon my Honour.
Duke of Northumberland. Not guilty upon my Honour.
Duke of Ormond. Not guilty upon my Honour.

Duke of Somerset. Not guilty upon my Honour.
Duke of Norfolk. Not guilty upon my Honour.
L. H. Stew. My Lord Privy Seal, &c.
Earl of Pembroke. Not guilty upon my Honour.
Then his Grace the Lord High Steward stood up uncovered, and laying his Right Hand on his Breast, pronounced his Grace's own Judgment thus:
L. H. Stew. My Opinion is, That my Lord *Mobun* is not guilty upon my Honour.
Then his Grace seated himself again in the Chair, and numbered up the Opinions of the Peers.
L. H. Stew. My Lords, I have carefully taken your Lordships Opinions, and find the Numbers to be thus: My Lords that have found my Lord *Mobun* to be Guilty are Fourteen; my Lords that have found him Not guilty are Sixty nine. Call for the Prisoner.

Proclamation was made for the Chief Governor of the Tower to bring forth the Body of the Prisoner, and he was brought to the Bar as before: And Proclamation for Silence was made.

L. H. Stew. My Lord *Mobun*, you have been indicted for the Murder of *William Mountford*; upon your Arraignment you have pleaded Not guilty, and have put your self upon the Judgment of your Peers; and your Peers have considered what hath been said both for and against you, and the Judgment of my Lords is this, That your Lordship is Not guilty: Your Lordship is therefore discharged. Make Proclamation for dissolving the Commission.

Cl. of Crown. Serjeant at Arms, make Proclamation.

Serjeant. O Yes.

Cl. of Crown. Again.

Serjeant. O Yes.

Cl. of Crown. Again.

Serjeant. O Yes.

Cl. of Crown. My Lord High Steward of England his Grace, doth straightly Charge and Command all manner of Persons who have given their Attendance here, to depart hence in the Peace of God, and of our Sovereign Lord and Lady the King and Queen; for his Grace the Lord High Steward of England intendeth to dissolve his Commission.

Which the Serjeant at Arms repeated, and at the End of it, his Grace standing up, and holding the White-Staff in both his Hands, broke it in two, by which his Commission was dissolved.

Marq. of Carmarthen. Is it your Lordships Pleasure to Adjourn to your own House?

Lords. Ay, Ay.

Marq. of Carmarthen. This House is Adjourned into the House of Lords.

And then the Peers returned to their own House in the same Order



CL. *The Trials of ROBERT CHARNOCK, EDWARD KING, and THOMAS KEYES, at the Old-Baily, for High Treason, March 11. 1695. 8 WILL. III.*



THIS Day the Trial of *Robert Charnock, Edward King, and Thomas Keyes*, who were indicted at *Hicks's-Hall* on this Day seven-night, upon a special Commission of *Oyer and Terminer* for High-Treason, in Compassing the Death of the King by a barbarous Assassination, in order to further and assist an Invasion into this Kingdom from *France*, and Subversion of the Government, were proceeded upon in Manner following.

After opening of the Court, at which were present a great many of the Nobility, Members of Parliament, and other Persons of Quality, the petty Jury returned by the Sheriff of *Middlesex* to try the Prisoners, were all call'd over, being in Number above Eight-score, and consisting of Barons, Knights, Esquires, and Gentlemen, and the Appearances of those who answered to the Call were recorded; and six of the Judges, *viz.* The Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, the Lord Chief Baron *Ward*, Mr. Justice *Nevil*, Mr. Justice *Powell*, and Mr. Justice *Rokeby*, being upon the Bench, the Prisoners were called for to the Bar, and there arraigned upon the said Indictments.

Clerk of Arraignments. *Robert Charnock*, hold up thy Hand (*Which he did*): *Edward King*, hold up thy Hand (*Which he did*): *Thomas Keyes*, hold up thy Hand (*Which he did*): You stand Indicted in the County of *Middlesex* by the Names of *Robert Charnock*, late of the Parish of *St. Clements Daves* in the County of *Middlesex*, Gent. *Edward King* of the said Parish and County, Gent. and *Thomas Keyes* of the same Parish and County, Yeoman, for that You the Fear of GOD in your Hearts not having, nor the Duty of your Allegiance weighing, but being moved and seduced by the Instigation of the Devil, as false Traytors against the most Serene, most Illustrious, most Clement, and most Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of GOD, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. your Supreme, True, Lawful, and Undoubted Sovereign Lord, the Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of our Lord the King that now is, towards him our said Lord the King should bear, and of Right ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all your Strength purposing, designing and conspiring the Government of this Kingdom of *England* under him our said Sovereign Lord the King that now is of Right happily and duly established, altogether to subvert, change and alter; as also our said Sovereign Lord the King to Death and final Destruction to put and bring, his faithful Subjects and the Freemen of this Kingdom of *England* in-

to intolerable and miserable Slavery to *Lewis* the *French* King to subdue and subject, the tenth Day of *February*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, contrive, purpose, design and intend our said Sovereign Lord the King that now is, to slay, kill, and murder, and a miserable Slaughter amongst the Faithful Subjects of our Lord the King throughout this whole Kingdom of *England* to make and cause. And the same most abominable, wicked and devilish Treasons and traiterous Contrivances, Intentions and Purposes of yours aforesaid to fulfil, perfect, and bring to Effect, you the said *Robert Charnock, Edward King and Thomas Keyes*, and very many others false Traytors to the Jurors unknown, afterwards, to wit, the said tenth Day of *February*, in the Year aforesaid, at the Parish aforesaid in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, clandestinely, traiterously, and with Force and Arms, &c. did meet, propose, treat, consult, consent and agree our said Sovereign Lord the King by lying in wait, to assassinate, kill and murder: And that execrable, horrid, and detestable Assassination and Killing the sooner to execute and perpetrate, afterwards, to wit, the same Day, Year and Place last mentioned, traiterously did treat, propose, and consult of the Ways, Manner and Means, and the Time and Place where, when, how, and in what Manner our said Sovereign Lord the King, by lying in wait the more easily you should kill, and did consent, agree and assent, that forty Horsemen or thereabouts, of you the said *Robert Charnock, Edward King, and Thomas Keyes*, and the said other Traitors unknown, and others by them to be hired, procured and paid, with Guns, Carbines and Pistols with Gun-powder and leaden Bullets charged, and with Swords and other Arms armed, should lie in Wait, and be in Ambush, our said Sovereign Lord the King in his Coach being when he should go abroad, to set upon, and that a certain and competent Number of those Men so armed upon the Guards of our said Sovereign Lord the King then and there attending upon him, and being with him, should attack, and should overcome and subdue them, whilst others of the said Men so armed our said Sovereign Lord the King should Assassinate, Kill, Slay and Murder: And also that You the said *Robert Charnock, Edward King, and Thomas Keyes*, your Treasons and traiterous Intentions, Designs and Contrivances aforesaid, to execute, perpetrate, fulfil,

fulfil, and fully to bring to Effect afterwards, to wit, the Day and Year last aforesaid at the Parish aforesaid, divers Horfes, and very many Arms, Guns, Pistols, Swords, and other Weapons, Ammunition, warlike Matters, and military Instruments, falsely, maliciously, secretly and traiterously did obtain and buy, collect and procure, and cause to be bought, obtained, collected and procured with that Intention, the same in and about the detestable, horrid and execrable Assassination, killing and murdering of our said Sovereign Lord the King as aforesaid, to be used, employed, and bestowed, against the Duty of your Allegiance, and against the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, as also against the Form of the Statutes in such Cases made and provided.

How say you, *Robert Charnock*, are you guilty of the High Treason whereof you stand indicted, or Not Guilty?

Charnock. My Lord, I desire, I may have a Copy of this Indictment; that I may advise with Council upon it before I plead.

* *L. C. J.* Pray, Mr. *Charnock*,
* *Sir John Holt*. will you speak out, that we may hear what you say.

Charnock. My Lord, I find here is a very bad Crime that is laid to my Charge; I desire that I may have a Copy of the Indictment, to advise with Council upon. And that I may have Council to assist me in my Tryal, and to direct me, who am an ignorant Man in these Matters, how to manage myself according to the new Act made this Sessions of Parliament, for regulating Tryals in Cases of High Treason.

L. C. J. Have you not had Council already to advise and direct you, Mr. *Charnock*?

Char. My Lord, I had Notice on *Wednesday* last before I could get my Council to come to me.

L. C. J. And what did your Council advise you? Did they tell you, you were to have a Copy of your Indictment, by Virtue of the late Act of Parliament?

Char. My Lord, tho' the Act does not take Force as to some Things till the 25th of this Month, yet the Equity of that Act, it being now reduced into a Law, is conceived to reach to Cases of the like Nature before the 25th, and I desire the Act may be read.

L. C. J. You shall have it read if you will, but of what Avail or Benefit it will be to you I cannot tell; for you yourself take Notice that it is an Act of Parliament made this Session, and is not to take Effect until the 25th of this Month. You now here stand indicted before the 25th, and for a Treason committed before, and therefore you can't claim, nor have any Benefit or Advantage by this Act; but you are to be proceeded against according to the Law before, and the Practice used in all Proceedings against other Persons in your Circumstances. And it is the known Practice and received for Law, in all Times before this new Act was made, That no Copy of an Indictment for High-Treason should be granted, nor Council assigned, or permitted to assist the Prisoner in making his Defence: True it is, a Copy of the Indictment has been often desired, but as true that it has as often been denied.

Char. My Lord, the Equity of this Act (it being now an Act of Parliament) is now in Force, as much before the 25th of this Month as after.

L. C. J. Equity is nothing in these Cases: You are here tried by the Law, and we are bound to go in all such Cases according to the Rules of Law, and are not to be guided by any equitable Consideration, further than the Law it self does allow us.

Char. But, my Lord, the Ground of that Act, which is the Reasonableness and Equity that all Prisoners should be made capable of fairly defending themselves, is now in Force, I say: And I hope your Lordship and the Court will look upon it to be reasonable that I should have the Benefit of that Equity.

L. C. J. I tell you we are not here in a Court of Equity, but must proceed according to the Rules of Law; and the Law you now speak of does not yet commence.

Char. My Lord, I am informed, for I am very ignorant in these Matters myself, that there is nothing that I now desire which is contained in this Act, but what was Law before the making of this Act, tho' the Practice may have been otherwise.

L. C. J. Then I must tell you, Mr. *Charnock*, you have been very much misinformed; for if all that is contained in this Act of Parliament that you mention was common Law before, there would have been no Occasion for the making a new Act of Parliament.

Char. My Lord, I do not say that all Things in this Act of Parliament were Law before, because there are several Things in it that have not been Law before. But, my Lord, there are several Things besides; and particularly those two Things which I now desire, a Copy of the Indictment and Council to assist me, were Things that were agreeable to Law before; and I must take the Liberty to appeal to a Judge that I see upon the Bench, my Lord Chief Justice *Treby*, as to his own Opinion, and desire he would please to declare, whether formerly in a Conference between the Lords and the Commons he did not deliver his Opinion, That it was the common Law, that a Prisoner should have a Copy of his Indictment, and Council to assist him.

L. C. J. Here is my Lord Chief Justice *Treby*, you had best to apply yourself to him for his Opinion.

L. C. J. Treby. Pray, Sir, What is your Question you would ask me?

Char. My Lord, I am here for my Life, and must take all the Advantages that I can; I am here Arraigned for a very grievous Offence; I desire I may have a Copy of the Indictment, and Council to assist me in my Defence. Here is an Act of Parliament, out of the Equity of which I apprehend, I ought to have some Advantage; for I am informed that what I desire was common Law before the making of the Act; and particularly that your Lordship's Opinion, in a Conference between the two Houses, was, that the Prisoner ought to have those Advantages by the common Law.

L. C. J. Treby. Then, Sir, I take your Question to be this: You would have my Opinion to be declared, That this Act which was lately pass'd for regulating Trials in Cases of High-Treason, and all the Particulars in that Act, were common Law before.

Char. No, my Lord, I do not say that all the Particulars in the Act were common Law before.

L. C. J. Treby. Then pray, Sir, name your Particulars, and I will endeavour to give you an Answer.

Char. My Lord, the Particulars that I do ask are these, First, that I may have a Copy of the Indictment, and Council to advise me, because it is a grievous Crime I stand here accused of, and

that I may have them to assist me at my Trial in Court: This I do insist upon from the Equity of the Act of Parliament and your Lordship's Opinion at the Conference that it was common Law before.

L. C. J. Treby. As to my Opinion about the having a Copy or Council, I do not think or believe, that I ever said that it was common Law.

Char. My Lord, I beg your Pardon; I was informed your Lordship had delivered such an Opinion, at a Conference between the Lords and the Commons: But I desire the Assistance of Council, because I myself am ignorant of the Law; and particularly as to this Point, whether I am not intitled to the Equity of this Act of Parliament; for it now having pass'd both Houses of Parliament, and had the Royal Assent, it is a good Law; and though it be to take its Commencement on the 25th of this Month, yet that which is the Law of all Laws, the Reason and Equity of it, is, and always will be, the same.

L. C. J. No, Mr. *Charnock*, that does not follow, that because the Wisdom of the Law-makers has thought it to be equitable *de futuro*, therefore it should be Law now; which, as I told you before, is the Rule that we are to go by; it is Equity and Justice, that the Proceedings be according to this Act of Parliament, from and after the 25th of this Month; but it is not Justice that such Proceedings should be till then, because not according to Law.

Char. My Lord, the Ground of all Laws is Equity; and certainly it cannot be Equity, that a Prisoner should make his Defence against an Accusation in Writing, without having a Copy of it.

L. C. J. The Time of the Court must not be spent in this Manner; you have been already told, that by Law you are not to have a Copy of the Indictment; but you are to plead without having any Copy; for there is no Law now in being that allows the giving of such a Copy, and 'tis but a short Question that you are asked in order to your Trial; *viz.* Are you Guilty, or Not Guilty?

Char. My Lord, it is impossible for me to go to Trial presently, and without the Assistance of my Council.

L. C. J. Why, had you not Notice of your Trial?

Char. My Lord, I confess I had Notice, upon *Wednesday* last.

L. C. J. Had you not your Council with you since that?

Char. Yes, my Lord, I had on *Saturday* last; but from that Time I have not been able to prepare myself, as I think I ought; and I cannot conceive but that I should have the Assistance of some Council to direct me in my Trial; for here is a very great Crime, and heinous Charge laid against me in this Indictment, and I am very ignorant in all Law Proceedings.

L. C. J. It is very reasonable that there should be convenient Notice given to all Persons in your Circumstances; and truly this Day Seven-night, is a very convenient Notice; especially you having had, by your own Confession and Acknowledgment, Council with you in the mean Time.

Char. But, my Lord, what is the Advantage of having Notice, if one have not Privilege of Pen, Ink and Paper, and one's Council and Friends coming to them, and Privacy, without the Presence of the Jaylor?

L. C. J. What say you that are of the King's

Council; Was there Council allow'd to come to them?

Mr. Attorney General. My Lord, there was Order given, that their own Council that they desired should come to them.

Mr. Baker. My Lord, as soon as ever they desired Council there was an Order for it; and left with the Jaylor, that he should permit the Council to come to them, and be with them in private.

L. C. J. Then tho' you had not your Council come to you till *Saturday*, it was your own Fault, for you had an Order for Council as soon as you desired it; and even from *Saturday*, is a reasonable Time enough to prepare for answering the Question, whether Guilty or Not Guilty.

Char. I suppose Mr. *Bale* is in Court, who gave Notice on *Wednesday*, and I acknowledge he came upon the *Thursday*, and asked if I would have any Body come to me; and he took then the Names of the Council that I desired might come to me; and told me he would carry them to Mr. Attorney General, and see what his Opinion was of them; I suppose he did so: For upon *Friday* he came again, and brought me an Order for it; but when that Order was brought, the Council that was desired was not to be had, or at least with very great Difficulty, because it was the Time of the Assizes, or very near it, and Council were gone or going out of Town; so that we could not have the Advantage of the Order for Council.

L. C. J. Look you, Sir, We think you have had convenient Notice, with Liberty of consulting whom you had a mind to; if you have neglected your Opportunity of consulting them, you must blame yourself, and no Body else; we must go on according to Law.

Mr. Att. Gen. My Lord, they had the Liberty of naming their own Council, and the Names were brought to me, and as soon as ever they were so brought, those that were named had Leave to go to the Prison to them, and they had a further Order than the first, which was, that their Friends should be permitted to come to them; but that was not, as it was not convenient to be, in private; but the other Order was, that the Council should speak with them in private, and not in the Presence of the Jaylor.

L. C. J. Pray hear what Mr. Attorney says, that your Council was ordered to be with you in private.

Char. But there was no Order, my Lord, for my Solicitor to be with me in the Absence of the Jaylor, who is the only proper Person for the consulting with, and for going about to summon the Witnesses.

L. C. J. We think you have had convenient Notice, and all the Allowances that can be in such a Case. Ask him to plead.

Cl. of Arr. Robert Charnock. Are you guilty of the High-Treason whereof you stand indicted, or Not Guilty?

Char. My Lord, I hope you will give me some more Time to get my Witnesses, that are now absent; several of them are ten Miles out of Town; and therefore, I would beg your Lordship to give me some Time.

L. C. J. Why, is ten Miles such a Distance, that you could not have your Witnesses between this Day seven-night and this Day? but besides, Mr. *Charnock*, what you now urge is out of Time, you speak too soon to put off the Trial, for there can be no Trial till Issue joined; and that cannot be till Plea pleaded.

Ch. My Lord, I was never instructed in Querks of Law, nor bred up to the Law; and I hope your Lordships will take care that I be not hurt for Want of Knowledge in the Forms of Law.

L. C. J. You may assure yourself, Mr. *Charnock*, you shall not be hurt by your Ignorance in the Law. All the Harm you will receive will be for having done contrary to the Law, and there is none of your Council, if they have been faithful to you, but must tell you the same Things we tell you now.

Char. My Lord, if I am to have no Council, I must desire that the Court would be pleased to take the greater Care of me: For, as I have been informed, that was the Reason of the Practice of denying Council, that the Court should be of Council for the Prisoner.

L. C. J. Mr. *Hardesty*, ask him whether he be guilty, or not guilty.

Cl. of Ar. *Robert Charnock*, are you guilty, or not guilty?

Char. Not guilty.

Cl. of Ar. Culprit, how will you be try'd?

Char. By God and my Country.

Cl. of Ar. God send you a good Deliverance. *Edward King*, How say you, Are you guilty of the High-Treason whereof you stand indicted, or not guilty?

King. My Lord, I beg the same Favour that Mr. *Charnock* has done, that I may have some more Time to prepare for my Trial, and a Copy of the Indictment, and Council assigned.

L. C. J. But you hear what has been said to Mr. *Charnock* upon those Points, and the same Rule that was given in his Case, you must expect will be in your Case.

Cl. of Ar. What say you, are you guilty or not guilty?

King. Not guilty.

Cl. of Ar. Culprit, how wilt thou be try'd?

King. By God and my Country.

Cl. of Ar. God send thee a good Deliverance. *Thomas Keyes*, are you guilty of the same High-Treason, or not guilty?

Keyes. My Lord, I have had no Council at all.

L. C. J. But you might have had if you would; you had an Order for it as well as the others.

Keyes. My Lord, I was a Servant to Captain *Porter*; I was not able to see any Council.

L. C. J. But you can tell whether you are guilty, or not guilty.

Cl. of Ar. Art thou guilty, or not guilty?

Keyes. Not guilty.

Cl. of Ar. Culprit, How wilt thou be tried?

Keyes. By God and my Country.

Cl. of Ar. God send thee a good Deliverance. *Charnock.* My Lord, I desire I may have the Favour of Pen, Ink and Paper, upon my Trial.

L. C. J. Yes, yes, you shall have it; and if you have a Mind to it, you shall have the Indictment read to you in Latin.

Char. My Lord, my Ignorance in Forms of Law made me not ask that before, because I did not know whether I should properly ask it or not: And I donot know whether I should ask it properly now.

L. C. J. Yes, it is a very proper time to ask it, and you shall have it, if you have a mind to it.

Char. My Lord, I do really desire it, as it be a proper Time for me to have it.

L. C. J. Read the Indictment in Latin.

Char. And now, my Lord, I hope your Lordship will please that I shall have Pen, Ink and Pa-

per, that I may make the best Observations I can since I cannot have a Copy.

Cl. of Arr. *Furatores pro Domino Rege super sacrum suum presentant quod Robertus Charnock, nuper de Parochia Sancti Clementis Dacorum, in Com. prædicto, Generosus; Edwardus King, nuper de Parochia Sancti Clementis Dacorum in Com. prædicto, Generosus; & Thomas Keyes, nuper de Parochia Sancti Clementis Dacorum, in Com. prædicto, Teoman, timorem DEI in cordibus suis non habentes, nec debitum Ligeancie sue ponderantes, sed instigatione diabolica moti & seducti, ut falsi Proditores contra serenissimum, illustrissimum, clementissimum & excellentissimum Principem, Dominum Gulielmum Tertium, DEI Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, Fidei Defensorem, &c. Supremum, verum, legitimum, legale & indubitatum Dominum suum; cordialem dilectionem, ac veram & debitam obedientiam, fidelitatem & ligeanciam, quas quilibet subditus dicti Domini Regis nunc erga ipsum Dominum Regem gereret, & de jure gerere tenetur, subtrahentes & penitus extinguere intendentes & machinationem, & totis suis viribus excogitantes, designantes & conspirantes, gubernationem hujus Regni Angliæ sub ipso Domino Rege nunc de jure feliciter & debite stabilitam omnino subvertere, mutare & alterare, nec non eundem Dominum Regem ad mortem & finalem destructionem ponere & adducere; ac subditos suos fideles, & liberos homines hujus Regni Angliæ, in servitutem intolerabilem & miseriam Ludovico Regi Gallico subjugare & mancipare decimo Die Februarii, Anno Regni dicti Domini Regis nunc septimo, & diversis aliis diebus & vicibus tam antea quam postea, apud Parochiam prædictam in Com. prædicto, falso, malitiose, diabolice & proditorie eum assassaverunt, imaginati & machinati fuerunt, excogitaverunt, designaverunt & intendebant dictum Dominum Regem nunc occidere, interficere & murdare—*

Char. What Word was that last, Sir?

Cl. of Ar. *Murdare.*

Char. That is an odd Word, I can't understand what it means.

L. C. J. It is a Term of Art, the Signification of it is to murder: —Go on, Mr. *Hardesty.*

Cl. of Ar. *Ac stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regni Angliæ facere & causare & easdem nefandissimas, nequissimas & diabolicas proditorias machinationes, intentiones & proposita sua prædicta perimplenda perficienda & ad effectum redigendum ipsi idem Robertus Charnock, Edwardus King, & Thomas Keyes, & quam plurimi alii falsi proditores Furatoriibus prædictis ignoti, postea, scilicet eodem decimo die Februarii, Anno supra dicto, apud Parochiam prædictam, in Com. prædicto, ac diversis aliis diebus & vicibus tam antea quam postea, ibidem & alibi in eodem Com. falso, malitiose, adversate, clandestine, frauditorie ac vi & armis, &c. conveniebant, proposuerunt, tractaverunt, consultaverunt, consenserunt & agreeaverunt ad ipsum Dominum Regem ex insidiis & dolo percutiend' Anglice To Assassinate, interficiend' & murdrand'; & ad execrabilem horrendam & detestabilem Assassinationem, Anglice Assassination, & interfectionem illas citius exequend' & perpetrand' postea scilicet eisdem die anno, & loco ultimo mentionatis, proditorie tractaverunt, proposuerunt, & consultaverunt de viis, modis & mediis ac tempore & loco ubi, quando, qualiter, & quomodo dictum Dominum Regem sic ex insidiis facilius interficerent, & consenserunt agreeaverunt & assenserunt quod qua-*

draginta homines Equestres, aut eo circiter de ipsis, Roberto Charnock, Edwardo King & Thoma Keyes & prædicti aliis proditoribus ignotis ac aliis per eos concidendi procurandi & impendendi cum bombardis, sclopis & sclopetis, pulvere bombardico & globulis plumbis oeveratis, & cum gladiis ensibus & aliis armis armatis insidiati forent & essent in subsecsa, Anglice Ambush, ad eundem Dominum Regem in Rbeda sua in Anglice, his Coach, existentem, quando foris iret in vadend; quodq; quidam & competens numerus de hominibus illis sic armatis in satellites, Anglice the Guards, ipsius Domini Regis eum tunc ibidem attendentes, & secum existentes aggressi forent & eos devincerent, & expugnarent, dum alii eorundem hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderent & murrarent; & etiam iidem Robertus Charnock, Edwardus King & Thomas Keyes ad proditorias & omnes proditorias intentiones, designationes & machinationes suas prædictas exequenti perpetrandi & perimplendi & plenarie ad effectum redigendi postea, scilicet die & anno ultimo supra dictis, apud Parochiam prædictam, diversos equos & quam plurima arma, bombardas, sclopos, enses & gladios, & alia armamenta munitiones & res bellicosas & instrumenta militaria falso, malitiose, secrete & proditorie obtinuerunt, emebant, colligerunt & procuraverunt ac emi, obtineri, colligi, & procurari causaverunt, ea intentione ad illa in & circa detestabilem, horrendam & execrabilem Assassinationem, Interfectionem & Murrdrum dicti domini Regis ut præfertur utendi, occupandi & impendendi contra Ligeanciam suæ debitum, & contra pacem dicti Dom. Regis nunc, Coronam & Dignitates suas, nec non contra formam Statuti in hujusmodi Casu editi & provisi.

Char. My Lord, I desire the Indictment may be read again, for there is so great a Noise in the Court, and that Gentleman hath not the most perfect Delivery; he is more used to Law-Latin than to any other. But I beg I may have it read again, that I may as perfectly as I can understand it.

The Indictment was read again in *Latin*.

L. C. J. Look ye, you that are the Prisoners, every one of you has the Liberty to challenge 35 of those that are returned to serve upon the Jury that is to try you, without shewing any Cause; now if you will all join in the same Challenge, then we can try you all together, as ye are all together jointly in the Indictment; and save the Time and Trouble that will otherwise be unavoidable. But if you will not join in the same Challenge, but every Man challenge for himself, as by Law he has Liberty to do, we must be forced to try you single, and therefore we would know of you, whether you design to join in your Challenge or not?

Char. My Lord, I hope the Court will give me leave to have my Solicitor by me during my Trial, that I may be instructed in some measure how to manage myself, and when it is proper for me to speak, and what.

L. C. J. No, we can order no such Thing, you must speak for yourself.

Char. My Lord, I am ignorant of the Methods of Law, and may make a great many Mistakes and Slips, and omit what may be material to be observed for my Defence, and therefore shall the more need a Friend or Solicitor to be by me, to mind me of it.

L. C. J. No, we cannot direct any such Thing by Law. What say you as to your Challenges?

Char. As to the Jury, I had not a Copy of the Pannel till Yesterday, and I have been informed,

that it is usual to have a Copy of the Pannel ten Days before the Trial; they are Gentlemen that I have no Knowledge of, nor can come at any Account of their Qualifications, so as to make proper Challenges.

L. C. J. You have the same Privilege that is ordinarily given to Persons in your Condition.

Mr. Att. Gen. There was Order given for a Copy of the Pannel to be delivered.

L. C. J. That was not of Right, but of Favour; and it is a Practice that has of late obtained; but for what you talk of ten Days, that never was in any Case, nor is it practicable; you have the same Favour shewn you, that all other Prisoners have, and you can expect no more: But you do not answer the Question, whether you will join in your Challenges or not?

Char. It is an indifferent Thing to me, my Lord.

L. C. J. Do you agree to it, *Mr. King*?

King. My Lord, I do not well understand it, I am ready to do any Thing I should.

L. C. J. What say you, *Keyes*?

Keyes. My Lord, I have had no Council at all, to advise me about any Thing.

L. C. J. I tell you what the Law is in such Cases; You may every Man of you challenge 35 peremptorily without Cause, but if you do not all agree in the same Challenges, ye cannot be tried together by the same Jury: But the Court must separate you, and try you every one single.

Char. My Lord, I have got a Copy of the Pannel, if these Gentlemen that are by me do agree to join in the Challenge, I am very well content; it is indifferent to me.

L. C. J. Do you understand what is said to you, *Mr. King*, and *Mr. Keyes*? Every one of you may, without shewing any Cause, except against 35 of those that are returned of the Jury which are to try you, if you have no mind that those should be sworn; but then if each of you do severally challenge 35, ye cannot be tried by the same Jury.

Char. I hope, my Lord, if I do challenge, as I do not know how I shall be enabled without knowing their Qualifications, the Court will put me in mind when I come near the Number, that my challenging may not injure me; because I am ignorant in the Law, and perhaps may slip in point of Number; and therefore, I would beg that your Lordships would allow me a Solicitor to assist me, and put me in Mind, that I may not run into Errors.

L. C. J. You have been told over and over, that we cannot do that; the Court will take care that you be informed in Time, that you do not exceed in challenging a greater Number than you ought: What say you, *Mr. King*? Do you agree that one shall make Challenges for you all?

King. I do agree, that whatsoever Exception *Mr. Charnock* makes, I will abide by.

Char. My Lord, I cannot but think it hard, that I have not either Council or Solicitor; my Council that I had are out of Town.

L. C. J. Why, was there no Council but those that are gone the Circuit?

Mr. Att. Gen. My Lord, he had Order first for one Council, and then for another, and whomsoever he named he had Order for.

L. C. J. If you will chuse none but those you cannot have, that is your own Fault; You, *Mr. Keyes*, will you join in the Challenge?

Keyes. Yes, with all my Heart.

Cl. of Ar. Then you the Prisoners at the Bar, those

those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King, and you, upon Trial of your several Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Then those of the Pannel that had appeared were called, and the Prisoners challeng'd 33. And the Names of those that were sworn are as follow.

<p>Samuel Harwer, Jonas Morley, Anthony Nurse, Jasper Hodgsons, William Farnborough, William Bird,</p>	}	<p>Simon Smith, Thomas Dunck, Richard Heath, John Mills James Ketzwich and Christopher Redknap.</p>
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Then Proclamation for Information, and the Witnesses appearing, was made in usual Form.

Cl. of Ar. Robert Charnock, Hold up thy Hand, (*Which he did*): *Edward King*, Hold up thy Hand, (*Which he did*): *Thomas Keyes*, Hold up thy Hand, (*Which he did*): You Gentlemen of the Jury, look upon the Prisoners, and hearken to their Cause; They stand indicted by the Names of, &c. (*prout in the Indictment, mutatis mutandis*)——And against the Form of the Statutes in that Case made and provided. Upon this Indictment they have been Arraigned, and thereunto have severally pleaded, Not Guilty, and for their Trial have put themselves upon God and their Country, which Country you are: Your Charge is to enquire of them, and every of them, whether they be Guilty of the High-Treason whereof they stand indicted, in Manner and Form as they stand indicted, or Not Guilty; if you find them or any of them Guilty, you are to enquire what Goods or Chattels, Lands or Tenements they had, at the Time of the High-Treason committed, or at any Time since. If you find them, or any of them, Not Guilty, you are to inquire whether they fled for it; if you find that they, or any of them, fled for it, you are to inquire of their Goods and Chattels, as if you had found them Guilty; if you find them Not guilty, nor that they did fly for it, you are to say so, and no more; and hear your Evidence.

Mr. Mountague. May it please your Lordship, and you Gentlemen of this Jury; The Record that has been now read unto you, is an Indictment of High-Treason, which charges the Three Prisoners at the Bar, *Robert Charnock*, *Edward King*, and *Thomas Keyes*, with a Traiterous Conspiracy, and Design to subvert the Government of this Kingdom, and to murder the King, and to bring the Subjects and Freemen of this Kingdom into Slavery and Subjection to the *French King*; and to this End the Indictment sets forth; That upon the Tenth of *February* last, and diverse other Times, as well before as after, at the Parish of *St. Clements Daves*, in the County of *Middlesex*, these three Prisoners at the Bar, with diverse other Traytors unknown, did Consult and Agree, to Assassinate the Person of our Sovereign Lord the King, as he was riding in his Coach; and did likewise agree, that Forty Horsemen, of which they themselves were to be part of the Number, should lie in Ambush, and set upon the King, so being in his Coach, and upon the Guards

that were to attend him: And it likewise charges them with buying Horses and Arms, for the Execution of this Wicked and Villainous Intention: To this they have pleaded Not guilty. We shall call our Witnesses, and prove this Matter upon them; and then we doubt not, but you, Gentlemen, will do Justice according to your Evidence.

Mr. Att. Gen. My Lord, and you Gentlemen of the Jury, these Gentlemen at the Bar stand indicted for a most Horrid and Barbarous Conspiracy, to Assassinate and Murder his Majesty's Royal Person: Gentlemen, this Assassination was to be seconded with an Invasion from *France*, where Troops lay ready at *Calais*, as soon as the dismal Stroke was given, to have landed upon our Coasts; which if it had taken Effect we had not only suffered that most unspeakable Loss of the King, but it would have made an End of all our Liberties and Laws at once.

Gentlemen, This Offence in its Nature, is so Horrid and Barbarous, that as it needs no Aggravation, so it is incapable of having any, by any Words that can be used; for the very Naming of an Assassination of a King, carries such Horror and Detestation in its self, to all honest People, that it is impossible to aggravate it by any Expressions that can be used about it. But there is this peculiar Consideration to be had, by all *English* Men, who love their Country, that this designed Assassination upon the Person of His Present Majesty, was to take away the Life of a King, who every Body knows first ventured his own Life, to restore our Religion, Laws and Liberties, when they were just expiring under the Oppression of Popery and Tyranny. And as he ventured his Life first to restore 'em; so he has since, upon all Occasions, with the utmost Hazard, exposed his Royal Person to the most imminent Dangers, for the preserving and maintaining our Religion, Laws and Liberties, against the Power and Violence of the common Enemy: This Consideration to all true *English* Men must have a very great Weight, and create the greatest Horror and Detestation, both of the barbarous Design, and of all those who had any Concern or Hand in it, to attempt upon the Life, not only of a King, but of such a King.

Gentlemen, when you hear the Evidence that we shall offer to you, to prove this bloody Conspiracy against these Prisoners, I doubt not but that there will be enough, and more than enough, to satisfy all true-hearted *English* Subjects, and all People that have a Desire to preserve our Constitution and Government, in what Danger we and our Posterity were of being utterly ruined, and involved in a common Destruction. I shall not detain you longer with any Discourse about the Heinousness of this Offence, because every Man's own Thoughts cannot but suggest to him, how dismal the Consequences must have been, if so fatal a Stroke had been given.

But, Gentlemen, I must crave leave to take up so much of your Time as to open how this Bloody Execrable Conspiracy was first framed, and afterwards carried on by the Prisoners at the Bar, together with others, till it was very near putting in Execution, had not the infinite Mercy of God prevented it, by a timely Discovery.

Gentlemen, this Conspiracy was first framed and consulted upon the last Year; there were several Consultations and Meetings, at several Places about the Town, for this Purpose; then and

at those Consultations and Meetings, there were present Capt. *Porter*, the Prisoners, and others of whom you will have an Account from the Witnesses; and at that Time they had an Expectation of Commissions from the late King, to authorize the Design; that not coming, they yet resolved to put it in Execution before the King went away. But because the *French* Troops were then not in a Readiness to come over hither, to protect them, after the Execution of the bloody Design, it was necessary for them to fly thither for Shelter; and therefore they endeavoured to procure a Vessel to be ready to carry them over to *France*. But they could not get a Vessel time enough; and then the King's going over into *Flanders* quickly after, prevented the Execution of the Design for that Time, and so Matters rested till the King's Return.

About two or three Months ago, Sir *George Barclay*, who is an Officer in the late King *James's* Guards in *France*; and some other Officers, with Sixteen or Eighteen Troopers in those Guards, privately came over from *France* to put this Design in Execution; and he did acquaint Mr. *Porter* and Mr. *Charnock* with the Design, knowing that they had been engaged in the Matter before, and so could not but expect that they would readily assist. This Design was treated and consulted of between them at several Times, and in several Places, at Captain *Porter's*, and Mr. *Charnock's* Lodgings in *Norfolk-street*; at the *Globe Tavern* in *Hatton-Garden*, the *Nags-head Tavern* at *St. James's*, and several other Places; several Consultations and Meetings were had between the Prisoners at the Bar, and others, whom you will hear named at these Meetings; several Ways and Methods were proposed, how it should be best effected; it was proposed by some, that it should be done by Ambuscade, that should be laid near the King's House at *Richmond*, such a Number on Foot were to lie in the Wood, there ready to attack the King as he came by, and the rest of the Conspirators at the same Time to fall on the Guards. But this Method was not so well approved of, as that which was afterwards proposed and agreed to: That is, there were to be three Parties of them, and the Place was the Lane, lying between *Brentford* and *Turnham-Green*, at the End next *Turnham Green*, which the King used to pass thro', upon his Return from *Richmond*: The Order and Method of the Design was this; Sir *George Barclay*, with Eight or Ten more, was to attack the Coach, and by firing into it, to have killed the King, and all in it, and the rest were to attack the Guards, in two Parties, on each Side of the Lane, whereof Mr. *Charnock* and *Porter* were to command one, and Brigadier *Rookwood* the other. In order to see how feasible this Design might be, the Prisoner *King*, Capt. *Porter*, and *Knighly*, were to go and survey the Place; and the next Day after that Consultation, they went to view the Ground, and did very carefully do it, both on this Side the Water, and on the other Side the Water; and they came back and met the rest of the Company at the *Nagg's-Head Tavern* late at Night, to give an Account what they had done in order to this Enterprize. It was agreed the Number should be about Forty; Sir *George Barclay* was to make up about Twenty, Mr. *Charnock* was to furnish Eight, Capt. *Porter* Seven, and so in other Proportions, in all to make up the Number of Forty; which they thought were enough to effect and accomplish the Design.

In order to make this Matter the more sure, they did appoint Two to lodge and wait at *Kensington*, near the Guards; who were to give Notice, when the King went abroad: And they had their several Persons assigned to whom they should give Notice, who thereupon were to send Orders to the several Parties; one of which was *Chambers*, who was to give Notice to the Prisoner at the Bar Mr. *Charnock*, and there was one *Durance*, who was to give Notice to Sir *George Barclay*; and when such Notice was given, then they were to send Orders to the several Persons, who were to be concerned in this bloody Business, to come at the Time appointed, to be disposed of into their several Posts.

Gentlemen, in order to the furthering of this Design, they did likewise send *Durance* to go and view, and give them an Account of the most convenient Inns at *Brentford*, and *Turnham-Green*, and the Places adjacent; which were least liable to Observation, where the Men might be the most conveniently disposed of, to lie ready against the Time, when they were to execute this barbarous Assassination; accordingly he went, and took an Account of the several Inns within that Compass, and they were to be billeted by Two or Three in an Inn, so as not to be observed; Sir *George Barclay* and his Party at *Turnham-Green*, and the rest at *Brentford*.

Gentlemen, after they had thus laid the Design, *Saturday* the 15th of *February* was the first Time pitched upon for the putting it in Execution, if the King went abroad, as he used to do, upon *Saturdays*, to *Richmond* to hunt; and if they had Notice from *Durance* and *Chambers*, that he was so to do, which Notice they had; and every Thing was prepared in order to have perpetrated this villainous Design; but it happened that the King went not abroad that Day, of which they had Notice about Noon from *Chambers* to *Charnock*, and *Charnock* sent Word so to *Porter's* Lodgings, and then the Order for their getting together was countermanded, and the Note, by which *Charnock* sent Word, was subscribed with the Name of *Robinson*; which you will hear is a Name he goes by, as well as by that of *Charnock*.

Thus they were disappointed at that Time, but they were not discouraged from pursuing this inhuman Enterprize; but resolved to go on the next Opportunity that should be given. And to omit several Things that intervened, which the Witnesses will give you an Account of, on the *Friday* following they met again, to have every Thing ready against the next Day, which was *Saturday* the 22d of *February*; when they expected the King would go abroad, as he usually did on that Day of the Week; and that Meeting was at the *Sun Tavern* in the *Strand*, and there were present Capt. *Porter*, Sir *William Perkins*, Sir *George Barclay* and Mr. *Charnock*; and at that Time there was a Discourse amongst them about the Disappointment, which they had had the Week before, and some of them had a Jealousy that a Discovcry had been made of their Design: But then, upon further Consideration, They concluded, If it had been so, they should not have met there, but should have been taken up: And therefore they concluded the King's staying at Home that Day was but Accidental, and so resolved to put their Conspiracy in Execution the next Day.

While they were there, several Persons for whom

whom Capt. Porter had undertaken, that is, one Cranborne, Kenrick, and Keyes the Prisoner at the Bar, came to Porter; these were carried into another Room, and commanded all to be ready the next Day, when it was resolv'd to put the Assassination in Execution: And then Capt. Porter asked Kenrick for Sberborne, who it seems had been undertaken for; but it was answered, That he asked so many Questions about the Matter, that he did not think fit to trust him.

The next Morning they met again at Captain Porter's Lodgings; and there met, as the Witnesses will tell you, amongst others, Mr. Pendergrafs, Mr. Keyes, and Mr. King; King brought a Message to Capt. Porter from Sir George Barclay, to know the Names of those that were concerned, and upon that Message Capt. Porter writ down the Names of his Men, who were for his Quota, and sent the List by Cranborne to Mr. Charnock, to add his List to it of the Men he was to have under him; Cranborne afterwards came back, and brought the List that Capt. Porter sent, with the additional List sent by Mr. Charnock, written with his own Hand, and subscribed R. C. and Cranborne told them that Chambers had sent Word, that the King would go out that Morning: At the Hearing of which there was much Joy amongst them; for they hoped then their wicked Design would be put in Execution that Day. There was a Discourse then likewise, that Porter had a Piece which carried Six Bullets; and this, it was ordered, should be put into the Hands of Pendergrafs, who was to be one of Sir George Barclay's Men, to attack and fire into the King's Coach.

This was upon Saturday the 22d of February, when they had News that the King was to go abroad, and every Thing was to be put in Execution at his Return from Richmond. From Captain Porter's Lodgings they went to the Blue Posts in Spring Garden; but about 12 o' Clock there came News from Chambers, one of the orderly Men at Kensington, that the King did not go abroad that Day: This put them into a very great Confusion; they then thought some Discovery must needs be made because of the Disappointment two Saturdays together; and Keyes, the Prisoner at the Bar, came up and told them, that the Guards were all come back in a Foam, and the King's Coaches were brought back to the Meuse: And this confirmed them in their former Jealousy that the Matter was discovered; upon which Captain Porter, Mr. Pendergrafs and Mr. Keyes went together to lie hid some Time; but they said they would send Keyes to Mr. Charnock, to let him know where they might be heard of; and if the Matter was not discovered, they would still go on to put it in Execution: But they could not part without drinking some Traiterous Healths, which the Witnesses will tell you of, to the Restoring of the late King and his Queen, and the Prince of Wales; and after all, one of the Company taking an Orange in his Hand, began a Health to the Squeezing of the Rotten Orange; and in this Manner it was drunk by all of them before they parted, tho' they were under the Apprehension at that Time of being discovered already.

This is the Beginning and Progress of the several Consultations that were had for the Carrying on this execrable Traiterous Conspiracy. I have opened it shortly to you, but you will hear it much fuller in its several Parts by the Witnes-

ses. By what I have opened, you cannot but observe, that it was very near coming to be executed, if there had not been a Discovery of it Time enough, thro' the Providence of Almighty God, to prevent it. They had agreed, after the intended Assassination, to keep together, till they came near the Town, and then they were to lie hid till the French Troops landed, which they were assured of were ready upon the least Intimation of the Success of this Conspiracy.

Gentlemen, every Body may guess at the dismal Consequences that would have follow'd, had this bloody Design taken Effect; and I am sure, as we and our Posterity could not have expected any Thing less than the perpetual Yoke and Burden of Slavery and Popery, if it had pleas'd God to permit this Conspiracy to take Effect; so I hope we shall always remember the merciful Hand of Providence, that has detected and disappointed it.

Gentlemen, I shall not detain you any longer; I have opened unto you Part of that which will more fully be made out by the Witnesses; only I would observe, that the Providence of God has not only made a Discovery to prevent the Execution of this abominable Villainy, but hath brought this Conspiracy so far to light, by such unquestionable Testimony, that no Man can doubt of the Reality of it, which I hope will raise in every honest Man's Mind an Abhorrence and Detestation of those Principles, upon which so villainous and barbarous a Design was founded; and I think I may say, that after the Evidence you will hear this Day, no one will pretend any Doubt of the Truth thereof, but either such as are sorry for the Discovery, or such as knew too much of the Conspiracy before. I shall trouble you no further, but call our Witnesses, who will give you a clear and full Account of this Conspiracy. Swear Capt. Porter. (*Which was done.*)

Mr. Sol. Gen. * Captain Porter, I would not lead you with any Question, but * Sir John Hawker. pray will you give the Court and the Jury an Account what you know concerning any Conspiracy about assassinating the King, and when it was to be done, and where, and how, and by whom; and particularly what relates as to that Matter to the Prisoners at the Bar.

Char. My Lord, there are two Things that I must beg of the Court, in Relation to the Witnesses that are to be produced and the Evidence that is to be given against me at this Time: And the first is, That before any of the Witnesses give any Evidence against me, the rest that are to be sworn and produced, may be kept out of Court, till they that are called have severally given their Evidence, that one may not hear what the other says; That I suppose is but reasonable in a Case of this Nature, and what was never denied, but always allow'd, as I have been informed.

L. C. J. There is but one Witness sworn, and I believe, that there are none of the rest here.

Char. Yes, my Lord, here is one Gentleman in Court whom I suppose to be an Evidence, and that is Mr. De la Rue.

L. C. J. If there be any others of the Witnesses, let them withdraw till they be called for; let there be some Body to look after them and attend them. (*Which was accordingly done.*)

L. C. J. Mr. Charnock, you have your Desire as to this Matter, all the rest of the Witnesses are withdrawn.

Char. My Lord, there is another Thing that I have to beg of the Court, and that is, in relation to the Evidence in general, That if there be any Thing prov'd to be spoken in Company, and talked of by Way of common Discourse, or only in Jollity in ordinary Conversation, that may not be interpreted as a Proof of any settled Design or Practice.

L. C. J. Look you, Mr. *Charnock*, who can tell what the Evidence will be until it be given? you will hear what is depofed by the Witnesses, and you have Pen and Ink, and may make such Observations as you think fit: When the Witnesses are heard, you will have all the Advantage that can be allowed you, and you may then propose your Objections to the Matter of their Evidence; which, no doubt, will have their just Weight with the Court: In the mean time, have you any Exception to this Man's being a Witness? If you have no Exception against him, then he must give his Evidence; and after he has deliver'd himself, and the King's Council have done with him, you are at Liberty to ask him what Questions you think fit.

Mr. Soll. Gen. Captain *Porter*, I desire you will acquaint the Court and the Jury what you know of any Conspiracy to take away the Life of his Majesty, when it began, in what Manner it was carried on, how far it proceeded, how it came to be disappointed, who were concerned in it, and what relates to the Prisoners at the Bar, as to their Share therein.

Capt. Porter. My Lord, I am unfortunately engaged in this Matter, and have made a frank Discovery, to make the King all the Atonement I can, for having been concerned in such a Design. Some Weeks before this Conspiracy for Assassinating the King was in Hand, there came to my Lodging

Mr. Att. Gen. Captain *Porter*, I would not interrupt you, but to put it into a Method, and Order of Time, will you please to recollect your self, and give the Court and the Jury an Account of your Knowledge about the first Beginning of this Conspiracy the last Year; I would not lead you, and therefore I ask you the general, and no particular Question.

Char. My Lord, I suppose that any Question about what was done the last Year is not at all to the Purpose in this Case, for there is nothing mention'd in the Indictment of the last Year.

L. C. J. It is in the Indictment diverse Days and Times, as well before as after.

Char. The Crime for which we are accused is laid to be the 10th Day of *February*, 1695.

L. C. J. The Day is not material, but only a Circumstance, but in Form, some Day before the Indictment preferred, must be laid; and tho' the Day mentioned in the Indictment is the 10th of *February*, yet it is also said, that the Things contained in the Indictment, of which you are accused, were done likewise at diverse Days and Times, as well before as after, and so the Indictment comprehends even what might be done the last Year as well as this.

Char. I beg the Favour of the Court in this Matter, for sure the 10th of *February* last can no way be supposed to be in the last Year.

L. C. J. I told you before, the Day is not material, not are the Witnesses nor the King's Council tyed up either to the particular Time or Place mention'd in the Indictment, so it be within the

County, and before the Indictment preferred. All that is to be regarded is, that no Evidence be given or admitted of any other Species of Treason, but what is contained in the Indictment; for a Man may certainly be indicted for a Treason committed this Year, and upon his Trial Evidence may be given of the same Treason committed the Year before.

Char. But then how can a Man prepare for his Defence?

Mr. Att. Gen. The Time is but a Circumstance, it may certainly be proved at another Day than what is laid in the Indictment, and yet very good Proof; and so it is in all other Cases, as well Civil as Criminal.

Char. Mr. Attorney General has said enough I think to confute himself; for if one Year may be put in the Indictment, and another Year brought in in the Evidence, how shall any Man be able to apply himself to his Defence, whose Thoughts run only upon the Time laid in the Indictment? I hope neither the Court nor the King's Council will come fo hard upon us, as to put our Thoughts quite out of all Order, that when we apprehend we are only to defend ourselves against what is said to be done this Year, we must afresh prepare ourselves to answer what was done the last Year.

L. C. J. It is always so; for Form Sake, there is a particular Time laid in the Indictment, but the Proof is not to be tyed up to that Time; but if it be proved at any Time before or after, so it be before the Indictment preferred, it is well enough. And not without great Reason, for the Treason consisting in imagining and compassing the King's Death, which may be manifested by diverse Overt Acts, some before, some on, and others since, the Tenth of *February*, yet they are Evidences of one Treason, which is the Compassing the King's Death.

Char. Then we may be under an Obligation to give an Account of all the Transactions of our Lives, if that be the Rule.

L. C. J. No, not so neither, for that very Treason assigned in the Indictment must be proved, and therefore you are only to give an Answer to that, and nothing else.

Char. But, my Lord, it may give a great Loofe, and much hinder our Defence; for as it is now desired that Proof may be given, of what was done last Year, at the same Rate, the [as well before and after] may signify seven Years ago.

L. C. J. And so it may if your Conspiracy reach'd so far, or did then begin, and was afterwards pursued; this is not any Thing that is unusual, but the Common Law is plain in it. Well, what say you, Mr. *Porter*?

Capt. Porter. My Lord, I will give you an Account, if your Lordship pleaseth, of what was done this Year? and if any Questions afterwards be thought fit by the King's Council to be now asked me, about what passed before, I will answer them very readily.

Mr. Att. Gen. Well then go on your own way, we will reserve ourselves till afterwards.

Capt. Porter. Some Weeks before this Design was on Foot, for assassinating the King, Sir *William Perkins* when he was in Town, was at the same Place where Mr. *Charnock* and I did lodge; it was about the latter End of *January*: He asked Mr. *Charnock* where he would be at Night; and I told them, if they were not about private Business, I would

would meet them. He told me, there were some Friends come from *France*, and that something was a doing that would be for the Service of the King: I told them, if any Thing of that Nature was a doing, I would readily engage in it; and they told me I should know it very soon. A little after I fell sick of the Gour, and could not stir from my Chamber: But then Mr. *Charnock* did acquaint me, that Sir *George Barclay*, and those that came from *France*, had brought a Commission to raise and levy War upon the Person of King *William*, and he asked me how many I could bring to join with them, if the King landed; I desired to consider of it, and he told me Sir *George Barclay* would come to him about it. Accordingly, he and *Holmes* came to the House where we lodged, in *Norfolk-street*, and there they were in private with Mr. *Charnock*; and afterwards, because I was lame, and could not stir, they came into my Room, and Sir *George Barclay* told me, he was glad to see me in good Health, but sorry to find me lame, but he hoped to see me abroad in a little Time; and I told him, I hoped for too. They said, they were going then to some Company, and they hoped to see me afterwards. After that there were several Meetings that we had, particularly at the *Globe Tavern* in *Hatton-Garden*, the *Naggs-Head* at *St. James-street*, and the *Sun-Tavern* in the *Strand*, and in all these Places we did consult together, which was the best Way, and where was the best Place to assassinate the King, when he came from Hunting. Sir *George Barclay* told us he had some Money to buy Horses, but not much, he had as much as would furnish about Forty. Capt. *Charnock* said, he would bring six or seven Men, that should come out of the Country. Sir *William Perkins* said he would lend five Horses, there to be mounted by Men of his own, the other two by such as should be provided. I promised to bring seven Men with Horses, and Sir *George Barclay* said, that *Loxwick* and others that came over with him from *France*, would engage in the Design, and make up the Number. I desired very much to see the Commission that came from the late King, and asked Mr. *Charnock* about it; he said he never saw it, but Sir *William Perkins* told me, he had seen it, and that it was all writ with King *James* his own Hand, and signed by himself. All this was agreed to, and then there were Consultations in what Method it was to be done. Several Proposals there were; one was to set upon him as he came from *Richmond* by the Road, others when he was on Horse-back at *Cue*, Sir *George Barclay* was for having it done by Ambuscade in the *Park* by *Richmond*, and therefore desired me to go with Mr. *Knighly*, and view the several Places and Ground thereabouts, to find out which was the most convenient Place. The Day before we were to go, Capt. *King* came to me, and would know if we were to go about such a Matter, and proffered to go with us. I told him I had never a Horse, but he said, he would get one. We went that Night to the *Swan* at *Knights-bridge*, and there we lay, and went the next Day to view the Ground, and came the next Evening to the Company, to give an Account what we had done; and upon the Account that we gave, Sir *George Barclay's* Mind was altered, and it was agreed to do it in the *Lane* coming from *Brandford* to *Turnham Green*, and the particular Manner was agreed on too.

There was one *Rookwood* that was to command one Party of Sir *George Barclay's* Men, to attack the Guard; he told us, he had bought twenty Horses which were to be employed in this Expedition; they were to be divided in three Parties, and Sir *George Barclay* was to have four out of each of the other Parties, and to seize upon the King's Coach, and to shoot into it, and kill the King, and all those that were with him: And this was to be done on the 15th of *February*, which was a *Saturday*, and the King usually went to *Richmond* on *Saturdays*. We had two orderly Men (as they were called) who were to lie at *Kenfington*, to give Intelligence when the King and the Guards went out, the one was *Chambers*, and the other one *Durant*, a *Flemming*, I think, or I do not well know what Country-man he was; and *Durant* was to bring an Account when the Guard went out, and *Chambers* when the King went out, and when we had Notice that the King was gone, we were to go by three or four in a Party to prevent Suspicion, and we were to be dispersed in the several Inns about *Brentford* and *Turnham Green*. Sir *George Barclay* was to be at the King of *Bobemia's* Head; and we ordered a Man to give Notice to him when the King landed, and then he was to give Notice to us, and so we were to form our selves into our several Bodies, to take our several Posts as were agreed upon. I asked him, what he thought to do when the Matter was over, how we should dispose of our selves? He told me, we need not fear any Thing, but might go to Town and lie still, and that there would come a sufficient number from abroad ready to assist us. That 4 or 5000 *French* were to divert in *Scotland*, and the King would be near the *French* Shore with a sufficient Army. On *Friday* before the 22d, when it was to have been executed again, we met at the *Sun-Tavern* in the *Strand*; and there discoursed, for a matter of half an Hour, about the former Disappointment, and several in the Company were afraid the Design was discovered; but then I told them, if it had been so, sure we should have been taken up before now; upon which it was agreed, Then let us resolve upon it again to Morrow, and so it was resolved upon. Capt. *Charnock* said, he could not stay, because he should want some Men that were come up out of the Country on purpose. I said, I was afraid my Horses were sick, and could not be used in the Service, and Sir *William Perkins* thereupon undertook to furnish me, and told Mr. *Charnock* and me he had sent to Mr. *Lewis*, that belongs to the Earl of *Faversham*, to procure some, having, as he said, promised to do. I sent the next Morning to have a Note for two, by Mr. *Cranburne*, and he sent me a Note back again by *Cranburne*, that he had sent to Mr. *Lewis*, and Mr. *Lewis* said, he would help him to three Horses, with Saddles, Holsters and Pistols, and desired the List of my Men, which I sent him, and he sent it me back again with the List of his own, and then I shewed it to Mr. *De la Rue*, and we were preparing all Things for the Execution of this Design, and presently after News came, that the King did not go out that Day neither; upon which I said I would go out of Town, and I asked Capt. *Pendergrafs* to go with me, and we sent *Keyes* to bring Linnen unto us, but he did not come until the *Wednesday*, and upon the *Thursday* we were taken.

Mr. *Att. Gen.* Captain *Porter*, you mention several Consultations, at several Times and Places; who were present at any, and which of them? Were any of the Prisoners at the Bar there, and which?

Capt. *Porter.* There was Mr. *Charnock*, and Mr. *King*, at all of them.

Mr. *Att. Gen.* What do you say about *Keyes*? What was he?

Capt. *Porter.* He was my Servant a Year and a Half.

Mr. *Sol. Gen.* Was he acquainted with the Assassination?

Capt. *Porter.* Yes, he was, and was present at most of the Consultations. He hired Horses for me to be employed in the Business. On the first Saturday, he hired two, I gave him Money for them, and he did know upon what Account they were hired.

Mr. *Att. Gen.* Was he present when News was brought of the Disappointment?

Capt. *Porter.* Yes, he was both Times.

Mr. *Att. Gen.* You are sure he was present then?

Capt. *Porter.* Yes, the second Time he said, that he met the King's Guards that were come back all in a Foam, and that he had spoke to one of my Lord of *Oxford's* Regiment, and that something was mutter'd, upon which he feared a Discovery.

Mr. *Att. Gen.* Did *Keyes* agree to be one of the Men, that should be concerned and act in this Business?

Capt. *Porter.* Yes, he did.

Mr. *Att. Gen.* What Quality is he of? What is his Profession?

Capt. *Porter.* He used formerly to help to dress me, and he was to look after my Linnen and Equipage.

Mr. *Sol. Gen.* Had he not been a Trumpeter? Was not that his Profession?

Capt. *Porter.* He was a Trumpeter, and used sometimes to entertain us with his Trumpet.

Mr. *Conyers.* You speak of a Meeting at the Sun Tavern in the Strand upon Friday the 21st of February where it was resolv'd to execute this Attempt upon the next Day.

Capt. *Porter.* Yes, there was such a Meeting.

Mr. *Conyers.* Was *Keyes* there at that Time?

Capt. *Porter.* He was not in the Room where we were, but he was in another Room in the same House, where I went out to him, and there was he, *Cranburne* and *Kenrick*.

Mr. *Conyers.* Pray what did you go to them for?

Capt. *Porter.* I went to acquaint them what was resolv'd upon; and I told them they were resolv'd to do it the next Day, to which they agreed, but that I thought my Horses would not be ready, but I hoped I should get some other.

Mr. *Con.* Pray, what other Discourse had you in that Company: With whom, and about what?

Capt. *Porter.* Mr. *Kenrick* came to me with his Arm in a String; either he had broke his Arm, or pretended so to have done. I then asked him for Mr. *Sherbourn*, whom he had mentioned before to me, as one that was likely to be concerned: He told me Mr. *Sherbourn* asked a great many Questions about the Design, which he did not think fit to answer; I thanked him for telling me so, and said I would not send to him.

Mr. *Cooper.* Pray, Captain *Porter*, give me leave to ask you one Question, Can you remember what

Number of Men *Charnock* was to provide for this Enterprize?

Capt. *Porter.* He promised seven or eight Men, some of which should bring their Horses out of the Country, others he would borrow or hire for them.

Mr. *Att. Gen.* Pray, Sir, was there any Body sent to take an Account of the Inns about the Place where this Assassination was to have been executed?

Capt. *Porter.* Yes, Mr. *Durant* was, and he did bring us an Account of the several Inns about *Brentford* and *Turnham Green*.

Mr. *Att. Gen.* As to the List of Men, which you say you sent to *Charnock*, and he sent you back with a List of his Men, pray can you tell whose Hand that List of his Men was in?

Capt. *Porter.* I know Captain *Charnock's* Hand very well, and, to the best of my Knowledge, it was his own Hand, and subscribed R. C.

Mr. *Att. Gen.* Sir, you have given an Account of the Meeting the 22d at your Lodging.

Charnock. I was not there he says.

Mr. *Att. Gen.* First let me ask you, how came it that it was not put in Execution the 15th; for that you did not tell us before?

Capt. *Porter.* I tell you, Sir, it was because the King did not go out that Day, according as we had Notice, that he intended to do: *Durant* wrote first Word that the Guards were gone before, upon which I went for my Men, and about Noon I received a Note from Mr. *Charnock* that the King did not go out that Day.

Mr. *Att. Gen.* Pray what Name was subscribed to that Note?

Capt. *Porter.* R. *Robinson*, which was a Name he used to go by sometimes.

Mr. *Att. Gen.* And pray in whose Hand was that Note?

Capt. *Porter.* To the best of my Knowledge it was Captain *Charnock's*, I know his Hand very well.

Mr. *Att. Gen.* My Lord, if the Prisoners will ask him any Questions, they may.

L. C. J. Will you ask him any Questions?

Char. My Lord, in the first Place I desire the Judgment of the Court, whether he be a legal Evidence or no. I conceive he is not, and I hope your Lordships will think so too: For he makes himself a Criminal by his own Confession, and that of a very heinous Crime, and it is equal in my Judgment (and as I have been advised, who I must still say am ignorant in these Matters) as if he had confess'd it upon an Indictment, and then the Law can take no Notice of him as a good Witness. And if he were no legal Witness then, I take it by the same Reason he is no legal Witness now: For the Crime is the same, and it is an Acknowledgement in open Court.

L. C. J. Look you, Mr. *Charnock*, if it had been a Confession upon an Indictment, it would have been a Conviction, which would have had quite another Operation; but it not being upon an Indictment, it is no Conviction, and therefore he is a legal Witness, though he does acknowledge himself to be guilty of the Crime.

Char. Then, my Lord, he is looked upon as no good Evidence, in my Judgment, because he is a Criminal.

L. C. J. He is a legal Evidence, tho' he does confess himself guilty of the Crime.

Char. He owns himself a Partner in a bloody Design,

Design, and to convict me, he swears to take away my Life, to save his own. I cannot imagine why he should be accounted a legal Witness, that is a Party by his own Confession in such a Matter.

L. C. J. Pray, who can tell better what was intended and done in such a Conspiracy than he that was a Party in it?

Char. My Lord, he has forfeited his Life by his own Confession, and now he would by Swearing against me take away my Life to save his own.

L. C. J. Whatsoever Objections you have against the Credit of his Testimony, you may make what Use of them you can in the proper Time; but for any thing that yet appears, he is a legal Witness.

Charnock. My Lord, I know not how far he is a legal Witness, therein I must be governed by the Judgment of the Court; but sure it will rake away from the Credibility of his Testimony, his own Acknowledgement of his being guilty of such a Crime. Tho' he may be a legal Witness, he cannot be a good one. And I hope the Gentlemen of the Jury will consider of it, when a Man comes to take away other Mens Lives to save his own, by accusing them of Crimes which he acknowledged himself to be guilty of.

L. C. J. Look you, Mr. *Charnock*, for that matter, it is so in all Cases of this Nature, not only in Cases of High-Treason, but of Robberies and Burglaries, and the like, where the Parties concern'd are and always have been allow'd to be good Witnesses against their Accomplices in those Crimes. Will you ask him any Questions, Mr. *Charnock*?

Charnock. My Lord, here is another Thing, which, I apprehend, I have Reason to object against the Testimony of this Witness; he does not only swear to save his own Life, and take away another's to deserve the saving of his own, but there is in this Case Swearing to get a Reward, for there is a Reward of 1000 *l.* apiece promised by Proclamation, for the Apprehension of this Man and others. And not only a Pardon but the 1000 *l.* to any of those in the Proclamation who shall discover and take any of the prescribed Persons. Now, where a Man stands accused by Proclamation, and his own Life is thereby concerned, and a Reward is propos'd for any of the Conspirators discovering and apprehending the others, it is a hard Matter to admit any one that acknowledged himself guilty of such a Crime, to prove a Prisoner guilty of that Crime under those Circumstances. Besides, my Lord, I have known this Gentleman, and tho' he may have had an Estate, yet since I have Reason to suspect, and perhaps it may be very well known, that the Fortune he had is lavished away; to make up that Damage, he may be tempted to undertake this Way of Swearing. So I think he cannot be a good Evidence, and I hope your Lordship will think so too, and that he is to receive no Credit or Countenance before an honest Jury, as I doubt not these Gentlemen are that are to try us.

L. C. J. Mr. *Charnock*, do not mistake yourself, he is to have no Reward by the Proclamation unless he had come in voluntarily, and apprehended one of the others; for only those that apprehend any of the Persons named in the Proclamation, are to receive any Part of the Reward, not any of the Witnesses against any of them; the Reward is for the Apprehension, whether they be found guilty or not guilty.

Char. But still, my Lord, he cannot be a good

Witness, for it looks as if he was a Man that was willing to have become an Evidence, because we, whom he has accused, particularly my self, were permitted to be taken, and then in the mean while he seems to withdraw, only that he might be taken as a Colour. For my Part, I know not but that it may be a Contrivance of his own, to be colourably taken up, because he is so willingly an Evidence, as the Jury may perceive he is.

L. C. J. It is certainly a very hard Matter, if not impossible, to discover Crimes of this Nature, if the Accomplices in those Crimes shall not be allowed to be good Witnesses against their Fellow-Conspirators.

Char. My Lord, I must submit to the Judgment of the Court that he is a legal Witness. But tho' I shall not press upon the Legality, yet I must say he is not a good Witness for all the Reasons that I have urged.

L. C. J. Nay, he is a very good Witness, if he be a legal Witness; but the Credit of what he says, as in all other Cases, must be left to the Jury, who are Judges of the Matter of Fact, and the Credibility of the Witnesses.

Char. My Lord, when Persons will own themselves guilty of joining in so barbarous a Crime as we stand indicted for, and accused of, sure there will be little Credit due to their Testimony.

L. C. J. His Credit must be left to the Jury, who are the Judges of it; now if you will ask no Questions, I must speak to the rest; Mr. *King* will you ask him any Questions?

Char. I speak this only in general; but I have some Remarks that I have made upon the Evidence that has been given, out of which, when I have told you of them, Questions may arise, which it may be fit for me to propose, and I shall desire your Lordship's Leave accordingly.

L. C. J. Look you, Mr. *Charnock*, you shall be heard all that you have to say, when your Time comes for your Defence, and to make what Observations upon the Evidence you please. But the Matter is now, whether you will think fit to cross-examine the Witnesses that are produced for the King, or to ask them any Questions?

Char. My Lord, I have taken some Notes of what has been said, and I desire I may make the best Use of them that I can.

L. C. J. You may make what use you will of your Notes, and make what Observation you will to make any Question you ask intelligible.

Char. My Lord, Capt. *Porter* in his Evidence hath said that this Conspiracy was in the latter End of *February*. Now I apprehend his Oath is not valuable upon this Indictment, because the Offence is laid the Tenth of *February*, and so his Conspiracy that he talks of, was after the Time laid in the Indictment.

L. C. J. I believe you mistake him, Sir.

Mr. Att. Gen. If he pleases to ask him, I suppose he will find himself mistaken.

Capt. Porter. My Lord, I say the latter End of *January*; if I said *February* I mistook.

L. C. J. And so it must be; for the two and twentieth of *February*, was to have been the second Time for the Execution of the Design, and several of the Conspirators were taken the next Day.

Char. My Lord, I desire Capt. *Porter* may be asked, where it was, and when, that I brought Sir *George Barclay* and Mr. *Holmes* into his Company?

Capt. Porter. It was the Beginning of *February*,

at my Chamber in the same House where Mr. *Charnock* lodged, and I was then sick of the Gout.

Char. My Lord, I declare it, I know nothing of it. Then he says we had several Meetings, particularly at three several Taverns; by what I can observe, there is no Time at all, nor at any of those three Places that there was any Sort of Conspiracy for the Assassinating of the King.

L. C. J. Yes, he says, that you met at those Places, where you did consult about Assassinating of the King, and the Ways and Methods how it should be carried on, and that you was at those Consults; for Mr. Attorney asked him particularly, Whether you that are the Prisoners were there? and he says, Ay.

Char. He says, that we met at the *Nagg's-head* Tavern in St. *James's*-street, where it was agreed that he and *Knighly* should go and view the Ground, to see which would be the most convenient Place; and that they came the next Night to give an Account according to our Desire. Now, my Lord, I was there at Dinner, and Capt. *Porter* did come in at Night; and if you do remember, Captain, you could not pull off your Boots well, and complained of the Gout, and was very peevish; and said you had been at *Mortlack*, and had met with a Friend there; That is all that I know. There was Capt. *King* and Mr. *Knighly* indeed; who sent for some other Cloaths, but it cannot be pretended that there was any Crime transacted at that Time; for you cannot imagine, that I would have to do in any such Matter amongst Porters and Messengers that were to go on common Errands.

L. C. J. I will only put you in a right Method; You may ask what Questions you will now; but you are not to make your Observations upon the Witnesses to the Jury till the King's Evidence be given, for then your Time will come for your Defence.

Char. My Lord, it may be I may forget then what may be proper for me to insist upon. If your Lordship will please to allow me a Solicitor to put me in Mind, I should be the better able to manage my self.

L. C. J. You may be helped by your Notes; but you have been told over and over, we can allow no Solicitor.

Char. My Lord, Capt. *Porter* says, I told him there was such a Commission brought by Sir *George Barclay* from King *James*; he says indeed, I told him I never saw it; and I do not know how I could, because I do not believe there ever was any such, and it is improbable there should be any such.

L. C. J. Mr. *Charnock*, I would not hinder you from saying any Thing that would be proper for your Defence, nor will interrupt you when your proper Time comes.

Char. My Lord, what I say is as to what Captain *Porter* has evidenced, and I will make Observations upon one Part of the Evidence after another, as it is given.

L. C. J. But that is not regular, according to the Course of Evidence, and will introduce a Confusion. You may ask any Questions of the particular Witnesses, as they are in Order, if you will; but your Observations, as to your own Defence, you must defer, till the Witnesses are heard, that so the Evidence may be intire, and your Defence intire; therefore if you will ask him any Questions, say so.

Char. No, my Lord.

L. C. J. Then Mr. *King*, will you ask him any Questions?

King. Capt. *Porter*, Did I mention any Thing, or was there any Discourse when you and I, and Mr. *Knighly*, as you say, went out to view the Ground, about killing the King?

Capt. Porter. The Day before we went, we dined together, and it was at the *Nagg's-head*, and he asked if I was to meet *Knighly*, and go and view the Ground, in order to settling the Design, which was then talked of, and consulted about; and Captain *King* desired to go with us, and we lay at *Knights-bridge*; and when we were about it, we discoursed several Times of the Nature of the Place; and Captain *King* did not approve of the Place on this Side the Water, but liked the Ambuscade better which was to have been on the other side the Water.

L. C. J. Will you ask him any more Questions?

King. No, my Lord.

L. C. J. Well then, What says the other Man, *Keyes*? Will he ask him any Questions?

Keyes. My Lord, I have had no Body to advise me, no Council; I was only a Servant to Captain *Porter*.

Mr. Att. Gen. If then they have done with him, before he goes, I desire to ask him one Question. What Discourse, or Treaty, or Consultation about this, or such like a Matter, there was the last Winter, and between whom?

Capt. Porter. There were several Meetings and Consultations the last Winter between Capt. *Charnock*, Sir *William Perkins*, and myself, about such a Thing; and we thought that the quickest Way to bring in the King, and restore him to his Crown, was by knocking King *William* on the Head; and there were several Meetings about the Ways of doing it.

Mr. Att. Gen. Who else were there at those Meetings?

Capt. Porter. There were several others in Company.

Mr. Att. Gen. But the Meaning of my Question is, who of the Prisoners?

Capt. Porter. I cannot remember any but Capt. *Charnock*.

Mr. Att. Gen. Pray will you acquaint us with the Reason why it was not done at that time.

Capt. Porter. We wanted a Commission from France, which we thought was a necessary Authority for us to act by.

Mr. Att. Gen. You speak of a List that was brought you again from *Charnock*, with the Addition of those Names that were his Men; pray at that time was there no Discourse about a particular Gun that was somebody's, and that one in the Company was to have, to be employed in this Service?

Capt. Porter. My Lord, I said, I had a Musketoon that carried 6 or 8 Bullets, that Capt. *Pendergrafs*, who was one of the Four out of my *Quota*, that was to go with Sir *George Barclay*, should have if he pleased.

Mr. Att. Gen. Capt. *Porter*, I would not lead you, but were there any particular Directions given, and what, touching the particular Employment of that Gun?

Capt. Porter. I remember I told Capt. *Pendergrafs*, if the Coach made any great haste to get away, he might easily hinder that, by killing or laming one of the Horses with that Gun.

Mr. Att. Gen. Pray recollect yourself, Sir, was *King*, the Prisoner at the Bar, present at that Discourse?

Capt.

Capt. Porter. Capt. King was then in my Room at *Maiden-lane*, where I then lay, being removed from my Lodging at *Norfolk-street*.

King. Do you say that I heard any such Discourse?

Capt. Porter. I cannot say you heard it, but you was present then.

Mr. Att. Gen. Was there not some Discourse about a Defect of the Numbers that were appointed, and expected to join in this Thing?

Capt. Porter. My Lord, I told you I wanted a Man, and that was *Kenrick*, who had his Arm in a String; and Mr. *De la Rue* brought one that I knew not, and some of the Company went to the *Blue-Posts* to tarry there whilst I came to them, and Capt. King was present when the News was brought us of the Disappointment, and then I resolved to go out of Town.

Mr. Att. Gen. The next Witnesses, my Lord, that we call is Mr. *De la Rue*, and we desire he may be sworn. *(Which was done.)*

Mr. Sol. Gen. Mr. *De la Rue*, we would desire you to acquaint the Court and the Jury, what you know of any Design or Conspiracy to Assassinate the King, when it began, how it was carry'd on, and by whom, and by what Methods.

Mr. *De la Rue*. My Lord, this Conspiracy hath been carrying on a great while, for some Years: And it originally came from Col. *Parker*, especially as to my Knowledge of it; and that was five or six Years ago, at *St. Germain's*, when I was there: He propos'd it to me, and said he would propose it to my Lord *Melfort*, who was King *James's* Secretary in *France*. Two Years after, he came over into *England*, it was a little before the Business of *La Hogue*, and he would have had me come over into *England* with him; upon which I apply'd myself to my Lord *Melfort*, to know whether I should come over hither yea or no: My Lord *Melfort* advis'd me to stay there a while, for, said he, you will find there is something a doing which will please you. But nothing being done, after that I came to *England*, and suffer'd a very tedious Confinement here. I became acquainted with Mr. *Charnock* and Capt. *King* abroad; I have been with Mr. *Charnock*, Mr. *King*, Mr. *Porter*, Mr. *Goodman* and Col. *Parker*, here in Town several Times, and at several Places. And now I come to what was a doing the last Year. In the Months of *January*, *February*, and *March*, till the King's going to *Flanders*, there were several Conferences, and Consultations about this Matter, between Sir *William Perkins*, Capt. *Porter*, and others; I cannot say that ever I was in Company with *Goodman* at that Time, when we talk'd of any Thing of this Nature. But Capt. *Charnock* carried me to Sir *William Perkins*, whom I had never seen before, to the *Mitre-Tavern* in *St. James's Market*, and there I was asked, if I would be concern'd in the Easing us from the Yoke that then lay upon us. I asked which way it was to be done, for I could not understand what was meant, but the taking off the King, and therefore I asked which Way it was to be done. Then they asked me, whether I knew where Capt. *Stow* lived; and they employ'd me to go to his Lodgings, and appoint'd me to meet them at the *Star-Tavern* in *White-Friars*. They were there before me, when I had met with the Captain, and brought him thither; but that they thought not a fit Place to consult in, and therefore they went to *Bromfield's Coffee-house*, and there they did talk something of it;

but they took one another aside, and talk'd privately amongst themselves, which I took some Observation and Notice of; and upon Enquiry I was told it was because there was an old Gentleman in the Company, whom they did not care to acquaint with any Thing of the Matter, because he was too Old to have any Hand in it, and they would acquaint none with their Resolutions, but those that were to be Actors in the Design. My Lord, I was not often in their Company after that, but I heard from Time to Time, how Matters went on, and I heard from Capt. *Porter* particularly, that they had been at *Turnham-Green* and liked the Place very well, and that the Design was to take the King off, or else to hurry him away to *Runney-Marsh* alive, and carry him into *France*.

Charnock. Surely this is not any Evidence, because Captain *Porter* only spoke of it, and it is by Hear-say, and we are not concern'd what other People talk of.

Mr. Att. Gen. Pray who was in the Room, when the Proposals were made?

De la Rue. What Proposals do you mean, Sir?

Mr. Att. Gen. At the Tavern in *St. James's-street*.

De la Rue. At the Coffee-house there was a little Talk of it between themselves; but they would not talk much, they said, because there was an old Gentleman there, who was too old to engage, and they would have none but Actors; that I understood to be the Reason why they talk'd one with another so: But I taking notice of their Privacy, whenever I asked *Charnock* of it, he refer'd me to Captain *Porter*. But withal he told me several times, that he believ'd it would come to nothing. The Design was to carry the King alive into *France*, if they could; if they could not take him alive, then to assassinate him, and pretend it was done by a Random Shot. He told me also, they had sent to King *James* for a Commission to execute this Matter, and to authorize them to carry the King into *France*, if they could take him; and then if they could not, they agreed to excuse themselves, as I said, by pretending that he was killed by a Random Shot. It should seem (as I understood) the Commission was delay'd a long Time, and then they resolv'd to execute the Design without a Commission; and within a few Days before the King was to go to *Flanders*, I was told, all was ready. But then they wanted a Ship to carry him off when they had taken him; and there met at the *Rose Tavern*, as I remember, Captain *Porter* and Sir *William Perkins*; but I cannot tell whether Mr. *Charnock* was there or not. I asked them if they had concluded upon the Matter; they told me, it was concluded upon, and, as I remember, they told me Captain *Charnock*, or *Robinson* (for he went by both Names) was to have a Recommendation to some Body at *Deal*; and there they were to hire a Vessel, and I was asked whether I would go with him: I told them, I would. But then the King went a little after for *Flanders*; and they had no Time to compleat the whole Affair, and so the Business was put off, till the King's Return this last Winter.

Mr. Att. Gen. Well, What say you to any Thing since?

De la Rue. This Year in the Months of *November* and *December*, Mr. *King*, the Prisoner at the Bar, told me, that there would be a Major General come over from *France*, and that there was a Man of Quality about the Town, that offer'd to dis-

burse two or three Thousand Pounds, if King *James* would give Order for it: And this was, as I suppose, to buy Horses to be engaged in this Matter, and he would tell me more a while after. A Month or two after, he told me he was out of Money about it, which could not be had: I was brought in by Capt. *Porter*, and they communicated this to me, about the latter End of *January*, or the Beginning of the Month of *February*; they told me there was a Major-General come over from *France*, and there were a great many People come over besides; and there would be something speedily put in Execution, which would be for the King's Service.

L. C. J. Who told you this?

De la Rue. Captain *King*. The next Time I saw him, he told me he wanted a Saddle with Holsters, it was the 7th of *February*, on *Friday* Night, for he was to go out of *Town* with some Friends, about something in order to this Affair; he desired me to lend him one; but I had none, I told him, but I would write to Captain *Porter*, to procure one for him; and he told me he was to go with *Knightly*, *Durant*, and others, to see whether the King went to *Richmond* or to *Hounslow*; because they were told the King had altered his Journey from *Richmond* to *Hounslow*. He afterwards told me, he went out with his Friends, and the *Sunday* Morning he comes to me, and told me, there was the rarest Place for the Execution of the Design against the King, that was possible to be thought of; if they should have studied never so long, and desired a convenient Place, they could not have had such another. It was within a Quarter of a Mile of the King's House at *Richmond*, in a Lane that leads to the House, and so narrow, that the Officers and the Guard could go but very few a-breast, hardly broad enough for a-breast; and there was to be an Ambuscade behind the Park Pales, and the other Side was the River; and, says he, he will have all the Pales sawed so far, that when the King's Coach comes into the Place, the Pales shall be broke down, and we will have a Parcel of Horse ready, that shall be sure to do the Work with the Guards; and when we fire, they shall take Notice to make their Attack. *Durant* desires to command this Party; and they were to be dressed in Country-Mens Habits, that they might the less be taken Notice of: And he said 10 or 12 Men on the other Side would beat 100 of the Guards in that Consternation, especially we having the Park Pales before us to defend us. He asked me if I would be one of the Ambuscade. I told him, I had rather be one of those on Horse-back to secure the Retreat, and I would rather attack the Guards. It was late, and so *King* and I went Home; and the next Day I went to see Captain *Porter*, when he was ill of the Gout. This was *Sunday*, the 9th of *February*; we did go to *Porter*, and he was in his Chamber, and two or three more, and they were talking of indifferent Things: He asked for Captain *Charnock*, and they said he was gone out; but he takes out Capt. *Porter* into the Yard to talk with him by himself; and what he said to him, I suppose was to tell him what he had told me before: Says Captain *Porter* to him, I have taken care of a Horse for you; we will ride out on *Tuesday* next to see the Place. Mr. *Porter*, and Mr. *King*, and, as I was told, Mr. *Knightly*, went to *Knightsbridge*, and lay there all Night; and the next Day they went out of *Town* to view the Place. I was at *Porter's* Lodging on the *Monday*,

but I was told there by *Keyes* and his Landlady, that he lay that Night at the *Swan* at *Knightsbridge*, and was to go out the next Day. On the *Tuesday* Morning I was coming back from *Kensington*, which was the 11th of *February*, and when I was coming along the Street I met with *Keyes*, and ask'd him where he was going? Says he, I am going to Sir *William Perkins* with a Lorrying Trumpet; for it seems he was raising a Troop of Horse, as *Porter* told me afterwards; and within a little Time afterwards, I saw Captain *Porter* at the End of *Norfolk-street*, and he told me they would all be together at the *Nagg's-head* about 7 or 8 a Clock. I went, and expected to be admitted, and asked if Captain *Porter* was there; they told me he was above, but there were several other Persons with him; and there was a Coach at the Door which had brought two *Scotch* Gentlemen, of which I thought Sir *George Barclay* was one, whom I heard to be in *Town*. I desired to speak with Captain *Porter*; they told me he was busy above in Company, and could not be spoke with; by which I saw they were not willing that I should come there amongst them, which I took very ill. Captain *King* came out to me, and was talking with me at the Door, and Captain *Charnock* comes with another to the Door in a Coach: I saw him, but when, I suppose, he perceived me, he pulls himself back into the Coach, as if he had no Mind to be seen; but finding he could not avoid it, he comes out, and asks me if I would not go up Stairs into the Company? I told him, No, I hear they are busy, and because I was not invited up at first, I would not trouble them. I was then thinking of going to my Lord *Shrewsbury's* Office immediately, to get some Messengers immediately to apprehend them; but then I thought I had not enough to discover their Intentions, and make it out against them, but I should have one Time or another. I did not see Captain *King* till *Saturday* afterwards at 12 a Clock, and I was then at *Charnock's* Lodging, to see whether he was gone out, that I might be able to give the King the better Account; they told me, he was at the *Blue Posts* in *Spring Garden*: I would not go and dine there, but went home, and afterwards went thither; and *King*, told me, the King did not go out that Day; I told him that I heard so, and would come and see them after Dinner. At this Meeting at *Spring Garden* I saw *Keyes* was one, and *Kenrick*, and *Sberbourn*, and *Brerly*, and two that I did not know. This was *Saturday* the 15th. On *Sunday* the 16th, I met Mr. *King* at *St. James's-street*, and we went thence to the *Dog Tavern*, and there we supped together, and he told me Sir *George Barclay* had brought over Sixteen of the Guards, and two Officers, and a Brigadier, and a Sub-Brigadier; and he told me the Day before, that he knew some of them, and was going to meet them; for they were *en Cachet*, as he called it in *French*, and did not stir abroad without Leave, and were subsisted at the Rate of 4 s. a Day, as the Guards were here. He told me, he had been lately with them a Drinking. I asked him whither they went; he told me, to the *Bear Tavern* in the *Strand*; and he told me, Mr. *Charnock* and Captain *Porter* had several Conferences with them to contrive how to take off his Majesty, to Murder and to Assassinate him. And he told me —

Charnock. My Lord, I desire he may be ask'd whether he was at the *Bear Tavern* with these Men.

L. C. J. What he says about this Matter, is what *King* told him.

Char. That is not Evidence, my Lord.

L. C. J. That is true, not to affect you, but only *Mr. King*.

De la Rue. Captain *King* told me besides, that *Mr. Charnock* did not argue like a Soldier, and reflected upon him for it; for he said, he seemed to desire to have his Post in as little Danger as was possible. And for *Mr. Porter*, he did not approve of him; for he told me he had as much Fat in his Brains, as he had in his Body. I remember those Words he said; and that what he and *Durant* had proposed, was rejected, that was about the Ambuscade: For it was said, that after all their Consideration, *Sir George Barclay* was not sure of Horse enough to carry them off afterwards; wherefore they resolved to Assassinate his Majesty in the Lane coming from *Brentford* to *Turnham-Green*; and *Sir George Barclay* was to command Eight Persons to assault the King, and those that were in the Coach; and *Mr. Charnock* was to attack the Guards in the Rear; and one *Rookwood*, with a Party that came from *France*, and Captain *Porter*, in two Wings, were to attack the two Sides of the Guards. I remember on *Sunday* Night I asked him if he had a good Sword, for I wanted one; and I said to him, Where is your Sword-Cutler? He told me, On the other Side of the Way; and he was sent for to bring a good Sword, and I chose one that was but a little Blade, which he thought would do best, and was ridiculing Captain *Charnock's* Sword, as being too broad, and of three or four Finger's Breadth. I liked his Sword, and spake to the Man to get me one like his; and he said a *Tuesday*, that he had sent him to my Lodging, but I had not seen him. On *Tuesday*, the 18th of *February*, I went to him, and asked him, whether I should see him in the Afternoon? He told me, No; for he was to go out with *Knighly* to buy Arms. Shall I see you then at Night? said I. I cannot tell whether you can or no, said he. I cannot remember any Thing more that passed upon the 18th. But I spoke to *Mr. Charnock*, whom I met near his Lodging in *Norfolk-street*, and desired to have a Word with him towards the Water-side: I asked him, how the Matter in Hand went; Says he, I find People that were sanguine, and hot, and forward, are now grown cold: I believe the King has Notice of it, and the Thing has taken Air; for he has not been abroad a good while. He was not abroad on *Saturday*, as he usually does go: and I hear that upon *Friday* Night it was agreed in Council, to take up several People. Said I, Does the Business go on? No, says he, I believe it is off, because we apprehend the Thing has taken Air; besides Things of such a Nature are not to be communicated to so many, nor delayed, both which are very dangerous; not above Three People should know of it. Said I, How then would they get enough for the Execution? If they be not acquainted with the Design, they will never engage. Well, said he, I believe they are quite off of the Thoughts of it; but you may depend upon the main Business, that will be very speedily, which was the Landing of King *James*. While I was talking, comes *Bryerly* from Captain *Porter*; and after him, came Captain *King* in a Coach, and asked me, if I would go Home with him? I told him, No, I was not going Home, but was going into *White-*

Fryers, and I took my Leave of them; and nothing pass'd more, that I remember, at that Time. On *Wednesday* Morning I went to Capt. *Charnock's*, thinking to learn something how Matters went on; but he was closer, and more reserv'd than before. I asked him to lend me a good Sword. He said he had none, but *Mr. Porter* had a good broad flaming Sword, which I thought to be the Sword that Capt. *King* mentioned to be his: And we had little Talk that Day; for I had Business to do, and I left him pretty soon on the *Wednesday*. Next Day after, I went to Captain *Porter's* Lodging, who was removed from *Norfolk-street* into *Maiden-head-lane*, to one *Brown* a Surgeon's, and very few People knew where he was, but those that were of the Party in this Business; and I went into another Room, into the Dining-room, because his Room had not a Fire, and he came in to us, and I told him what I had heard from *Mr. Charnock*, that the Thing was quite off. He told me, he heard nothing of it, but found all People that were concerned, as resolute for the Execution of it, as ever they were.

Char. My Lord, he speaks of what Captain *Porter* told him; that is nothing to me.

L. C. J. No, it is not, nor will it ever be urged against you; it is but Hear-say from another. Go on, Sir.

De la Rue. I stayed there but a short Time: But, Capt. *Charnock*, since you speak of this Matter, I only say, I told Captain *Porter* what you told me, that you thought they were off of the Business, and that it had taken Air; and I asked him what he thought: Says he, I know nothing of any Alteration; I believe they are as resolute as ever they were: For they fully purpose, that if the King goes abroad on *Saturday* Morning, we will have all ready. And he told me how it was to be done. He desired me to lie with him on *Friday* Night, that we might prepare everything against the next Day: But I could not do that; and therefore he bid me send at Nine, or thereabouts. I told him I would be at my Lodging about that Time, if he would send to me, to be sure about seven or eight a Clock in the Morning. About that Time in the Morning Captain *Porter* sends to me again; a Servant-Maid came to me, for the *Black* that used to attend him, used only to go abroad at Nights, and was not seen to go in and out a-Days, for Fear of being taken Notice of; because, as I said, none but those that were of the Party knew that he lodged there. I dress'd myself, and went to Captain *Porter's* Lodging. He was in Bed, but presently he rises, and told me in *French*, *Toutes Parties sont prests*; All Things are ready: And when he was up, he put on his Boots; and by and by, in comes *Mr. Kenrick*; and after him, in comes *Mr. Keyes*; and after him, *Mr. King* and *Mr. Pendergrafs*: and Captain *King* takes *Mr. Porter* into another Room, and there they were whispering a while, but I did not hear what they said; but *King* told me afterwards, he did not observe that I was in the other Room. The Question then was asked of *Cranbourne*, When he saw *Sir George Barclay*? He said, he just came from him: And then Captain *Porter* takes a Pen and Ink, and writes down a List of the Persons that he was sure of, and puts me down first. What, says *Mr. Pendergrafs*, are you the Captain? I told him, I believed I was in before the rest of the Company that were there. Then Capt. *Porter* sends *Mr. Cranbourne* with the List

Lift to Captain *Charnock's* Lodgings; and in the mean Time when Mr. *Cranbourne* was gone, Capt. *Porter* told me, that Mr. *Pendergrafs* was to be one of the Eight under Sir *George Barclay*, that were to Assassinate the King; And now, says he, I am going to lend him a Gun that will carry six or eight Bullets. Says Captain *King* thereupon to him, I hope you will not fear to break the Glafs Windows. No, says he, I will have a Hand or a Finger in the Business. By and by came in News, that *Chambers*, one of the orderly Men, as they called them that lay at *Kensington* to give Intelligence, had sent Word that the King was to go abroad, and the Guards were gone out. *Durant* was to stay last, to see when the King went out. *Chambers* had been there all the Week. Mr. *Cranbourne* came back, and told Captain *Porter*, that *Chambers* had sent to Captain *Charnock*, that the King would go out that Day. At which all the Company seem'd joyful. Captain *Porter* told me likewise of several Disappointments that they had, both as to Time, and as to Men; particularly that one Major *Lowick* had engaged to bring two Men, and that one of them had told his Wife, that he was to mount for King *James's* Service; and she went and cried after him when he went to the Coffe-house; and so he was forced to abscond, and so we lost three: And also told me, that *Kenrick* said he had broke his Arm; and when Captain *Porter* asked for *Sherbourne* whom *Kenrick* had talked of, he said he asked so many Questions that he durst not trust him: so that they had lost Five or Six in the whole: And there was one *Plowden* that they were disappointed of besides, whom they had very much reckon'd upon. When Mr. *Cranbourne* brought back the List that Captain *Porter* sent to Captain *Charnock*, there were added to it several Names, which Captain *Porter* said were the Names of the Men that were to be under Captain *Charnock*, and that it was his Hand; and at the Bottom there were the Letters R. C. which I thought stood for *Robert Charnock*. The Names made up about seventeen or eighteen: I told him, I thought there had been more. He told me, there would have been more, but that they were under some Disappointments, as I told you before. He asked me to get him some Men to supply the Defect, and I propos'd some Names, to make him believe I was hearty in the Business: We agreed to go to the *Blue-Poßin Spring-Garden*, and I went under Pretence to get the Men, and came and told them, I had got them, and I found Mr. *Pendergrafs* there, and I took Mr. *Keyes* thither, and Mr. *Porter* sent Mr. *Cranbourne* to Captain *Charnock* several times; by and by Word was brought that *Chambers* had sent Word, the King would not go abroad that Day; upon which they all look'd very blank: And *Keyes* came two or three times in, and went out again; he was several times up and down, at last he came and told us, the Guards were returned from *Richmond* foaming; and he went down again to learn further Intelligence, and within a little Time came and told us, the King's Coach was returned to the *Mews* Gate, and the People very much wondred what should be the Reason that the King did not go a Hunting for two *Saturdays* together as he us'd to do. They seem'd to be in a very great Conternation at this News, and Captain *Porter* said he resolv'd to go out of Town, and asked me if I would go: I told him, No; I had a Suit in *Doffers Commons*, and I

would go to my Proctor and Lawyers to consult about it. Then he asked Mr. *Pendergrafs* to go with him, which he agreed to do; and Captain *Porter* sent *Keyes* up to give the rest of the Company an Account, that there was no Occasion for them then, and so they dispers'd.

Charnock. Did I go out of Town, can you tell?

Mr. *De la Rue*. Now you put me in Mind, Mr. *Cranbourne* brought a Message from you about that Time to Captain *Porter*, that Sir *George Barclay* desired to speak with him at his Lodgings. Captain *Porter* was then apprehensive of Bayliffs meeting with him; and, says he, he knows this, I wonder he would not come to me. But he did not go to him, but resolv'd speedily to go out of Town; and *Keyes* was to give an Account where he was in the Country, that if Occasion was, he might be sent for. This is all I can at present recollect, only, I beg your Pardon, I remember, there were several disloyal Healths drunk in the Company, at several Times, as the Restoring the late King, the Health of the Prince of *Wales*, the late Queen, and the *French* King; and particularly, I remember, when the News of the Disappointment was, Mr. *Porter* took an Orange in his Hand, and squeezed it, and gave it into the Hand of the next Person to him, whom he drank to, and began a Health to the squeezing the rotten Orange; and said, Though we are disappointed one Day, I hope to have another: And *Keyes* was at Dinner with them all the Time, and every Body drank it, I did not see any Body refuse it, but it went from one to another quite round.

Mr. *Att. Gen.* Pray, who were there at that Time?

De la Rue. All the Company pledged the Health, and Mr. *Keyes* was there.

Charnock. Pray was I there?

De la Rue. No.

King. Was I there?

De la Rue. No, there was none of the Prisoners, but Mr. *Keyes*, who belonged to Mr. *Porter's* Party; Mr. *King* for his Part belong'd to Sir *George Barclay's* Party.

Mr. *Att. Gen.* My Lord, before we go to another Witness, I desire to know whether the Prisoners will ask this Witness any Questions.

Char. You say, there was a Note of Names sent by me to Captain *Porter*; Pray, do you know my Hand-writing?

De la Rue. I cannot say I have seen you write, or that I saw you write that; but I have seen your Writing several Times, and I believe it to be your Hand.

Char. Why so, have you any of my Writing?

De la Rue. I have received several Notes from you, which I believe are your Writing.

Char. But you do not swear, that they were my Writing, or that this was my Writing.

De la Rue. I tell you, you have sent several Notes to me at several Times, and you have own'd the Messages came from you, and I do believe it was your Hand-writing, because it was like the rest: and Captain *Porter* told me, it was your Hand-writing.

Mr. *Att. Gen.* Pray did Mr. *Keyes* use to sit down at Table with Mr. *Porter*?

De la Rue. Yes, in all Companies he was treated as familiarly as a Companion, and no ways as a Servant; and dined and supped at the same Table with the rest.

Mr. *Att. Gen.* What was done after that the News,

News was brought of the King's not going abroad, and Captain Porter resolving to go into the Country?

De la Rue. When Captain Porter was gone, the Company broke up; and away goes I to Captain Charnock, to see him, about four of the Clock in the Afternoon. When I came there, his Landlady told me there was a great deal of Company: But I desired her to go in, and tell him that I was there. She did so; and he sent and desired me to come in. I did so, and I saw several Persons there. There was one Douglas, and one Trevor, and four Troopers of my Lord Oxford's Regiment, and a Trumpeter that was his Servant in Ireland, when he was a Captain in Parker's Regiment; I know Captain Charnock was a great Crony of Parker's, and he sent Letters by me to him: I have seen some of the Letters that Parker sent; and they were drinking the same Healths as were drunk before at the Blue Posts, to the restoring King James, the Queen, the Prince of Wales, and the Grand Monarch (as they called him) the French King.

L. C. J. Who was in Company then?

De la Rue. Mr. Douglas, Mr. Trevor, four Troopers of my Lord Oxford's Regiment, one White, one Lowthorp, and one Mason, whom I know when I see very well; Mr. Charnock, one Day in the Summer, asked me to go and drink a Bowl of Punch, which I was unwilling to do; but he must needs press me, and he carries me where Mason and Lowthorp were, at the George Inn in Piccadilly; whence we went to the Prince of Orange's Head, and Captain Charnock spent in Wine and other Liquors upon them a great deal of Money. This was half a Year ago in the Summer Time, but I do not remember that I saw those two, Lowthorp and Mason, afterwards, till the 22d of February.

Mr. Att. Gen. Is this all that you can say as to the Prisoners?

De la Rue. This is all at present that I can recollect.

Mr. Att. Gen. Then for the Satisfaction of the Court and Jury, give us an Account when you first made a Discovery of this Conspiracy, and in what Manner, and to whom.

De la Rue. The last Year I had discovered it if it had come to a Head, and been ripe enough to have been put in Execution; I did then design to acquaint the King with it; but it coming to no Head then, I deserv'd troubling the King with it: And now this Year I design'd (had the King gone out the 15th of February) to have prevented any Mischiefs, but they had Notice that he was not to go: But my Way was, to have put them all into the King's Hands, by getting two or three General Officers to be acquainted with it; and dividing some of the Guards into several Parties in the Lanes between Brentford and Turnham-Green, and so have surpris'd them and their Horses in their several Inns that they were quartered in. But upon Monday the 17th of February, lest they should alter their Resolution, and I should happen not to be acquainted how it was to be done, I went to a General Officer of my Acquaintance, that is, Brigadier Lewson, to acquaint him with the Matter; but he was gone out of Town with Colonel Fitz Patrick and another: I went then to Durant's Lodgings for a Colour, and it was told me, he had been out all Night. I went again to Brigadier Lewson's, but he was not in Town, and I left Word for him, that the next Day I would wait upon him, and desired he would not

go out till I came to him. I went, he was not then at home, but I afterwards met with him, and acquaints him with this Business, and begs of him to acquaint the King with it that Day, which he told me he would. He asked me which Way I purpos'd to put them into the King's Hands. I told him the best Way and safest for me, was for his Majesty to go out on the 22d, for the Party that was to execute this Design, were not to go out of Town till the Afternoon, to be at Brentford, when the King came back from Hunting, and that they should have two or three Troops of Horse by Parties to have seiz'd them and their Horses in the several Inns and Publick-Houses, where they were dispers'd. He said, it was not safe to run that Hazard, but he would offer it to the King, and let me know his Mind. He sent to me the next Day, and told me, he had acquainted the King with it, who desired to know who they were that were concern'd in it; then I gave him the Names of those that I knew, and where they lived. I dined with him on Thursday, and told him what had pass'd on Wednesday Morning between Captain Charnock and I, and what Porter said about it on Wednesday Night; and after Dinner he said he would go again to the King and acquaint him with it; and that I should come to him on Friday Night, which was the Reason I was not there with Captain Porter, where Sir George Barclay and they were together; for I went to the Play to pass away the Time. When I came home to my Lodging, I found there were a Couple of Letters from the Brigadier, to whom I went; and he told me, the King was desirous to see me: I told him I would wait on him to the King with all my Heart. I went with him to Kensington, and was introduced to the King by my Lord Portland, where I think I told the King what I have told the Court now.

Mr. Att. Gen. What Day do you say it was you discover'd it to the King?

De la Rue. Brigadier Lewson acquainted the King upon the Tuesday Night before, and that had been done the Day before, if I could have met with him; but it was Friday Night that I was with the King.

Mr. Att. Gen. Will they ask him any Questions?

Char. No, my Lord, I do not think that any Thing he says against me is material at all.

De la Rue. My Lord, I remember one thing more; that upon Tuesday Night Mr. King told me he had my blue Coat on.

Mr. Att. Gen. Have you any thing more to say as to Keyes?

De la Rue. Keyes was the only Man that told me of the Meetings.

Char. Where was it that you say I pull'd myself back in the Coach?

De la Rue. It was at the Nagg's-head in St. James's-street, and he came out of the Coach and asked me to go up; but I took it ill to be refus'd before, and because I was not invited up at first, I refus'd, and said, I had Business elsewhere, and went away.

L. C. J. Will you ask him any more Questions?

Char. No; yet I think I would ask him one Question more. You say, Sir, I carry'd you once to the George Inn in Piccadilly, where there were Lowthorp and Mason: Are you sure it was the George Inn?

De la Rue. Yes, sure.

Char.

Char. Are you positive it was the *George Inn*?
De la Rue. I believe so, I took it to be that Inn.
Char. You did swear it positively, that it was the *George Inn* before.

De la Rue. I saw those two Men since, which was on *Sunday* the 23d, at *Kensington*, and they said they did quarter at the Inn in *Piccadilly*, where you carried me to them.

Char. Pray, whereabouts is the *George Inn* in *Piccadilly*?

De la Rue. The Inn that I speak of is about the Middle of *Piccadilly*, upon the Left-hand.

Char. There is but one *George Inn* in all *Piccadilly* that ever I heard of, and that is at the further End, there is no such Sign in the Middle.

L. C. J. He is not so positive as to the Sign, but as to the Place.

Char. I appeal to every Body, if he did not swear before positively, that it was the *George Inn* in *Piccadilly*.

De la Rue. I do say, it was to an Inn in *Piccadilly*; and *Lowthorpe* told me on *Sunday* the 23d at *Kensington*, they were quarter'd at an Inn in *Piccadilly*, I take it to be the *George Inn*, if it be not the *George*, I know not what Sign it is; but I think it is not very material what the Sign was.

Char. Yes, it is all material to us; and I think it is very material for every Man to take care how he forswears himself.

L. C. J. No, it is not forswearing himself, when he is not positive as to the Sign.

Char. But I hope every Body considers, that he did swear it was the *George Inn*, and there is no such Inn there.

De la Rue. This I did not think of, to take so much Notice of it then, as to mind what the Sign was; 'twas you carried me thither.

Char. It was your Interest to mind every Particular; for, according to your own Words, you had been a *Trapanner* half a Year before.

De la Rue. I have told you already, I intended never to have been an Evidence; but to put you into the King's Hands, and revert the Execution of the Design, and I begg'd of the Council to be excused from given any Evidence, but I could not by any Means get my self excused.

L. C. J. Will Mr. *King* ask any Questions?

King. No.

L. C. J. Well, what say you, *Keyes*, will you ask him any Questions?

Keyes. My Lord, he says I drank the Health to the Squeezing of the *Orange*, and the other Healths: I was not in the Room while any such Healths were drunk, nor did I sit down while I was there, nor do I know any thing of the *Horses*, upon my Word, that he speaks of.

Mr. Att. Gen. Then if they have done with him, there is a noble Lord, whom he has mention'd, as being present when he discover'd this to the King, who we desire may be examined touching that Matter: We must humbly pray my Lord *Portland*, that he will please to be sworn.

L. C. J. Hold my Lord the Book, and swear him. *(Which was done.)*

Mr. Att. Gen. My Lord, I humbly ask your Lordship this one Question, whether Mr. *De la Rue* did make any Discovery of this Matter in your Presence to his Majesty, on *Friday* the 21st of *February*.

E. of Portland. Yes, he did.

Mr. Att. Gen. Your Lordship has heard what he said now: Was it to the same Purpose?

E. of Portl. Yes, to the very same Purpose, and

he did it before he went in to the King to me, being brought to me by his own Desire: It was all the same in Substance as he has told you now; and afterwards he was brought to the King on *Friday Night*, and there he said the same Things.

Mr. Soll. Gen. This Gentleman did it not to save his own Life, but the King's. Our next Witness, my Lord, is Mr. *Pendergrafs*.

(Who was sworn.)

Mr. Att. Gen. But before we go on to another Evidence, I would ask Mr. *Porter* one Question, and that is, What is become of the List which you spoke of?

Capt. Porter. I burnt that List.

Mr. Att. Gen. Why did you so?

Capt. Porter. Because I thought the Thing was discover'd, and it was not fit to have such a Paper remain.

Mr. Soll. Gen. Mr. *Pendergrafs*, pray will you tell my Lord and the Jury what you know about this Matter, how you came to be acquainted with it, who were concerned in it, and when and how it was to be done.

Capt. Pendergrafs. My Lord, about the 11th of *February* last, I was sent to by *Captain Porter*, where I was in the Country, to come to Town; the 13th of *February* I met him at the *Blue Posts* in *Spring Garden*; we dined there, and he told me of a Design that was on Foot, to take away the King's Life, and that *Sir George Barclay*, and other Officers, were come on purpose out of *France*, in order to execute the same. I was very uneasy when he told me of the Thing, but I said nothing till I had an Opportunity of waiting upon my Lord *Portland*, which I did as soon as I could, and acquainted him with the whole Matter of the Design, and desired him to acquaint the King: This was upon the *Friday Night*, which was the 14th, and he told me the King had a mind to speak with me; and afterwards my Lord *Portland* carried me into the King's Closet, where the King ask'd me some Questions. I told him what I knew of the Design, but desir'd to be excus'd from naming any Persons, because my Intention was only to prevent such a barbarous Action, and I was resolv'd not to be a Witness. The King promised me I should be safe, and pres'd me to name them, and assur'd me I should not be forc'd to come in as an Evidence; upon which I did tell all that I knew, and went out of Town with Mr. *Porter* as resolving not to be an Evidence; but being satisfied, after we were taken, that Mr. *Porter*, who had engaged me in it, had himself discover'd, and accus'd me, I thought my self discharged from any Obligation of Honour in concealing it, and am willing to give an Account of any thing that I know.

Mr. Att. Gen. We know you do it voluntarily, as you did it at first honourably, and therefore, Sir, we desire you would please to give an Account of your Knowledge in the Matter.

Capt. Pendergrafs. My Lord, as I told you before, the 11th of *February* I was sent to by *Capt. Porter* into the Country, where I was with Mr. *Bryerly*, to come to Town; accordingly the 13th, which was the *Tuesday*, I came to Town with Mr. *Bryerly*, and found *Capt. Porter* at the *Blue Posts* in *Spring Garden*, and we dined there. There was *Keyes*, and *Bryerly*, and *Porter*, and I in Company, where he acquainted me with the Design, We had no further Discourse that Day; the next Day we dined at the *Rose Tavern* in *Covent Garden*, where

where there was *King, Bryerly, Cranbourne, Porter,* and I dined together.

King. Pray, was it by way of Rendezvous or fet Meeting?

L. C. J. Holt. Look you, you must stay your Time before you ask any Questions of the Witnesses; you shall be heard, when your Time comes, as fully as you desire. Go on, Sir.

Capt. Penderg. This was *Friday* the 14th of *February*, we had some Discourse about the Matter; *Captain King* and *Captain Porter* went away, and then I went to my Lord *Portland's*, and was by him introduced to the King. The 15th I came to *Captain Porter's* Lodgings, and he was getting ready, in Expectation of Notice whether they should execute the Design that Day or no. While he was getting ready, I goes to the *Blue Posts*, where was *Kenrick* and *Sherbourne*, and *Mr. Bryerly*, and there we were drinking a Glas of Wine, and in comes *Durant*, who was an orderly Man that lay at *Kensington* to give Intelligence; and *Bryerly*, directed him to *Capt Porter's* Lodgings to carry the Intelligence which he brought that the King intended to go out that Day; upon that he went away to his Lodging, and *Capt. Porter* came a little time after, booted, to the *Blue Posts*, and there he din'd; within an Hour or two after *Capt. Porter* came in, *Mr. Charnock* sent a Note to *Capt. Porter*, to tell him, the King did not go that Day, and so there must be Counter Orders; *Capt. Porter* told me it was his Hand; the Note was signed *R. Robinson*, and he shewed me the Note, and acquainted me and the rest of the Company, that they were disappointed that Day, since the King did not go; there we dined, and drank a Bottle of Wine. The next time we met, there was *Mr. King*, and *Mr. Keyes*, and *Mr. De la Rue*, at *Mr. Porter's* Lodgings; this was *Saturday* the 22d in the Morning, there we had some Discourse of the Matter; and *Capt. Porter*, upon Notice from *Capt. Charnock* of the King's intending to go abroad, had sent a List of his Men, and receiv'd back a List of *Capt. Charnock's*, and *Capt. Porter*, and *De la Rue*, and we went to the *Blue Posts* to dine, where we had an Account afterwards, that the King did not go, and so there was another Disappointment; and a little after *Keyes* came in, and said, the Guards were come home all in a Foam, and the King's Coaches come back to the *Mews*. *Capt. Porter* then thought all was discover'd, and says he, I will go into the Country; *Mr. Pendergrafs*, will you go with me? With all my Heart, said I; so we sent *Keyes* to get our Horses ready; welay at *Epsum* that Night, and from thence to another Place we went the next Day, where we lay till *Thursday* Morning, when *Captain Porter*, *Mr. Keyes* and I was taken together, the Place was called *Leatherhead*, in *Surrey*, whence we were brought up to Town; and have remained Prisoners ever since.

Mr. Att. Gen. Which of the Prisoners were there present upon the *Saturday* the 22d at *Capt. Porter's* Lodgings?

Capt. Pendergrafs. There was *Capt. King* and *Mr. Keyes*.

Mr. Att. Gen. Pray was there any Discourse about a Gun, and who was to have it?

Capt. Pend. *Capt. Porter* told me there was a Musquetoon that he had would carry 6 or 8 Bullets, and I should have it, being to joyn with *Sir George Barclay* to set upon the King's Coach, and directed

me to be sure to shoot some of the Horses to stop their Course if they seemed to drive furiously away; and *Mr. Cranbourne* was the Person that carried the Messages from *Mr. Charnock* to *Mr. Porter*.

Mr. Soll. Gen. Do you remember, Sir, that *Keyes* said the Guards were come back?

Capt. Pendergrafs. Yes, and that they were all in a Foam, and the Coaches were come back to the *Mews* Gate, and one of my Lord of *Oxford's* Regiment told him there was something extraordinary mutter'd among the People, upon which they concluded it was discovered.

Mr. Att. Gen. Will the Prisoners ask him any Questions?

Char. King, and *Keyes.* No.

Mr. Att. Gen. Then I must beg the Favour of my Lord *Portland* to give himself the further Trouble of acquainting the Court how this Gentleman behaved himself in reference to this Discovery.

E. of Portland. My Lord, it was, as he has acquainted you. This Gentleman came to me upon the *Friday* Night, and told me of it; and then upon the same *Friday* Night, which was the 14th, I think the Night before the first time that it was to have been executed, and declared his Abhorrence of such a barbarous Business: And he told me his Design of coming into it, and keeping Company with them, was to save the King's Life by acquainting me with it, and discovering it, which he would do upon a Promise that he should not be used as an Evidence, nor pressed so much as to name Names, which Promise I made him, and the same Promises were made him that Day seven-night, when I carried him to the King. But the King pressing him to name their Names, assuring him he should be safe and not forced to be an Evidence, he did then name the Names under that Promise from the King.

Mr. Att. Gen. Pray, my Lord, who was by then besides your Lordship?

E. of Port. My Lord *Cuts*.

Mr. Att. Gen. We must desire my Lord *Cuts* will please to be sworn. (Which was done.)

Mr. Soll. Gen. Pray, my Lord, will you please to acquaint the Court and the Jury what happen'd at that time.

L. Cuts. My Lords, I was in the King's Closet that same *Friday* Night when *Mr. Pendergrafs* was brought in there: 'Twas, as near as I can remember, between 12 and 1 a Clock at Night; no Body was present but my self, with the King, when my Lord *Portland* came in with this Gentleman: All that he said to the King at first was, that he had a Discovery to make of a Design to assassinate his Person, if that his Name might not be made use of, nor he forced to be an Accuser or a Witness. And therefore desired to be excused if he said no more; then desiring the King not to go out the next Day, but to take care of himself, because there were some Persons had resolved to assassinate him coming home; but begg'd to be excus'd from naming Names, for he said he would rather die than betray his Friend, and he thought it enough that he had saved his Majesty's Life. It was above half an Hour before the King could persuade him to name Names, and he would not till the King had given him his Word and Honour that he should not be obliged to be a Witness, and then he did name the Names. Afterwards when *Captain Porter* and *Mr. Pendergrafs* were taken, as my Station obliged

me to give Orders, and require Intelligence, and assist at the securing and Examination of the Conspirators, I happen'd to see them before they were carried into the Council, and presently knew Mr. *Pendergrafs* to be the Person that was with the King that *Friday* Night; I had a great Compassion to see Gentlemen and Officers, whom I had some Knowledge of before, in such a Condition, and I told them naturally what my Opinion was: Mr. *Porter* did seem sorry for what he had done, and inclin'd to make the King that Atonement for his Fault which he has now done. When I came out and told Mr. *Pendergrafs* this, and that Mr. *Porter* had named him, and owned the whole Matter, I only gave him my Opinion upon it, that I thought he was discharged from any Obligation of Friendship: and he seem'd then inclined to do the same likewise that Mr. *Porter* had done.

Mr. *Sol. Gen.* Swear *Thomas Bertbam*. [*Which was done.*] Pray do you give my Lord and the Jury an Account how long you have known Mr. *Charnock* to be engaged in this Conspiracy: Tell your whole Knowledge as to him.

Mr. *Bertb.* The 8th or 9th of *February* last I was crossing *Covent-Garden*, I lit upon one Mr. *Trevor*, who is now in *Newgate*, and he told me he was going down to Mr. *Charnock's* Lodgings, and that he heard him say he wanted to speak with me; I told him he had no Business with me nor I with him that I knew of: But he prevailed upon me to go with him, and when we came to Mr. *Charnock's* Lodgings, he met me in the Entry.

Mr. *Sol. Gen.* Who did?

Mr. *Bertb.* Mr. *Charnock* did. He told me he wanted to speak with me, and took me into a back Room, because he had Company in his own; and he told me the King, that is, King *James*, was a coming, and there was a Piece of Service to be done before he could come, and if I would assist in it, it would answer my Expectation. I asked him what was to be done? He answered, you must only go abroad to take the Air, you will see several of your Acquaintance there. I desired to know what was to be done? He said it was to cut off this Spark or to take off this Spark, I can't tell which, and then the King will come home quietly.

Mr. *Att. Gen.* Who were to cut him off?

Mr. *Bertb.* The Party that I was to meet when we rode out to take the Air.

L. C. J. Who did they say they were to take off?

Mr. *Bertb.* He said we must take off this Spark, or cut off this Spark, I can't tell which, which I understood to be the King.

Mr. *Att. Gen.* How long had you known *Charnock*?

Mr. *Bertb.* By Times, seven Years.

Mr. *Cooper.* How came you acquainted with him?

Mr. *Bertb.* We were in the Army together; he was a Lieutenant in Col. *Parker's* Regiment, and I was a Trooper there then.

Mr. *Sol. Gen.* What Discourse was there between you and *Charnock* after you heard there were Warrants out?

Mr. *Bertb.* Sir, I have not yet done with what pass'd at his Lodgings. He asked me if I would accept of being one in the Business? I told him I could not engage in it, for I had disposed of myself otherwise. So we came out of that little

Room, and he desired me to come into his Room and drink a Glass of Wine: There were three or four Gentlemen that I did not know; and then there was one Mr. *Chambers*, and Mr. *Trevor*, and Mr. *Lee*, which Mr. *Chambers* fetch'd afterwards in there.

Mr. *Att. Gen.* He would not be engaged there because he had otherwise disposed of himself: Indeed, he was engaged with Sir *William Perkins*.

Mr. *Bertb.* After I came in I observed great Whispersings among the Company, and frequent calling out of Mr. *Charnock* for private Discourse; but there was no other particular Discourse about this Matter that Night.

Mr. *Sol. Gen.* Pray when did you see Mr. *Charnock* again, and where?

Mr. *Bertb.* At another time, which was the 22d of *February*, I met him at *Lincolns-Inn* back Gate; and meeting me there, he called me aside, and took me within the Inn upon the Pav'd-stones; we took a Turn there: He told me Warrants were out against us, as he heard, and we had as good, if I would come to his Lodging, go out to *Kensington* and do the Work at once and take him off, and then we shall be quiet, and have the King peaceably here. I am sure he cannot say that I do him a Word of Wrong in what I have said, he knows it all to be true.

Mr. *Cooper.* Has any Body else engaged you in this Matter? Do you know one *Lovick*?

Mr. *Bertb.* If that be necessary I will tell it. But this is all that I know of any thing of the Prisoners; only Mr. *Charnock* did ask me as to Mr. *Trevor*, what I thought of him, whether he might trust him? I told him he might do what he pleased.

L. C. J. H. Mr. *Charnock* will you ask him any Questions? for his Evidence relates only to you.

Char. No, I think not. Pray did I send for you?

Mr. *Bertb.* I met Mr. *Trevor*, and he told me, he was coming to your Lodgings, and that you desired to speak with me: And when I came, you told me your self you wanted to speak with me: Indeed I knew no Business you had with me, or I with you.

Mr. *Att. Gen.* We have one more Witness, and that is one Mr. *Boyle*. (*Who was sworn*)

Mr. *Sol. Gen.* Pray, Mr. *Boyle*, will you give an Account when you were spoke to about this Design, and by whom?

Mr. *Boyle.* On *Friday* the 14th of *February* I went to visit Mr. *King*, and he was the first that ever told me of the Business; it was in his own Chamber, he told me there was a great Undertaking in Hand, and he had put my Name into the List, and if I would make one, I should have a Horse; and he asked me if I had any Boots? I said No. He desired me to see if I could get any, and to meet him in the Afternoon at the *Rose-Tavern* in *Covent-Carden*; but in the mean time he bid me go to Mr. *Knightley* and he would inform me further. I went to Mr. *Knightley*, and I came to Mr. *King* again in the Afternoon at the *Rose-Tavern*, and he desired me not to be out of the way the next Day, but to be at my Lodging, and he would come or send for me; and I had Twenty Shillings of him to buy Boots, and he still refer'd me to Mr. *Knightley*: When I came to Mr. *Knightley* I was told there was nothing to be done that Day: But I was desired to be always in the way, for the Business would soon be over. This

is all the Discourse that Day. After that I met Mr. King several times, who still refer'd me to Mr. Knightley, and when I asked him for my Horse, he told me I should have one allotted for me time enough; and when this Thing was done we should be happy: But he never told me it was to take off the King.

Mr. Att. Gen. Pray what did you understand was to be done?

Mr. Boyse. I did believe I should know further of it; for I would not have engaged till I did know. But he did not tell me it was to take off the King, or what it was. This, to the best of my Memory, is what I know of the matter.

Mr. Att. Gen. Pray when did you come from France?

Mr. Boyse. He told me indeed several were come from France, and that the King would land very speedily.

Mr. Att. Gen. But when did you come?

Mr. Boyse. I came the Beginning of June last.

Mr. Att. Gen. Do you remember nothing about Sir George Barclay?

Mr. Boyse. Yes, he told me Sir George Barclay would command the Party, and that there were about forty or forty-five, that were concerned in the Design.

Mr. Soll. Gen. Do you remember nothing else?

Mr. Boyse. No truly, I do not remember any thing more concerning Mr. King.

L. C. J. H. Mr. King, will you ask him any Questions? for what he says relates only to you.

King. No, my Lord.

Mr. Att. Gen. Then we have done, my Lord; we rest it here till we hear what they can say.

L. C. J. H. Mr. Charnock, The King's Council have done all the Evidence they design to give, and now is your Time to make your Defence.

Charnock. My Lord, I have taken some Notes of the Evidence, and made some Remarks, which must be my Defence; and I shall take them in Order of Time as they were given: The first is Capt. Porter; and the main Evidence he hath given against me, is my informing him that Sir George Barclay was come from France, with a Commission all written with King James's own Hand, thereby authorizing us to raise War against the Person of King William. But then he says at the same time, I told him I never saw it; and I know not how I should? for it is impossible to see a Thing that is invisible, a Thing that never was in being, and to suppose that ever there should be such a Commission under the King's own Hand, and writ with his own Hand, is such a Contradiction to all Sense and Reason, that no rational Man can be guilty of; and therefore I hope the Court and the Jury will consider of it, and reject it all as a foolish, idle, nonsensical Fiction and Story. It is very well known that King James has always had, and still has, notwithstanding his present Sufferings and Circumstances, his Ministers of State about him, in how slender a Condition soever they may be, or be represented to be. He has my Lord Middleton as his Secretary of State, he has been all along with him, and it is not supposable that he should put himself to the Trouble of Writing any Commissions with his own Hand, when there were others enough to do it for him, and he need only sign the Top of it James R. much less is it supposable, that he should give any such Commission as this that they speak

of, and write it all with his own Hand, and that Sir George Barclay should bring it over. This is such a nonsensical ridiculous Story as ought to be rejected with Scorn and Contempt, and is only fit to be laughed at: I hope every body will look upon it as such, and think that such Evidence is very incredible.

My Lord, Another Thing that I observe out of Capt. Porter's Evidence is this: He says, he and I was to command a Party; he knows what he himself intended to, but I am sure I know of no Party that I was to command. It is all a Dream, a meer Dream and a Fiction. He thinks fit to acknowledge his own Guilt of a very bad Crime, and he may accuse himself as long as he will, but I think that will not make me guilty of any such Thing, only because he says so: He does not say what Men they were, or who they were; and it cannot be an Overt-Act, unless he can tell who they were. He says Sir George Barclay and I met at the Sun Tavern in the Strand, and at several other Places where this Matter was discoursed of, and a great many were supposed to be in the Assassination, to the Number of Forty; but he does not mention any thing then of its being discoursed who they were to be: And is it supposable when the Design he talks of was so near being put in Execution, it should not be known who should engage in it? For my Part, I deny that ever I was with him at any Place where Sir George Barclay, or any Body else, talked of any such thing. When I was examined before the Council, my Lord Keeper asked me when I saw the Duke of Berwick? I thought it not fit to answer that Question, because I knew the Duke of Berwick was out-law'd here, and I might accuse myself if I acknowledged having been in his Company, tho' it were at St. Germain's. But I said I never believed he was in London, and I do not believe he was. I heard that Colonel Parker was in England, but I did not see him; and as to the Major-General and other Officers, they talk of, it is all a Jest to me, and it is no way at all to be believed or credited; that because other Men have Notions of Castles in the Air, I must be so foolish as to believe such Impertinencies too. He says I sent him a List of Men, and written with my own Hand, and subscribed with the two Letters of my Name; he does not swear he saw me write it, and Similitude of Hands was never thought good in Criminal Causes; and I believe it was never look'd upon for Law, that it should be a good Evidence for a Man to swear such a Writing was another Man's own Hand, unless he says he saw him write it, and kept it in his own Custody till it should be produced as Evidence, and produce it in open Court, and not let it go out of his Custody till then. All these Things I apprehend, the Law judges necessary to make a good Proof of a Writing to be of a Man's own Hand; but here is nothing of that here: Here is nothing produced, nor does he say he saw me write it; and so I think it all goes for nothing, a meer idle Invention of his own. My Lord, upon this Evidence there is not any positive Proof of my doing an Overt Act, by buying of Arms or Horses, or writing Letters, or any thing of that Nature; and I hope if I speak irregularly, your Lordship will pardon me; I am no Lawyer, and I have no Assistance but my own nonsensical Notes to depend

pend upon for my Defence. My Lord, he speaks about Horſes that were to be provided, but there is no Proof of that; I never bought any Horſes, or borrowed any; nay, nor is there any Proof, that while this bloody Affaſſination that he owns himſelf to have contriv'd and carried on, was on foot, I had not ſo much as a Horſe any where, and that I ſhould be ſo vain to get Men to engage in ſuch an Expedition with me, and have never a Horſe my ſelf, is very ſtrange. The Conſpiracy he ſays was depending a long while, and whenever it was to be put in Execution, we were to go expeditiouſly to work, left it ſhould be diſcover'd; and 'tis very ſtrange then that I ſhould never have provided the leaſt thing in the World to do it with! neither Arms, nor Horſe, nor any thing: For there is no Proof of any ſuch thing againſt me, but only Talk, as he is pleas'd to ſwear, to take my Life to ſave his own: And I hope your Lordſhip and the Court will declare to the Jury, that here is no Evidence of any Overt Act againſt me.

My Lord, there is another Thing he ſays againſt me: He ſays he had a Note from me by the Name of *Robiſon*, to countermand the Orders upon the 15th: My Lord, The Truth of that would depend very much upon the producing of that Note, then it would be ſeen whether it was my Hand, and what it contained, and what it related to: For my Part I utterly deny I ever lent any ſuch Note wherein there was a Word of the King, or of any Fact of this Nature that was to be committed, or any thing relating to it, if it were true that I had written any Note to him at all; and I hope the Jury will conſider, and the Court will direct them ſo to do: For I know not that they are any more ſkill'd in the Law than my ſelf, and therefore I hope your Lordſhip will give them ample and true Directions, what is Law and what is not Law, and what is Evidence and what is not Evidence; and this cannot be Evidence to affect me at all, there being nothing that doth appear or is produced.

My Lord, he ſays, there were four that were to go with Sir *George Barclay*, that were to be appointed out of each Party; he does not ſay I nam'd any, nor does he name any himſelf; but it ſeems they knew what was to be done; and truly if any Thing was to be done, they knew it themſelves (and no Body eſe that I know of) who ſwear to ſave their Lives, and get a Reward. If the four were to be out of the Party, which he calls his own, he knows them beſt, and I believe the Party was his own, and the Plot his own too, and no Body's eſe; he does not ſay that I appointed any one, he only ſays there were four to be appointed out of a Party, which Party was in *Nubibus*, and ſo is the whole Deſign, unleſs it be in his Head, fram'd there by his own Invention, for it only exiſts there that I know of.

My Lord, theſe Obſervations I make upon Captain *Porter's* Evidence: The next Witneſs is Mr. *De la Rue*, and he is a very good Evidence indeed, if Hear-ſay be to be believ'd; he ſays I was very ſhy of diſcourſing with him about it, that I told him it would come to Nothing, without ſaying what would come to Nothing, not that the Plot would come to Nothing, for there was nothing at all ſpoken of any Plot, much leſs of a Deſign to Affaſſinate the King. This is all that he ſays, as to me, of his own Knowledge, all

the reſt relating to me is but what Captain *Porter* told him. But to begin with the Beginning of his Evidence, he ſays one Thing which is very odd, that at the *Roſe-Tavern*, the laſt Year, there was a Conſultation about carrying King *William* away into *France*, in a Veſſel alive, and that Sir *William Perkins* ask'd him whether he would go along with me to *Deale*, to procure a Veſſel to carry the King over: He might as well have ask'd him to go with me to *Conſtantinople*, or any other Place in the World, as to *Deale*, and about any other Employment, as that. A pretty Sort of Thing, that I ſhould go to *Deale* to hire a Veſſel to carry the King over into *France*; I that know no Sea-Man, or any Maſter of a Veſſel at *Deale*, that I ſhould be employ'd to hire a Ship before the Deſign was form'd, as he ſays it was not come to an Head. If we had got the Prince of *Orange* into our Power: If we had King *William* in our Power, how was it poſſible we ſhould ever have carry'd him to *Deale*? I cannot but think any one would believe us Mad-men to entertain ſuch a Chimera in our Heads. What nonſenſical Stories are all theſe, that we ſhould carry King *William* to *Deale*, and I hire a Ship to transport him to *France*! I hope the Jury, and all that hear it, will conſider what ridiculous Stuff theſe Men talk of, as Evidence againſt Men for their Lives. Then he talks of my coming in a Coach to the *Nagg's-head Door*, where I was very ſhy of letting him ſee me, and afterwards, when I came out, ask'd him to go into the Company; but he was angry that they had deny'd to admit him before, and ſo would not go up: What a ſtrange Sort of a contradictory Story is all this? here was a Conference it ſeems, appointed the Night before to be at that Place, when Captain *Porter*, and Captain *King*, and Mr. *Knighley* were juſt come from viewing the Ground, and were to make their Report, and *Porter* told him of it, and yet they would not admit him, and I was ſhy of him, and yet ask'd him to go up: What contradictory Nonſenſe is this? it muſt needs be look'd upon as improbable or impoſſible to be True, that I ſhould ask him to go up into ſuch a Company, where ſuch a mighty Conference was to be had about ſuch a great Tranſaction, when I had ſhewn my ſelf apparently ſhy of him, by falling back in the Coach, as being unwilling to let him ſee me; I hope the Jury will conſider the ſelf Contradictorineſs and Improbability of ſuch Evidence. Then there is another Thing, and that is, what he ſays Captain *King* ſaid he did not believe it would come to any Thing, becauſe he did not like me as being no Soldier, for I was for keeping out of Danger, and having an eaſy Poſt: If he means I had no Mind to be in a Plot, he was in the Right of it; for no Man in his Senſes, would ever be engaged in any ſuch deſperate Deſigns, where there is ſuch apparent Deſtruction in view: ſo I cannot apprehend what there is in that of any Objection againſt me, or any Proof that I had a Hand in this Plot, becauſe I deſired to keep out of Danger. It was ſaid that I was to have attack'd the King, with Sir *George Barclay*; but Captain *Porter* ſays, we were to be together, to attack the Guards; and both can't be true, nor indeed is either of them true, but a Figment and Invention of their own: Then he ſays he ask'd *Keyes* for a good Sword, and he told me I had a very good one: 'Tis true, I had a Sword, I always wore one, but it does

not follow that that was to be employ'd upon such an Enterprize as this. And then he tells you a Story again of Captain *Porter's* having a broad flaming two-edg'd Sword. But what is all this to the Purpose? Does this prove any Thing against me, that I consented to, or was engaged in any such bloody Design, as this. He saith that on *Wednesday* he came to me, and ask'd me of the Affair, how it went on; he doth not say what the Affair was, nor he doth not say it was about killing the King; nor indeed is it probable it should be, for he says I was always shy of him, and that he could never get any Intelligence but from Captain *Porter*. He saith I told him it was a Thing would not admit of being delay'd, and that only three People should know such a Thing; but still he doth not tell you what this Thing was, and therefore I do not apprehend how this should affect me, as Evidence of my intending to Assassinate the King. He saith he had it from Captain *Porter*, that Mr. *Chambers* was an orderly Man, a Word I do not understand, to convey Intelligence to me; and that *Durant* was an orderly Man, to convey Intelligence elsewhere: Still this is all but what Captain *Porter* told him, and there is no Proof that I sent Mr. *Chambers* any where; *Chambers*, I acknowledge I know, he is a poor Man, and my Lord Chief Justice *Treby*, I suppose, cannot but remember that he was in Prison, and try'd before him, upon the Account of Piracy; I must needs say, I thought him an honest Man because he had serv'd with me in *Ireland*: I knew he was in great want, and therefore I gave him his Diet and Lodging; there is no Proof that I furnished him with Money, but I acknowledge I did with Bread and Drink, to keep him from Starving; that I think was an Act of Charity, but it cannot be interpreted, nor is there any Proof to warrant it, that it was with any ill Design, or that I gave it him to hire him or engage him to any such Purpose. My Lord, they would make it as if the Persons that were intended to be employ'd in this pretended Plot, were to be regular Troops, and to have Courts of Guard, and to be dispos'd of into Quarters, and this was to be done by these orderly Men: I profess I know not what to make of it, it is such a Medley, a Fancy, and a Chimera, that it is perfectly Unintelligible, whether these were to be general Officers, or private Centinels, or what. Then, my Lord, he saith *Cranbourne* brought a List from me to Captain *Porter*, with R. C. at the Bottom: *First*, that he does not prove that it was my List, nor doth that R. C. being at the Bottom of the List make me a Partner in this Conspiracy. Then he saith that *Cranbourne* came to the *Blue-Posts*, as from me, to acquaint them of the Disappointment, because the King did not go out that Day: Surely, my Lord, I need not trouble you with saying any thing to this, for it is all, as to me, but Hearsay; and what am I concern'd in that which other People talk amongst themselves? tho' they do use my Name, how can I help that? My Lord, he saith himself that he intended to discover this Conspiracy a Year ago, but the Thing failing then, which how ridiculous it was I observed before, he let it alone for that Time; but when I met him at the *Nagg's-head* Door, and he was so angry for their not admitting him into their Company, which was three Weeks before this Design they talk of was to be execu-

ted, he had a Mind to go to the Secretary's, and get Warrants and Messengers to apprehend us; and he saith he hath often come to me, to ask about the Affair, as he calls it, but I was still reserv'd and shy, and told him nothing would come of it. From all this I would observe that I have very good Reason to look upon him to be no Evidence, not only for the same Reason that I objected against Mr. *Porter*, that by his own Acknowledgment he is *Particeps Criminis*, but his coming to me after he resolv'd to discover, plainly declares, that he set himself to be a Trapanner, and no Trapanner can, in the Judgment of any honest or understanding Man, be a credible Person as an Evidence to take away any Man's Life: I am sure what he saith of my Shyness to converse with him, and his own frequent Attempts to converse with me, shews plainly, he was willing to trapan me, for so he himself saith. He came to me several Times, and took me aside, to ask how the Affair went on, but he did it only to enable himself, to make the better Discovery, which makes him ten thousand times worse, than if he had only gone at first and told what he pretends he knew, and afterwards forbore the Company. Besides, my Lord, as to trapanning, I have read in a Book of Sir *Robert Atkins*, that to be *Particeps Criminis*, proves a Person to be a bad Man, and consequently not so Credible, especially if it can appear the Witness has trapan'd the Prisoner into the committing the Crime; then the Witness will appear to be guilty of a far more higher Crime than the Prisoner, and therefore ought not to be believ'd as a credible Witness against the Prisoner, for he is a credible Witness that has the Credit of being a good and honest Man, which a Trapanner cannot have; and this Trapanning proves withal that the Trapanner did bear a Spight and Malice against the Person trapanned, and intended to do him a Mischief, and design'd to take away his Life: Shall such a one, *says he*, be a credible Witness, and be believ'd against him? *God forbid!*

My Lord, as to Mr. *Pendergrafs*, who is the next Witness, I do not take my self to be much concerned in all he saith. I think I have seen him but once of a great while, and that was on the *Wednesday* or *Thursday* before I was taken up; but, my Lord, I have this to say to his Evidence, I desire your Lordship to observe I was not in the Proclamation, though he was: They took Occasion to have me secured as a Colour, or to save Expences, I suppose, while they themselves went out of the Way, to have their Names put into the Proclamation; that some Body might colourably take them, and get the King's Money. All that he saith of me, is, that *Cranbourne* brought Messages from me: One Time I writ a Note, sign'd R. *Robinson*; another Time I sent a List subscribed R. C. and that *Porter* shew'd him them both; but all this is but Hearsay still out of the Mouth of *Porter*, and can be no Proof at all against me. He saith, upon the Disappointment he and they went to *Epsom*, which to me seems a very remarkable Thing; for if he say true, it is plain, this was before by him discover'd at Court; and to me it shews, that he had a strong Design of getting Money, and taking away People's Lives upon that Account; and that Capt. *Porter* was in the same Design: For *De la Rue* saith, Captain *Porter* ask'd him to go with them, as well as *Pendergrafs*. Now
can

can it be supposed, that these three should agree to go together, unless they were in a Combination, as it appears they now are? And I cannot but think, the Court and the Jury will think it reasonable to believe: For if I was in a Plot of such a Nature as this, and should hurry out of Town after I had discover'd it, with three or four of the People that were concern'd in it, and some of them afterwards pretend to be Discoverers too, nobody in the World can believe but they contriv'd the Thing amongst themselves, and went out of Town only for a Colour, that they might be put in the Proclamation, and pretend to be taken, to entitle themselves to the Reward.

L. C. J. Really, Mr. *Charnock*, I am loth to interrupt you in any Part of your Defence, but I do not understand what you mean by this, and I very willingly would understand you if I could.

Mr. Cbar. My Lord, I say, I look upon it, that they were all combin'd together in a Design to get the King's Money, and take away our Lives; that *Porter* should desire them to go with him, into the Country, and particularly Mr. *Pendergrafs*, who discover'd this to the King, and then that he should agree to go with him.

L. C. J. Truly, I do not understand the Force of your Argument; that because upon the supposed Discovery, Capt. *Porter* went to *Epsom*, and Mr. *Pendergrafs* went with him, therefore this must be a Design between them to get the King's Money, I cannot any way see how that must follow.

Cbar. Pray, my Lord, to what End should he run out of Town, upon the Apprehension of the Discovery, and with Captain *Porter* too, when he actually had got the King's Promise that he should be safe, and not be a Witness, unless it were a Combination between them, in order to set up as Witnesses against us, to get the King's Money?

L. C. J. I'll tell you why he was willing to go with Captain *Porter*; because he had not a Mind that the Discovery he had made, should be any Way known to have come from him; for you see how unwilling he was to name Names, and so kept Captain *Porter* Company still, as his Friend, resolving not to be an Evidence against him.

Cbar. Well, my Lord, after all, I hope, what he saith cannot be look'd upon as any Evidence against me; because whatsoever he saith relating to me, is about the Notes and Messages that he saith were brought to Captain *Porter*, and all of it can amount at the utmost to Hear-say from other Peoples Mouths. My Lord, the last Evidence that I apprehend relates any Way to me, is that of Mr. *Bertram*, and he talks of what I should say to him upon the ninth of *February*, that I should take him into a back Room into my Lodgings, and there tell him, That there was something in Hand for the Restoring King *James*, but there was somewhat to be done first to take off the Spark, or I do not know what, nor do I believe any Body else doth know how to make any thing of it. It is a very improbable Thing, that this Matter which was to be so great a Secret, and which I should say, was not fit to be communicated to above three People at once, I should send for a private Trooper, for he was no otherwise, to communicate so great a Matter to him; besides that, I cannot, nor, I believe, can any Body else tell what to make of the Words, *Taking off the Spark*, how to construe that to make it an Evidence of an Intention to kill the King. It

might be probable I might say there was a Noise that King *James* would come, for it hath been in the *Gazettes* and the publick Prints, that there was such an Expectation, and Preparation for it on the Coast of *France*; but it is not probable, I am sure it is not true, that I should say there was something to be done first, for the *taking off the Spark*. Evidence of a Thing of this Nature ought to be plain and clear, and distinct: He doth say nothing that I talk'd to him of killing the King, or of Assassinating him, or of my asking him to be one in any such Thing, and that I furnish'd him with Arms, and an Horse on any such Design, but only that he might ride out, and take the Air, and there he should meet with some of his Acquaintance: What unaccountable loose Stuff is all this? It is very strange, my Lord, that if I liked the Man so well, as I must do if I would send for him to communicate a thing of this Nature to him, that I should not put it into a Method, that he might be one with us in the Execution of it: But there cannot be any Thing inferred of that Nature, for which we stand accused, from any Words that he saith were spoken. My Lord, he doth say indeed that he told me, that he had disposed of himself otherwise; but that is no more certain, nor can be referred to any particular Thing, than the rest. He might dispose of himself to a Friend, he might dispose of himself to his Wife; but what is all that to this Purpose? And he might indeed, if King *James* came, dispose of himself to assist him, or to oppose him, or to let it alone; but all this is nothing to the Business for which we are here to be try'd; it's all loose, idle, impertinent Talk, and not at all to the Purpose. And then he saith, that afterwards, I met him at *Lincoln's-Inn* back Gate, and took him into *Lincoln's-Inn*, and told him, there were Warrants out, and we had as good do the Business presently. My Lord, I do remember I met him at *Lincoln's-Inn* Gate, and it was upon *Saturday* the Day before I was taken up, and it was about twelve a Clock at Noon, and I did hear there were Warrants out, but there never was that Intimacy between him and me, that I should desire him to come to my Lodging, or that I should support him in any Sort. My Lord, I have made a few Remarks to your Lordship and the Jury, upon the Evidence; I am sensible I have given the Court a deal of Trouble, but I hope you will consider it is for my Life, and my All, and I hope you will be of Opinion, that the Evidence produced against me is frivolous and weak, and that the Witnesses have a very bad Cause of it, since all that they talk of, if it were true, is only a Discourse, and they are forced to supply in Words, what they want in Fact.

L. C. J. Have you any more to say, Sir?

Cbar. Yes, my Lord, I desire to take Notice to the Court and the Jury, that the Business of bare Words was never look'd upon in Law as an Overt Act to prove a Man guilty of High-Treason, nor that several Persons met together doth prove a Conspiracy. These Persons proving that I met with them doth not prove that I was concerned in the Assassination, nor that I consented to any such Thing, besides, my Lord, I am taxed in the Indictment with buying Arms and Horses for this Business; but there is not one Word of it proved, or of my riding out to view the Ground, nor any thing, that I was to be concern'd about this

villainous Act. My Lord, if I had bought any Arms, that had not been an Overt-Act of itself; it must be proved first that I bought them with such an Intent to employ them about such a Business; and it neither is, nor can be proved, that I furnish'd any Body with Horses or Arms: And therefore the bare Buying of Arms of itself, as far as I am informed of the Law, would be no Proof of an Overt Act. To prove an Overt Act of Treason by the buying of Arms it must be prov'd that I declar'd some way that I bought them with such an Intent, or else it is no Proof at all; but now if you have no Evidence that I bought any Arms at all, I look upon it, that there is no Possibility to make that an Overt Act. If you please, my Lord, to bear with me to give you the Trouble of reading some short Notes, which I have taken out of some Law-Books about Overt Acts.

L. C. J. No, the Court won't think it any Trouble: Make your Defence as well as you can, and take your own Way.

Char. My Lord, I hope you will allow what hath been collect'd out of the Books of Law as to Overt Acts: There is *Hales's Pleas of the Crown* is positive in it, That an Overt Act must be alledged in every Indictment, and proved; That compassing the Death of the King by bare Words, is no Overt Act. Now if bare Words be no Overt Act, why then all the Conspiracy that is here proved, supposing all to be true that is said, it is no Overt Act; for it is all but Words still. And bare Conspiring is no Overt Act, according to my Lord *Coke's* Opinion in his *Third Institutes*; and the utmost of all that any of them prove against me is, that I did say so and so, which is but bare Conspiring. Pray, my Lord, let me know upon what Law it is that I am indicted and try'd, I suppose it is upon 25 *Edw.* 3.

L. C. J. Yes, you are, and only upon that Statute.

Char. My Lord *Coke*, in his *Third Institutes*, saith, The open Act must be manifestly proved. If divers conspire the Death of the King, and the Manner how, and thereupon provide Weapons, Powder, Poison, send Letters, or the like, for the Execution of the Conspiracy, or Preparation be made by some Overt Act to depose the King, or take him by Force, or by strong Hand, or imprison him; these are sufficient Overt Acts, to prove the Compassing the King's Death. But by this it is plain, that bare Conspiring is not Treason, as wanting a sufficient Overt Act to declare the Intention. Now, my Lord, I say, that in all this Evidence that hath been given against me, there is not one Overt Act proved of my providing Arms, or sending Letters, or the like. And the same Page of the same Book, the *Third Institutes*, Chap. *High-Treason*, upon the Words *proveable Attaint*, it must be by Overt Act, it must be upon direct and manifest Proof, not upon conjectural Presumptions or Inferences, or Strains of Wit: So that the strongest Presumptions upon the whole Earth will never be able to make any Overt Act, without plain and manifest Proof. And, my Lord, I do insist, here is not plain and manifest Proof, or any Overt Act, but only Presumptions in the whole Scene of the Thing. I must beg the Favour of the Court as to one particular Thing: Your Lordship, no doubt, knows the Law very well. I am here an ignorant Man, unable to defend myself by the Forms of Law; but I hope your Lordship and the Court will not let me suffer any Damage

upon that Account. You are always presumed to be of Council for the Prisoners; and I look upon it as assured, that you will do that Justice to Persons in our Circumstances, as truly to instruct the Jury how they shall behave themselves in Relation to this Matter that is now upon Enquiry before them. Particularly, my Lord, I desire they may be told plainly and truly, what is Proof of an Overt Act, and what is not; and when your Lordship sums up the Evidence, you will tell the Jury directly and plainly, what is Legal Evidence, and what is not: and then what is sufficient Proof of any one Overt Act or Species of Treason; and that you would not leave it to the Apprehension of the Jury, what they do believe, but inform them really and truly what is Legal Evidence, and what of that Sort hath been given to Day. My Lord, here is a strange Sort of Thing, a Conspiracy, which, consider'd in the general, hath neither Head nor Tail; how many there were to be is uncertain. In the Indictment is said, there were forty Men to do this Fact upon the King in his Coach, and for attacking the Guards. Can it be supposed, that any Man in his Senses would do such an Act as this, without Respect to have Security for himself and his Family, or those he is concerned for? I know not how great Wits these People be in other Things, but I am sure they shew no Wit in this, I look upon it to be so desperate a Thing. The Guards are at least treble the Number, and better appointed; and that forty should go to assault treble the Number, and in divided Bodies too, that were only to mix Fury and Malice with Resolution, to be torn in Pieces by the Mob upon an apparent visible Disappointment. And when we had done this, and made this Attempt, where were we to go? We had no *Asylum* that we can hear of, nor Castle or Fort to retire to, nor none that were to back or assist us; and I am sure no Man in his Wits would undertake a desperate Attempt without Assurance of a Retreat. If I was resolv'd to kill any Man, I would propose to myself some Place, to which I might repair for Shelter and Safety when I had done. If then we were in our Senses, it cannot be imagined we should ever engage in so apparently destructive a Design. We ought rather to have been confin'd to *Bedlam*, than any other Place, if we could be thought guilty of so much Rashness and Folly. My Lord, I pretend not to make any particular Reflections upon these Gentlemen that have given Evidence here; but only I must take leave to say in general, that there are none of them, but that if they have had any Fortunes in the World, their Circumstances as to that Matter are now much altered; and if any Persons will be Evidence against others for their Lives in Hopes to repair those Fortunes, and concerning Matters in which they were engaged themselves in, as they do acknowledge, and if it be true, it must be thro' the Desperateness of their Fortunes, it is the most barbarous and inhuman Sort of Evidence that ever was given by any that ever had any Sense of Honour, and must be a base Reflection upon any who pretend themselves to be Gentlemen: And I hope the King will think them upon that Account very little deserving Credit. My Lord, I hope your Lordship will please to consider, that what I have offer'd is but what my own sudden Thoughts could suggest to me out of the confused little Rem-

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marks I have been able to make upon the Evidence; and it is the more confuted and immethodical, because I could have no Council to assist me. I would only put your Lordship in Mind once more, of what I earnestly desire and insist upon from your Lordship, that you would tell the Jury plainly and truly what Evidence it is the Law requires to convict any Person of the Crime for which I stand accused; what Things are necessary to make up that Evidence, what is a Legal Proof of an Overt Act, and what Overt Acts have been plainly and manifestly proved against me in this Case, and not leave the Construction of the Evidence to the Apprehension or Inclination of the Jury. This is all the Favour that I have to beg of the Court, and I hope I need not doubt the Justice of the Jury.

L. C. J. Have you done, Sir?

Char. Yes, my Lord.

L. C. J. Then what say you, Mr. King?

King. My Lord, I must insist upon a great many Things that Mr. *Charnock* hath said. But as to what relates to myself, Captain *Porter* saith, I went with him and Mr. *Knighbley* to view the Ground where this Design was to be executed. Truly, my Lord, I did go abroad with Captain *Porter* and Mr. *Knighbley*; but it was merely to take the Air, and no other Thing. Truly, my Lord, I have not taken any Notes of the Evidence, nor have I had any Council to assist me, and so I am not very capable of making my Defence.

L. C. J. Well, have you any more to say?

King. As to Mr. *De la Rue*, he doth not pretend to say, I did ever tell him of any thing of a Design of destroying the King: And as to the Sword he speaks of, he knows I always wore one, and ever had one.

L. C. J. Well, is this all you have to say?

King. And as to Mr. *Pendergrafs*, he saith, he saw me at the *Rose-Tavern* in *Covent-Garden*, where we discoursed something of the Matter; but he tells you not what that Matter was, nor what the Discourse was. And as to Mr. *Boyle*, he doth not tax me with any Design of killing the King: Nay, he saith, I did not mention any such Thing to him. And as to the Matter of an Overt Act, what is an Overt Act and what not, and what is good Proof of it, and what not, I must refer to your Lordship and the Court.

Char. My Lord, I beg your Pardon, there is one thing I forgot to offer to your Lordship; there is no Place laid in the Indictment, nor no set Number of Men ascertained.

L. C. J. At present you are out of Time, for that you might have spoke to it before the Evidence was given, or you may speak to it after the Verdict is brought in, if there be Occasion.

Char. My Lord, I am ignorant in the Forms of Law.

L. C. J. If you will observe any thing out of the Evidence, you may; now is the Time.

Char. My Lord, I think the Evidence is inconsistent with the Indictment: for the Indictment doth say positively, that there were Horses and Arms bought and provided. Now if this be an essential Overt Act, as I apprehend it is, according to my Lord *Coke*, to prove the compassing the King's Death, then there hath been no Evidence to support this Indictment; for there is no Proof of the buying of any Horses or Arms.

L. C. J. They tell you there were forty provided.

Char. My Lord, I have taken some Notes, as well as I could, upon reading of the Indictment; and in the first place it is said, that it was agreed there should be forty Horse-men armed of us, *Robert Charnock, Edward King, and Thomas Keyes*; which I take to be Nonsense and impossible.

Mr. Att. Gen. But there is, *And others* in the Indictment too.

Char. It is *Quadraginti Homines equestres de ipso Roberto Charnock*.

L. C. J. And divers others, to the Jurors unknown. May not they make forty? thirty-seven and you three will make forty.

Char. That *divers others* is so uncertain, that no one can tell whether it be five or five thousand; and I know not what will make an Indictment void, if Uncertainty will not.

L. C. J. But your Time of Exceptions to the Validity of the Indictment is not now; we are now only upon the Trial of the Fact.

Char. My Lord, I was advis'd by my Council that if I could find a Flaw in the Indictment, I must mention it, and take the Advantage of it before the Summing up.

L. C. J. You were not well advis'd; for after the Jury is sworn, we are only to have Regard to the Fact, and we are now upon the Trial of the Fact; and the only Thing we have under Consideration upon the Fact and the Evidence is, Whether upon this Evidence that hath been given, you are guilty or not of the Fact that is charged upon you in the Indictment?

Char. My Lord, I crave your Pardon, and I hope you will take no Advantage of my Ignorance, not being used to these Proceedings.

L. C. J. As to what you said at first, that there was an Overt Act proved because there is no Proof of buying Horses or Arms; it is true, that is one Overt Act laid in the Indictment, and there is some Evidence given of it; but what that Evidence will amount unto will be a farther Consideration by and by.

Char. There was another Observation, my Lord, that I have made upon the Indictment, that it is uncertain upon the Word *tunc*; there is no Time assigned, nor no Place: Pray what Time doth this *tunc* refer to?

Mr. Att. Gen. When the King went out.

L. C. J. But these things are not proper now, I tell you we are upon the Fact. Mr. *King*, have you any more to say? because Mr. *Charnock* interrupted you.

King. My Lord, if there be any Objection that Mr. *Charnock* hath made, would be of any Advantage to me, I hope you will let me be heard by my Council, that I may have the Benefit of it.

L. C. J. I tell you, that is not proper now; you may have the Benefit of any Objection of that Nature, if there be an Occasion, after the Verdict: Now we are only considering the Evidence upon the Issue, Guilty or not Guilty; and you are now to apply yourselves to that.

King. My Lord, I think I have answered all the Evidence.

L. C. J. Well then, Mr. *Keyes*, What have you to say for yourself?

Keyes. My Lord, all that I have to say is, I was a Servant to Captain *Porter*, and I did nothing but by his Order.

L. C. J. Is that all you have to say?

Keyes. Yes, my Lord.

L. C. J. Then I must tell you, no Man is such a Servant that the Commands of his Master can excuse him for committing High-Treason.

Keyes. I did but obey his Commands.

L. C. J. But I tell you again, no Man is so much under the Command of his Master, as that he ought to obey him, if he command him to commit High-Treason. It is proved you bought Horses, and he told you upon what Design, and you engaged in it.

Keyes. I did not hear any thing of it, my Lord. My Master was pleas'd to jest with me several times, and he might say a great many things that I did not much regard.

L. C. J. You were by when your Master, as you call him, promis'd Mr. *Pendergrafs* his Musquetoon, and Mr. *King* told *Pendergrafs*, he hop'd he would not fear breaking the Glass Windows.

Keyes. Indeed I do not remember any such thing.

L. C. J. And there are several other Particulars sworn against you: But have you any thing more to say?

Keyes. Nothing, but that I did what my Master order'd me to do.

L. C. J. Have you all done then? If you have any more to say, you must speak it now, because you cannot speak after the King's Council have fum'd up; they must have the last Word: Have you any Witnesses to call, or any Thing more to say?

Char. No, my Lord, we have nothing more to say, but leave it to your Lordship entirely.

Mr. Soll. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King against the Prisoners at the Bar, and I think the Matter hath been fully proved as Mr. Attorney at first opened it; That there was a Design of an Invasion on this Kingdom from *France*, and of an Insurrection within this Kingdom, to abet that Invasion, and as an Inducement to both, of a barbarous and abominable Assassination upon the Person of the King, and that the Prisoners at the Bar had an Hand in this Conspiracy.

Now, Gentlemen, I must tell you, that for the two first Parts of this Design, the Invasion and the Insurrection, we have given you no other Evidence now, but some short Hints, that such a Thing was intended; and we did it purposely for this Reason because the Prisoners, tho' they were concerned too in those other Parts of this Plot, yet they are not now indicted for that Matter, but only for a direct Conspiracy to murder and assassinate the King: We have abundance of Witnesses to prove the other Parts at several Times against a great many as well as them; but we confine ourselves now to this Particular, as it stands charged against these Persons in the Indictment.

Gentlemen, There is an Overt Act alledged in the Indictment, as it by Law is necessary to do, to prove the Treason; which is, Compassing the Death of the King; and it is by Law a good Overt Act, That they did at such a Place, that is to say,

the Parish of *St. Clements* in the County of *Middlesex*, on the tenth of *February* last, consult and agree to carry on such a Design: now it is not material, as my Lords the Judges will tell you, in Point of Law, to prove all the several Consultations to be in that Parish, nor to have been upon the Day alledged in the Indictment; for if it be any Day before or after the Times specified in the Indictment, so it be before the Indictment prefer'd, and if it be at any Place within the County wherein the Indictment is laid, it is sufficient; the thing that is material to be proved, is, Whether they did meet upon such a Design before the Indictment, within this County.

This Design, Gentlemen, we in Law call High-Treason; the highest Crime that our Law, or the Law of any other Government, takes Notice of: and it very well deserves to go under that Name; for it tends to subvert the very Foundations of the Government, without which no Subject is safe, and to bring all into Confusion and Desolation, by taking away the Life of the King, who is the Head of this Government; which Life the Law makes sacred above all others, because without that be safe, there can be no Safety to any particular Person.

Gentlemen, We have proved this bloody Conspiracy most fully against all the Prisoners at the Bar: I will not take up so much of your Time, as to repeat every Particular of the Evidence that hath been given; but only shortly remind you of what hath been materially said against each of them by the Witnesses that have been produced.

Against Mr. *Charnock*, there is first Mr. *Porter*, who hath sworn, That he and others met, and consulted about this Design, agreed upon it, and on the Ways and Methods for carrying it on; and he names the Places where, and the Times when those Consultations were had: Then there is Mr. *De la Rue*, who saith, he ask'd Mr. *Charnock*, how the Affair went on? and he answered, he was afraid it would come to nothing; that shews he was willing it should come to something, though perhaps he might be fearful whether it would take Place or no. Mr. *Pendergrafs* saith, Mr. *Charnock* sent a Note to Mr. *Porter* to countermand the Orders for the 15th, subscribed by the Name of *Robinson*; but that is only a concurring Evidence to that of Captain *Porter*, who said before, he had such a Note; but *Bertram* tells you, That he ask'd him if he would be one in the Design to take off the Spark? And that after he heard Warrants were out, he would have had him joined in the putting it in immediate Execution, and assured him there would be Safety in so doing.

Against Mr. *King*, there are the same Witnesses, Mr. *Porter*, and Mr. *De la Rue*, who tell you of the Discourses at Captain *Porter's* Lodgings, where Mr. *Pendergrafs* was likewise, who tells you the Times, viz. the 15th and 22d of *February* last, the Days when this wicked Design was to have been put in Execution, and there they consulted about carrying it on. Mr. *Boyse* likewise tells you of the Discourse he had with *King*; he would not indeed directly tell him, what the Design was, but Mr. *Boyse* did suspect what it might be; for Mr. *King* told him Sir *George Barclay* was come, and Mr. *Boyse* should have a Horse, and make one, and it would soon be over.

Then for *Keyes*, there are three positive Witnesses against him; there's his Master, as he calls him, *Capt. Porter*, who swears, That *Keyes* knew of it, and consented to it. *Mr. Pendergrafs* saith, *Keyes* was one that met at *Captain Porter's* the 15th of *February*, to put the Design in Execution that Day. *De la Rue* tells you, *Keyes* was in the Chamber at that Time, and in other Places consulting about it, and so must needs know of it, and consent to it. So that, Gentlemen, if you believe these Witnesses, as I see no Reason offered to the contrary, we have most manifestly proved upon them all three, the Matters charged in the Indictment.

As to what they speak of the Witnesses being Trappners, and swearing them out of their Lives to save their own; it is plain the Prisoners designed to trapan the King out of his Life, and some the Prisoners would have trapan'd to have join'd with them in that Design, who honestly and honourably discover'd it, and now the Prisoners Danger is a Safety to the Nation.

Gentlemen, They argue against the Belief of this Conspiracy, from the Improbability that any Person should be so desperate to engage in so wicked a Design. Truly had this been a Matter that had been only talked and discoursed of once, that might have been the better alledg'd; but when there have been so many Meetings at several Times and Places, and such Methods taken for the putting this Conspiracy in Execution, and after a Disappointment one Day, put off to another; nay, and as it hath been prov'd, it hath been a Project that hath been transacting for several Years, from one Year to another, and all this made as manifestly evident, as Proof by Testimony can make it; the Objection of Improbability will soon vanish into nothing; and I hope you will think, as I believe all the World doth, or will after this Trial, That there hath been such a barbarous, bloody Conspiracy, as in the Indictment is alledg'd, and that these Persons are guilty of it, and that you will give your Verdict accordingly.

Mr. Conyers. My Lord, I would only add to what *Mr. Solicitor* hath said, some few Observations that have been omitted of the Evidence that hath been given against the Prisoners.

The Treason charged, is a Design of Assassinating the King's Person, the Overt Acts laid in the Indictment are several Meetings and Consultations in order to the bringing it to Effect, and the providing Men and Horses to put it in Execution.

This Charge we have fully proved against the several Prisoners at the Bar, by two Witnesses at the least, and it is manifest that they were all concern'd in the several Meetings and Consultations for the carrying on this Design.

As for *Mr. Charnock*, *Mr. Porter's* Evidence is very full as to his providing Arms and Horses; and there is besides, *Mr. De la Rue*, who though he met him at the Tavern, and not being admitted at first, took it ill, yet afterwards at two Meetings he did discourse with him about it; and *Bertram* gives an Account, how he would engage him in it.

As to *Mr. King*, there is not only *Captain Porter*, who testifies, that he dined with him the 14th of *February*, where they did discourse of this intended Assassination, but *De la Rue* likewise, that said, there was a Meeting appointed for *Porter*

and *King*, and another, to go and take a View of the Ground; and the Prisoner himself owns he did ride out with them, but he would have it only to take the Air; *Captain Porter* tells you, it was to see which was the most convenient Place, and that the Place pitch'd upon was the Lane between *Brentford* and *Turnbam-Green*.

And for *Keyes*, there are two positive Witnesses *Capt. Porter* and *Mr. De la Rue*, that he was at the *Blue Posts*, and at *Mr. Porter's* Lodgings when this Matter was consulted of, and particularly that he came and gave an Account of the Disappointment the second Day, upon the Guards coming back.

Besides, *Mr. Porter* gives an Account in general, of several that were to provide Arms, Horses, and Men; and *Mr. Bertram* proves that *Mr. Charnock* told him, the Design was to take off the Spark, and then the Time would come, that *King James* would come back quietly. *Mr. Boyse* swears, *King* told him on the 14th of *February*, that he was to go out upon a Design the next Day, and that he should have a Horse provided, which next Day, the 15th, is by all the Witnesses agreed to be the first Time appointed for the Assassination; and *Mr. Bertram* adds that he met with *Charnock* the 22d, who told him Warrants were out, and it was best to go and do the Business presently, and desired him to come to his Lodgings, and he went to his Lodgings, and found several Persons there—*Char.* He does say no such thing, Sir.

Mr. Att. Gen. He does say that *Mr. Charnock* desir'd him to come to his Lodgings.

Mr. Conyers. As I apprehend him, he says, he went thither in the Evening on the 22d.

Mr. Att. Gen. He says, *Mr. Charnock* would have had him come, but he did not; the Time that he was at his Lodging, was before.

Mr. Conyers. My Lord, if I mistake, I beg Pardon of the Court, and of the Prisoner too.

L. C. J. As I take it, there is no coming to his Lodging at all, but the 9th or 10th of *February*.

Mr. Att. Gen. He says the ninth of *February* he met with *Trevor*, who carry'd him to *Charnock's* Lodgings, and then he would have engaged him in the Design of Taking off the Spark; the Meeting of the 22d was afterwards in *Lincoln's Inn*, and there was no going to the Lodging that Day.

Mr. Cooper. My Lord, I am very loth to take up any of your Time; but I would beg the Favour to observe two or three Passages relating to this Matter, which have not been observed yet; and shall only mention so much as I think has been omitted.

The Defence that has been made, has been principally by *Mr. Charnock*; and upon his Defence, it seems, the rest do depend; therefore I would beg Leave to make some few Remarks upon the Defence that he hath made. He says, That all the Evidence is but Hearsay, as to him, and no Overt Act of his own proved; but, my Lord, I question not, if the Evidence be looked into, it will appear sufficient not only to prove him guilty beyond Contradiction, of all that is charg'd upon him in the Indictment; but particularly, that he was the principal Agent (under *Sir George Barclay*) in carrying on this whole Conspiracy.

For *Captain Porter* tells you, That *Charnock* first acquainted him with *Sir George Barclay's* coming

ing over with the Commission; that *Charnock* brought Sir *George Barclay* to the Lodgings, where they both lay; that they had several Meetings, at which he was always present, and a main Promoter of the Design; That he agreed to find a principal Quota of the Persons that were to be concerned; particularly, That he was to find eight Men, and seem'd always most zealous for the Execution of it.

Then as to Mr. *King*, it is plain, that *Knightsley*, and Captain *Porter*, and he, went to view the Ground; and Mr. *De la Rue* tells you, what Report *King* made of that View; that with great Joy *King* acquainted him, they had found the rarest Place in the World for the Execution of their Design, a Wood hard by the King's House at *Richmond*; and then he opens the whole Manner of the Ambuscade, and the Design.

Charnock. It is at the Liberty of any Body to swear what they please; but I hope the Jury will consider the Nature of the Evidence.

Mr. *Cocop*, Mr. *De la Rue* tells you further, something more than Hearsay, as to Mr. *Charnock*; that he ask'd Mr. *Charnock* about the Matter, what was like to come of it? And he answered him, that he feared the Success of it; for that a Thing of such a Nature was not to be trusted to above three. Which could not refer to the intended Invasion and the Insurrection; for as to that, it is plain from the Nature of the Thing itself, that it must be communicated to a great many, or else they could not be ready to assist in it: And therefore it is evident, it was the Assassination which he was in haste to have executed, saying, it had been delay'd too long, and that was as dangerous as communicating it to too many.

My Lord, I shall make my Words good to you, and rather than take up your time in making Repetition of what has been said, I will chuse to break my Method, and omit what might be further observed: It is true, it was a Mistake of the Day as to *Bertram's* Evidence of his going to *Charnock's* Lodging, but that is not material; for it is in Proof he did go to his Lodgings, the 8th or 9th of *February*, and there *Charnock* told him that King *James* was a coming; but there was a Service to be done first, to take off the Spark, and then the King would come in quietly; if that Design took Effect, it would answer his Expectation: He was to ride out to take the Air, and meet some of his Acquaintance, and after all was over, we should be very happy. The Words indeed were something dark, but yet the Intent and Meaning of them are pretty manifest, not only from the Words to take off the Spark, but because this Action, whatever it was, was to precede the Invasion of King *James* with the *French* Forces, and was to be done in order to it, and therefore could not be meant of it, nor of joining with it.

My Lord, I shall trouble you no further but submit to your Direction.

L. C. J. Gentlemen of the Jury, these three Prisoners at the Bar (*viz.*) *Robert Charnock*, *Edward King*, and *Thomas Keyes* stand indicted of High-Treason, for conspiring, compassing and imagining the Death and Destruction of the King, and that in a very bloody and barbarous Manner, by Way of Assassination; and the Indictment charges them, that they did meet and consult with

divers other Traitors unknown to the Jurors, and there did resolve upon this Assassination, and Horses and Arms were prepared and provided for the Execution of it.

The Question, Gentlemen, that you are to try is, Whether these Persons who stand now thus accused, are guilty of this Crime or not? And you have heard a very long Evidence; Five Witnesses have been produced, and they have given upon this Occasion a very large Account of the whole Transaction, which I will observe to you as briefly as I can.

In the first Place, Gentlemen, you are told, how there had been a Design forming, even for some Years, for the Restoring of the late King *James*, and the Depriving and Deposing of this King; it seems it was a Design before the Business of *Cape la Hogue*, which you remember very well was in the Year 1692. about the Time of the burning a great Part of the *French* Fleet by Admiral *Ruffel*; but this Design, though it met with several Disappointments, yet did not die, it had its Ebbings and its Flowings, sometimes it was higher, and at other times lower; and in Winter was twelve Months it began to be more vigorously prosecuted than at any time before, since the *La Hogue* Business, and then there was a Resolution fram'd of attempting the Person and Life of the King, which appears by Captain *Porter's* and Mr. *De la Rue's* Testimony. And great Hopes were conceiv'd amongst them, that it might be effected before the King went over into *Flanders*; but it seems they wanted a Commission from abroad, (which they thought necessary as an Authority for them to act under) which not coming in time, the King went over to *Flanders*, and so for that time the Execution of it was deferred.

Gentlemen, after the King's Return from *Flanders*, the Prosecution of this Design was resumed, and Intimation was given, that a Commission was brought over by Sir *George Barclay* from King *James*, which was to make War upon the Person of King *William*, who was called therein, as you may suppose, the Prince of *Orange*: and you are told by Captain *Porter*, that at that time, he and Mr. *Charnock* lodged together in one House in *Norfolk-street*, and that Mr. *Charnock* told him Sir *George Barclay* was come with such a Commission from King *James*, and imparted to him the Design of Assassinating and Murdering the King, and that would be the readiest Way to bring Home King *James*: He asked Captain *Porter*, whether he would engage himself in the Matter. It seems Mr. *Porter* did freely and readily engage in it, and was in good earnest; and therefore there were several Meetings at several Places, in order to consult and contrive how they might bring it to pass.

Gentlemen, you are further informed, that there were several Meetings at the *Globe Tavern* in *Hatton Garden*, another at the *Nagg's-head* in *St. James's-street* in *Covent Garden*, and at the *Sun-Tavern* in the *Strand*, and that two of the Prisoners at the Bar, Mr. *Charnock* and Mr. *King*, with divers others, were at those Meetings, and *Keyes* was at several of them, and there it was agreed and resolved, that the King should be murdered, as the best Way to bring in the late King.

This being settled and resolved upon as fit to be done, the next Consideration was, in what manner

ner it might be effected, and two Ways were proposed, one by way of Ambuscade on the other Side of the Water near the King's House at *Richmond*, the other in the Lane that leads from *Brentford* to *Turnham-Green*, upon the King's Return from *Richmond*, some Evening; for it seems it is usual for the King to go to a House he has on the other Side of the Water, to divert himself once a Week upon the *Saturday*, and to return in the Evening.

These two Places being proposed, the one on this, the other on the other Side of the Water, there was a Difference in Opinion among the Conspirators, which of the Places would be the best and most proper: And in order to settle that Matter, it was resolved upon, that some Persons should be sent to view the Ground in both Places, and make their Report to the rest; and the Men agreed upon, were Captain *Porter* and Mr. *Knightley*, to whom Mr. *King* added himself, and accordingly they did go out of Town together to take a View of these Places.

Here the Court was interrupted by Mrs. King, the Prisoner's Mother, who in a very outrageous violent Manner, got into the Court; but being removed, the Lord Chief Justice proceeded.

L. C. J. Gentlemen, I was saying that this View was taken by those Persons that undertook it; and the Night of that Day they had viewed the Places, upon their Return, they made a Report to their Accomplices, and thereupon it was resolved to relinquish the Ambuscade, and that the Attack should be made in the Lane that leads from *Brentford* to *Turnham-Green*.

The Time that was fix'd upon for this Execution was *Saturday* the 15th of *February*: There were two Men that were appointed to lodge at *Kensington*, whom they called orderly Men, a Title that they gave them: these were to give Notice at what time the King and the Guards went out, the one was to give Notice first of the Guards going, the other was to give Notice when the King went: When Notice was brought them that the King was gone abroad, the Conspirators were to be ready to go after in small Numbers, and were to be quartered and dispersed in the several Inns about *Brentford* and *Turnham-Green*, to be gathered into the several Bodies, upon Notice of the King's Return; when the King came over, then they were to make the Attack in this Manner. Captain *Porter* and Mr. *Charnock*, with one *Rookwood* were to attack the Guards, and Sir *George Barclay*, and his Party, were to come up to the King's Coach, and fire into it, and kill the King, and every one that was in it; and of that Party Mr. *Pendergrafs* was designed to be one, and he was to have had a Mulquetoon from Captain *Porter*, that would carry seven or eight Bullets: These Conspirators, and the Persons that were to be concerned, were in all forty, or some few more in Number.

But, by great Providence, this bloody Design was discovered, as was told you, by one of the Witnesses, Mr. *Pendergrafs*, a Day or two before it should have been put in Execution; and so his Majesty did forbear going out that *Saturday* the 15th. But they having Notice that the Guards were gone, and after that receiving an Account that the King did not go, it very much alarm'd

these Conspirators; but notwithstanding this, as you have been told, they were resolved not to lay aside the Prosecution of this Design, but were rather bent upon executing it the next Opportunity that should offer itself, for which purpose divers of the Conspirators did meet together, and did consult whether it was fit further to proceed, particularly upon the *Friday* the 21st Day of *February* at the *Sun-Tavern* in the *Strand*, divers of them met, and there they had Discourse of the Matter, and were troubled at the Disappointment, and were resolved to pursue it, and for that purpose, agreed to be in a Readiness upon the next Day, and as soon as they should have Notice that the King was gone from *Kensington*, they would prosecute it in the same Manner, in which they had formerly agreed.

It should seem, some of the Men that they had engaged were gone off, and others were provided in their stead, but there was another full Discovery made, before that, by Mr. *De la Rue*, by which their wicked Purpose was a second Time disappointed.

Gentlemen, upon the Discovery of this Design, it was thought very fitting to take all possible Care, for preventing such a dismal Stroke, and for punishing such heinous Offenders; there was a Proclamation issued for the Apprehension of a great many of them that absconded, which had a very good Effect, by the taking of several of them, besides those that were taken up by Warrants before; and these three Prisoners now at the Bar, are indicted for this horrid and traitorous Conspiracy, and for pursuing this wicked Design, and are now upon their Trial for it.

Now, Gentlemen, you have heard the Evidence, which you are to consider of in relation to these Prisoners, and how far they are affected by it. I must tell you, that Captain *Porter*, gives a very full Evidence against all three; he tells you how and in what Manner they were all engaged, and what Parts they had all in the Prosecution of this bloody Enterprize. As for Mr. *Charnock*, he seems to have been a remarkable Person in almost all the Parts of it, a great Carrier-on and Promoter of it, was to be an Actor in it, and provide his Number of Men: and it seems he was a Person much trusted by Sir *George Barclay*, and he spoke to Mr. *Porter*, of a Commission that Sir *George Barclay* brought with him from King *James*, which was to levy War upon the Person of King *William*, which it seems was understood, to authorize them to Assassinate the King. Mr. *King* went to view the Ground, and *Charnock* and he were at the several Consultations, and *Keyes* was at *Porter's* Lodgings, and at divers other Consults, when the carrying on of this Design of assassinating the King, was debated and resolved upon. Mr. *Porter's* Evidence you have heard at large, and I doubt not you take good Notice of it, and the King's Council have repeated the most material Parts of it, therefore I need not do it again. And as to Mr. *Charnock*, you have heard what Evidence is given by *De la Rue* and *Bertram*; for tho' Mr. *Charnock*, says all that is testified by the other Witnesses, is only Talk and Discourse, and that bare Words are not High-Treason, but there must be some Overt Act; therefore you are here to consider particularly what the other Witnesses say against him, and whether another Overt Act is not proved. *De la Rue* (who was one of the Discoverers, and

(as he tells you) he resolv'd so to be so soon as he could get a perfect Knowledge of the whole Design) does inform you, that between the 15th and 22d of *February*, he met Mr. *Charnock*, and enquired of him how the Business went, to which *Charnock* returned answer, That the Design did languish, saying, that People were not so warm as formerly, and did believe the King had Notice, for that he had not been abroad on *Saturday*; that too many were acquainted with it, and therefore thought it might come to nothing: But the main Business, which was the landing of King *James*, would be speedy; and though the Discourse may be reckon'd only Words, yet they do import, at least acknowledge, to the carrying on this Design before that time.

But then consider what you are told by *Bertram*, another of the Witnesses, that he being inform'd by *Trevor*, that Mr. *Charnock* would speak with him, he thereupon went to Mr. *Charnock's* Lodgings, where *Charnock* took him aside into a back Room, and told him that King *James* was a coming, and there were great Hopes of restoring him; but there was something to be done to facilitate it, which he would do well to join in: And when he asked what it was, *Charnock* told him, he must go abroad and take the Air, where he would meet with some of his Acquaintance; and there was no way to effect it, but by taking off the Spark; and by doing that Thing, it would most probably be brought about that King *James* should be restored. Now, though it was not directly said, they were to kill the King, yet it is manifest what was meant by it: For the Taking off no one Person in *England*, besides King *William*, could conduce to the Return of the late King. And for his Encouragement, he told him further, that if *Bertram* would undertake the doing of it, it would answer his Expectations. And then you are told again by *Bertram*, that he met *Charnock*, at *Lincolns-Imm-Gate*, upon that very Day that it was last to have been executed, which was the 22d of *February*, where *Charnock* told him he suspected a Discovery was made, and that there were Warrants out against them; and that therefore the best Way was, to go immediately and take him off, and then all would be well.

Now I must tell you, Gentlemen, that what he says, that bare Words are not Treason, is very true in some Cases; for loose Words spoken, without Relation to any Act or Design, are not Treason or an Overt Act; but Arguments, and Words of Persuasion, to engage in such a Design or Resolution, and directing or proposing the best Way for effecting it, are Overt Acts of High Treason, as much as if two agree together to kill the King, though the Agreement be Verbal only, and not reduced to Writing: Likewise, consulting together for such a Purpose, is an Overt Act of Treason. For it is the Imagination, the Compassing and Designing the Death of the King, that is the Treason. For the Law is very careful of his Safety; and this Treason is the first Species mention'd in the Statute. But there is no Way of discovering those Compassings or Imaginations, in order to punish a Traitor, but by some external Act, that may be sufficient to manifest such an Intention and Purpose; and that which is a sufficient Manifestation of such a Design, is another Overt Act: But there have been proved several

Meetings, and Consultations and Proposals at those Meetings, about the Ways and Methods for bringing about the Design of Assassination. And it was never yet doubted, but to meet and consult how to kill the King, was an Overt Act of High Treason. Besides, Mr. *Charnock's* endeavouring to engage *Bertram* in this Enterprize, and the Argument he us'd to persuade him to it, that it was a means to restore the late King, and telling him it would answer his Expectation, is another Overt Act. And therefore, how far Mr. *Charnock* is Guilty of the Charge in the Indictment, you are to determine when you have well consider'd the Nature of the Evidence, and what Answer Mr. *Charnock* hath made to it; which shall be open'd to you by and by.

Then, Gentlemen, concerning Mr. *King*, who is the next Man, he has these Witnesses against him: Captain *Porter* says, that he was very frequently at the Meetings, and Consultations, and that he came to him when he and *Knighley* were to view the Ground, and desir'd to be one of them, and they went together, and did view the Ground; this was some Time before the 15th of *February*, in the same Week.

And you may also remember the Evidence given by Mr. *De la Rue*, That Mr. *King* told him about *November* or *December*, that a Major-General would come from *France*, and that Money was to be advanced; and that after Captain *Porter* and Mr. *King* told him, that the Major-General was come. On *Friday* the 7th of *February*, *King* said he was to go out of Town with *Knighley* and *Durant*, to know whether the King went to *Richmond* or *Hounslow*. Being inform'd the King had a Design to go to *Hounslow*; and being return'd, on the *Sunday* following, Mr. *King* did say they had found out the rarest Place, and the fittest that could be for that purpose, within a quarter of a Mile of the King's House at *Richmond*; and that there was to be an Ambuscade, and asked the Witnesses whether he would be one in the Ambuscade; but he liked it not, but had rather attack the Guards. He had been at the *Dog Tavern* with Mr. *King*, and discoursing about this Undertaking, Mr. *King* the Prisoner had told this Witness, that several of the Guards were come from *France*, and that several Conferences were had about taking off the King; and he did not approve of Mr. *Charnock*, in regard he did not talk like a Soldier, and was for an easy Post without Danger; and as for Captain *Porter*, he had another Objection against him, he had as much Fat in his Brains as he had in his Body; and so the one wanted Skill, and the other Wit. But still Mr. *King* owned his being concerned in the carrying on of this Design of Assassination: for after the Design of the Ambuscade was disapprov'd of, and agreed that the Guards should be attacked, and the King in his Coach, at *Turnham-Green*; he by Discourse with *De la Rue*, expresses his Consent to it; besides, he told *Pendergrafs*, who was to be one, and to have *Porter's* Gun to shoot the King, he hoped *Pendergrafs* would not be afraid to break the Glass Windows.

Mr. *Keyes* stands upon it, for his Part, that he was only a Servant to Captain *Porter*, and if he had done any Thing amiss, it was no more than what his Master bid him do; and that he knew of no Design; and that it was a hard Thing that he should be troubled in this Matter; for if a
Master

Master send his Servant to buy Horfes or Arms, if he does not know how they are to be employ'd, afterwards it doth appear they are to be employ'd in Affassinating the King, that the Servant should be punish'd for obeying his Master. But the Question is, whether *Keyes* knew what the Design was: Captain *Porter* says he did know when he hired the Horfes, for what Purpose they were to be us'd. And he says further, that he was with them at many of the Consults at the *Globe-Tavern* and other Places, where he did eat and drink with them, and was privy to the Design, and concern'd in it.

Then, Gentlemen, by the other Evidence it is proved, that he was in Company several times when the Design was discourf'd of, and that he was us'd as a Companion to Captain *Porter*, and us'd to sit and eat and drink with him and the rest of them at the same Table; and when they drank to the Restoration of the late King, and to the Squeezing of the rotten Orange, *Keyes* was there, and pledged the Health, which shews the Intention of the Man; and this was upon *Saturday* the 22d, and when News was brought that the Design was disappoint'd by the King's not going abroad that Day, he went out, to get Intelligence, and brought in Word that the Guards were come home, and that all their Horfes were in a Foam, and the King's Coaches returned to the *Mews*; all which is Evidence that he knew of the Design and consented to it. So that I must leave it to you upon the whole, though there be a great deal more Evidence than I have mention'd; you are the Judges how far it amounts to prove them Guilty.

But then, Gentlemen, as to what they say, that the Witnessess do testify by Hearfsay, that's not Evidence; but what they know themselves, or heard from the Prisoners; and so Mr *Charnock* insists upon it, that what Mr. *De la Rue* says against him, is mostly what Captain *Porter* told him, and therefore cannot make a Proof, by two: It is true, and therefore I did omit repeating a great Part of what *De la Rue* said, because as to him it was for the most part Hearfsay: But whatsoever Evidence has been given of any Fact done within the Witness's own Knowledge, or of any Consult or Discourse of the Prisoners themselves, that you are to take Notice of as good Evidence, and consider of it.

But then there is another thing that is object'd against the Evidence, and that is, as to the Fairness and Credibility of it, because the Witnessess, especially Mr. *Porter*, by their own Acknowledgment, are involved in the same Crime, and therefore cannot be good Witnessess against others. Now as to that Objection, I must tell you, first, that Prisoners under those Circumstances are good legal Witnessess, but their Credits, as in all other Cases, are left to your Consideration. But, Secondly, As to the Weight of this Objection against their Credit, you may consider that traitorous Conspiracies are Deeds of Darkeness as well as Wickedness, the Discovery whereof can properly come only from the Conspirators themselves; such Evidence has always been allow'd as good Proof in all Ages; and they are the most proper Witnessess, for otherwise 'tis hardly possible if not altogether impossible, to have a full Proof of such secret Contrivances; such Discoveries are to be encouraged in all Governments,

without which there can be no Safety: And though Men have been guilty of such heinous Offences, in being Partakers or Promoters in such Designs, yet if they come in and repent, and give Testimonies thereof by discovering the Truth, great Credit ought to be given to them, for such Evidence was ever accounted good. Besides, as to two of them, *De la Rue* and *Pendergrafs*, which were the first that discover'd, before they were apprehended, or suspected themselves to be in Danger, and therefore do not swear to save their own Lives, but resolv'd upon it to save the Life of the King. And Mr. *Pendergrafs* had not any Design to be an Evidence, who, tho' he discover'd it almost as early as he knew it, yet refused to tell the Names, upon a Principle of Honour, till he had the King's Word that he should not be press'd to come in as a Witness; and he tells you himself the Reason why he refused then, and why he comes in now, because Captain *Porter* was his Friend, to whom he was oblig'd, and he never intend'd at first to discover his Name, nor afterwards to be Evidence against him; but upon Captain *Porter's* being taken, and discover'd himself and his Witness, he thought then he was absolv'd from all that Obligation, and therefore resolv'd to appear as a Witness against the rest: And this does not depend only upon the Credit of *Pendergrafs*, but also upon the Testimony of my Lord *Portland*, and my Lord *Cutts*, who have given you a full Account of the Manner of it.

And Mr. *De la Rue* tells you, That it was his Design at first, even a Year ago, if the Conspiracy had so far proceeded, as to be ready to be put in Execution, he would have endeavour'd to have prevented the Mischiefs, by acquainting the King with it; and he gives you an Account how he reveal'd it to Brigadier *Lewson*, and to my Lord *Portland*, and after to the King, which is confirm'd by my Lord *Portland*; so that these are Witnessess beyond all Exception, and if such Evidence as this be not allowed to be good, the Government can never be secure against such villainous Enterprizes and wicked Machinations.

Gentlemen, This is not trappanning, for it doth not appear by any Evidence, nor have I heard the Prisoners pretend that these Persons did go about to seduce them into the Design, but indeed were endeavour'd to be seduced into it themselves; and though they kept them Company afterwards, yet it was only with a Purpose to acquaint themselves with the real Intentions of these wicked Men, which is Lawful and Just in order to the making a full Discovery of their so dangerous a Villainy; and therefore they ought to receive all Countenance for doing so great a Service to the Government, without undergoing the Imputation of being Trappanners.

Gentlemen, there is no more occurs to me at present that is material to be observ'd or taken Notice of; I leave it to you, you have heard what the Witnessess say against the Prisoners, you have heard what the Prisoners have said for themselves, you are the Judges of this Fact; if you are not satisfied that here has been sufficient Evidence given to prove them Guilty, you will acquit them; but if you are satisfied, that upon the Evidence and all the Circumstances of this Case, that they are Guilty, I suppose you will discharge your Consciences, and give your Verdict accordingly.

Then

Then the Jury withdrew to consider of the Evidence, and in less than half an Hour returned, and found all the three Prisoners guilty of the High-Treason for which they were Indicted, and the Court Adjourned 'till six a Clock that Evening.

Post Meridiem eodem Die.

ABout Seven a Clock the Lord Mayor, and the Common Serjeant, with as many of the Court as would make a *Quorum*, came upon the Bench, and by Proclamation in usual Form, the Court was resumed, and the Prisoners called to the Bar to their Judgment.

Cl. of Arraignments. Robert Charnock, hold up thy Hand (*Which he did*) You stand convicted of High Treason, for Conspiring the Death of our Sovereign Lord the King by Assassination, What can you say for yourself, why the Court should not give Judgment upon you to die according to the Law?

The Taylor first made him to kneel; and then, when he rose up, he spoke as follows.

Charnock. Sir, I have a great deal to say, if I knew when was the proper Time to apply myself to the saying what I have to say.

Mr. Com. Serj. You are now called to, to know what you have to say.

Charnock. Sir, I would put this Question, because I am ignorant in Forms of Law, Whether it be practicable for me to say any thing before Judgment, or not? For I have no Pardon to plead to hinder the Judgment; and therefore I would know, if it be practicable to say any thing before Judgment?

Mr. Com. Serj. Yes, Sir, it must be before Judgment; because what you are called to, and asked now, is what you have to say in Arrest of Judgment.

Char. I have many Things to say as to Observations I made out of the Indictment, and upon my Trial, if this be my Time to offer them.

Mr. C. Serj. Yes, Sir, it is your only Time.

Char. Then, Sir, I think the Fact is ill laid: We are indicted here for High Treason, in Conspiring the Death of the King, and no Overt Act is proved against me; I speak for myself, I suppose these Gentlemen will speak for themselves.

Mr. C. Serj. At present you are the only Person that is asked the Question; therefore pray go on, and say what you have to say in Arrest of Judgment. You say the Indictment is ill laid, wherein is it so?

Char. I do find fault with the Indictment, because it is laid for Assassinating the King; and all that is proved against me, was, That I was in Company where such a Thing was discours'd of: Now I am advised, and my own Reason tells me, that being in Company is no Proof of my giving my Consent to the Thing; and without my Consenting, there can be no Overt Act to

make me guilty of the Treason. It is said, *that I and my Accomplices*, though there are none named but us Three, *did meet together, and consult of this Matter, and that we bought and provided Horses and Arms*: Which I take to be the only Overt Act. And of all these Things, there is not one Tittle proved; and therefore, with Submission to the Court, the Indictment is naught in that respect. And this, I think, I may speak, not only for my own Sake, but for the Sake of these Gentlemen that stand by me; if there be nothing proved against us of an Overt Act, as laid in the Indictment, we ought not to be condemned.

Mr. Com. Serj. Look you, Mr. Charnock, you move nothing against the Indictments, but only run into the Proof: That Matter is quite at an End, and we cannot enter into any Debate about it; you have had a fair and a legal Trial, and upon that Trial the Jury has found you Guilty.

Charnock. I have not had a fair, and an equal Trial, Sir.

Mr. Com. Serj. Yes, you have had both a fair and a legal, and an equal Trial.

Charn. If you please to leave out the Word *Legal*, because it perhaps may be according to the strict Forms of Law: But I say it was not a fair and an equal Trial, because in the last Act of Parliament, which was made for regulating Trials in Cases of Treason, the Equity and Reasonableness of a Prisoner's having that which was denied me, that is, a Copy of the Indictment, and Council, is laid down as the Ground and Reason of making the Act; and without that it had never been made: It is in the Preamble of the Act, which I have look'd upon since I went out of Court; and though as to the Time of the Commencement, there is a certain Day prefix'd, yet the Equity of the Act is always the same, and that Equity I take myself to be intitled unto; and therefore being denied the Benefit of it, I think I had not an equal and a fair Trial.

Mr. Com. Serj. Sir, you have very unreasonably objected this Matter of this Act of Parliament at your Arraignment, and upon your Trial, and now; but your Objection is of no Moment or Validity in the World: For the Act is to commence *in futuro*, and you are tried according to the Course of Common-Law before that Act can take Place; and it is the Common Law only that this Court can proceed by, and you be tried by.

Char. Sir, I insist not upon the Law itself, but only upon the Equity of it, and the Reasonableness of the thing.

Mr. Com. Serj. Courts of Justice are to go according to Rules of Law, and that is equal that is according to those Rules: I say again, Sir, you have had a fair, a legal, and an equal Trial, and have been treated with all the Candor and Temper, that I believe was ever shewn to any Persons in your Condition.

Char. I had not Council allowed me to assist me.

Mr. C. Serj. The Law allows it you not; if it had, you should have had it.

Char. Then my Council were ignorant People, to instruct and advise me, that by the Equity of this Act I ought to have it.

Mr. Com. Serj. It was never practicable before, nor can be, till the Time that this Act takes Place.

Char. Sir, I cannot argue with the Court in Matters of Law; but as to the Evidence, I say, it did not come up to the Indictment.

Mr. Com. Serj. If you have any thing to except against the Indictment, that is very proper for you to do, and if you will propose it, we will hear you.

Char. Sir, I find fault with the Indictment in several Particulars; all the Facts are laid in the Parish of *St. Clements Danes*, and there is not one Fact proved to be done there.

Mr. C. Serj. It is not material that the Facts should be proved to be done in the particular Parish laid in the Indictment; it is sufficient, if they be proved to be done in the County.

Char. There is not one Fact proved to be done in that Parish.

Mr. C. Serj. All that is against the Evidence, which we cannot at all take Notice of after the Verdict.

Char. I insisted upon several Things, whereby it was impossible that the Evidence could be true, and mentioned several Things, wherein the Indictment was erroneous, and the Evidence not consistent with it, or at least not of such Validity as to affect me; all which Things, if I might have had Council to argue for me in Point of Law; (and I look upon it as a very great Hardship that it was denied me,) as likewise that my Lord Chief Justice over-ruled what I offer'd about Trappers, as I take these Witnesses to be, out of Sir *Robert Atkins's* Book, and what I quoted out of my Lord *Hales's* Pleas of the Crown, and *Coke's* Institutes.

Mr. C. Serj. *Mr. Charnock*, If you please to offer any Point of Law to the Court to stop Judgment, we are ready to hear it; but you ought not to reflect upon the Court.

Char. Where a Man is dying, sure he may have Leave to take Notice of what Hardships he has lain under.

Mr. C. Serj. Pray, Sir, hear me; No Men that ever stood in your Place have had more Indulgence and Favour shew'd them, nor, I believe, so much neither. Those of us that are here, and were at your Trial, do think you do very much amiss, to make any Reflections upon the Court, after you were so fairly dealt with. If you have any thing that is material to offer in Arrest of Judgment, pray let us hear it: But we must over-rule all Discourses of this Nature, it is a vain sort of Discourse, and will be of no Use or Service to you at all.

Char. Truly, I know not what it is possible for me to urge which you will think to be material, if I cannot urge false *Latin* and Inconsistencies. There have been heretofore Arrests of Judgment, and that must sure have been upon some Error or other.

Mr. C. Serj. It is true, but you assign none; you abound in Words, but will not offer any thing that is fit for you to offer.

Char. Sir, I assign this particularly as an Error, and if it be not, I cannot tell what is: I am upon my last Legs, and stand here for my Life, and ought to be allowed all legal Advantges. One particular thing is this, Whether the Scene of the Fact being laid to be at the Parish of *St. Cle-*

ment Danes there ought not to be Proof that such Facts were done there; and if so, Whether it be not an Error, that there was no Proof of any one Fact done there? And then the next thing is, we are charged to have bought Horses and Arms in the Indictment, and there was no Proof of any Horses or Arms bought; I am sure as to me there was not.

Mr. C. Serj. I told you before, all this is to no Purpose, you enter into the Evidence, which is Matter of Fact, which is all over, and we cannot enter into any Consideration of it, therefore pray do not spend our Time; but if you have any thing that is an Objection to the Frame of the Indictment, let us hear it.

Char. Then I think that the Indictment is uncertain; it says, *quadraginta Homines equestres aut circiter de ipsis Roberto Charnock, Edwardo King, & Thoma Keyes*; this is either not true, or it is Nonsense: For if there be forty Horsemen, or thereabouts, of *Robert Charnock, Edward King, and Thomas Keyes*, that cannot be true, for they can't make forty; and if you take in the *alii Proditoribus ignotis*, that will make it uncertain, and that Uncertainty will make the Indictment void.

Mr. C. Serj. I thought my Lord Chief Justice had satisfied you as to that Objection; you repeat but Part of the Sentence: It is said, *de ipsis Roberto Charnock, & predictis aliis Proditoribus ignotis, ac aliis*, that is certain enough, I thought we should have heard no more of that frivolous Objection, but you had been satisfied with the Judge's Answer to it.

Char. I am satisfied in Point of Fact that they construed it so; but these are the Words of the Indictment as they were read to me.

Mr. C. Serj. You shall have the Words read to you again. Read them.

Cl. of Arraignments. *Quod quadraginta Homines Equestres aut eo circiter de ipsis Roberto Charnock, Edwardo King, & Thoma Keyes, & predictis aliis Proditoribus ignotis, ac aliis.*

Mr. C. Serj. You took but Part of the Sentence, or else you could never have made that Objection.

Char. Then, Sir, here is *tunc & ibidem*, what is that?

Mr. C. Serj. You can easily tell that sure; it is *then and there*.

Char. What, *ibidem*? What Word is that?

Mr. C. Serj. It is the best Word that could be used; what Word would you have had?

Char. *Tunc & ibi*, is *then and there*.

Mr. C. Serj. No, *ibidem* is a better Word, and is always used in our Pleadings at Law.

Char. Then I have only this in general to say; Whether it be possible for a Man that is ignorant in Forms of Law to defend himself without Council? I must desire Council to look into the Indictment and to assist me.

Mr. C. Serj. That is what we cannot allow by Law, unless you offer something that may be such an Objection, as the Court shall think fit to have argued by Council.

Char. But how shall I that am ignorant in the Law, know how to offer you that which you will think fit to hear Council to?

Mr. C. Serj. You may offer any thing that you think is an Exception, and the Court will consider of it; for I think it is my Duty, and every
Man's

Man's that has the Honour to sit here by the King's Commission, to lay as much Weight upon any Objection that the Prisoner does offer, as it will bear; but if nothing be offer'd that is of the least Weight or Moment, we being to do our Duty equally between the King and the Prisoner, we cannot allow Council when there is nothing before us to allow it upon.

Char. You will not, it seems, let me have such Assistance as I may offer you something material.

Mr. C. Serj. You know well enough we cannot do it; pray do not spend our Time to no Purpose.

Char. Nay, Sir, if you be in haste, I will not trouble you any longer.

Mr. C. Serj. You have no Reason to say we are in haste; I am sure you have had all the Indulgence and Patience that could be; you are at Liberty to offer any Thing that you can, but to spend the Time of the Court in bare Words is not reasonable.

Char. The Law was never my Practice, Sir, nor Study: I perceive whatsoever I offer signifies nothing; therefore I beg your Pardon for the Trouble I have given you; I shall not attempt to offer any thing farther.

Mr. C. Serj. You may offer what you will, we will hear you.

Char. Sir, I perceive whatsoever I say is unacceptable, and so I had as good let it alone.

Mr. C. Serj. You shall be heard to say whatever you think is for your Interest to say.

Char. I thought these Things were for my Interest to offer; but I see it is to no Purpose; therefore I have no more to say; I have done.

Mr. C. Serj. You may offer what you will, and you shall be heard with all the Patience and Candour imaginable.

Char. I see it is impossible for me to offer any thing that the Court will think material; therefore it is in vain for me to speak, and trouble myself and the Court with what will be of no Use to me.

Cl. of Arraignments. Edward King, hold up thy Hand, (which he did.) You stand convicted of the same High Treason; What can you say for yourself, why the Court should not give Judgment upon you to die according to Law?

(Then he was made to kneel, and rise up again.)

King. What Mr. Charnock has said, all of it I do imagine to be material; and since he is not to be heard, I have done; I can say no more.

Cl. of Ar. Thomas Keyes, hold up your Hand; you are in the same Case with the Prisoner that went last before you: What can you say for yourself why the Court should not give Judgment upon you to die according to the Law?

(He was made to kneel, and rise again.)

Keyes. Sir, I have had no Council, nor no Assistance since I have been in Prison.

Mr. C. Serj. That you alledged upon your Trial, and you were then told you might have had Council if you had thought fit; for you had an Order for it, and you come too late to offer any Thing of that Nature now. But the Question that is now ask'd you is, what have you to say for yourself, why Judgment should not pass upon you?

Keyes. I was only a Servant.

Mr. C. Serj. You have been told that will not excuse a Man in such a Case.

Keyes. I cannot help it, Sir, I have done; I hope you will take care of my Wife and Children when I am gone.

Then Proclamation was made for Silence, whilst Judgment was in giving; which the common Serjeant, sitting down upon the Bench, pronounced thus:

Mr. C. Serj. Robert Charnock, Edward King, and Thomas Keyes, the Prisoners at the Bar; You have been severally indicted for High-Treason; you have pleaded not guilty, and put yourselves, for your Trial, upon the Country, which Country have found you Guilty: You have had the Benefit of a fair, lawful, indifferent, and equal Trial, according to the Laws of this Land; those very Laws, which you are charged in this Indictment to have conspired to subvert. It is a Crime of the highest Nature that the Law knows: You are Gentlemen of liberal Education, and I hope this will bring you to some Reflection, both upon the State of your own Case, and the Blackness of your Offence, in the Time you have to live, which I fear is but short: It is certainly the heinouslest Crime that any Persons can be guilty of; the Murdering of a Prince in cold Blood, and involving your Country in Slaughter and Confusion. I have nothing more to do, but to pronounce the Judgment that the Law has provided for such Offenders, and which the Court doth award:

That you go from hence to the Place from whence you came; and that from thence you be drawn upon a Hurdle to the Place of Execution, where you are severally to be Hanged by the Neck, and cut down alive; your Bowels and Privy Members to be cut from your Bodies, and to be Burnt in your View; your Heads to be cut off, your Bodies respectively to be divided into Four Parts; which Heads and Quarters are to be at the King's Disposal: And God have Mercy upon your Souls.

Char. Sir, I desire we may have the Favour to have our Friends and Relations come to us while we are in Prison.

Mr. C. Serj. You shall have all the Liberty of your Friends and Relations coming to you, that you can reasonably desire.

Char. And I hope we shall have no hard Usage in Prison.

Mr. C. Serj. No, God forbid you should; you may assure yourself you shall have none.

Then the Sessions of Peace for London, and of Gaol-Delivery of Newgate for London and Middlesex, were adjourn'd unto Saturday the 21st of March following.

Accordingly on Wednesday the 18th of March, 1695 they were all three drawn from Newgate to Tyburn on Sledges, were they deliver'd the following Papers to the Sheriff.

Mr. CHARNOCK'S Paper.

THAT I might avoid Distractions, and be compos'd as much as is possible at the Time of my Execution, I thought it much more proper to communicate this to the Sheriffs, than to give myself the Uneasiness of speaking, leaving it to them to publish (if they should think convenient) for the Satisfaction of the World; and in what I have to say, I have taken as much Care as I could to be short, that I might not lose time in my greatest Concern.

As concerning an Invasion intended by King *James* upon *England*, there was certain Intelligence of it from abroad, I presume every Body was satisfy'd, and to the facilitating of which, I own that myself and some others did agree upon the Undertaking to attack the Prince of *Orange* and his Guards, for which I am now to suffer; but I think myself obliged, by all the Ties imaginable, both of Conscience and Honour, to declare, that as for any Order or Commission of King *James's*, for assassinating the Prince of *Orange*, I never saw nor knew of any, but have had frequent Assurances of his having rejected such Proposals when they have been offer'd.

I confess, I did hear that there was a Commission arriv'd for levying of War; and which was natural to believe, if the King was in such a Readiness to come over as was reported; but if there was any such Authority as that, I declare I never saw it.

As to what regards the Body of the *Roman* Catholics, I must do them this Justice, and which I dare be positive in, that they had no manner of Knowledge of this Design; nor do I believe it was communicated to any other Party of such as are reputed the King's Friends, but carried on merely by a small Number, without the Advice, Consent, or Privity, of any Parties whatsoever.

I ask Forgiveness of all the World for what Offences or Injuries I have done to them; and I am (I bless Almighty God) in perfect Charity with all Mankind.

ROBERT CHARNOCK.

Mr. KING'S Paper.

I Am now, within a few Moments of Eternity, brought to this Place by the just Hand of God, in Punishment of all my Crimes, but particularly of that of which I have been lately arraign'd, and for which I stand here condemned; but I hope that Goodness of God, which has given me a Sense of my Wick'dness, will accept my Repentance, and shew Mercy on me; which I

hope to obtain, through the Passion and Merits of my Redeemer, upon whom I entirely cast myself.

And that I may find his Mercy, I think myself obliged to do Justice to my Neighbour, that so none may suffer wrongfully on my Account. And, therefore, as I am soon to answer the Truth of what I say before the Tribunal of God,

First, I declare, that I never saw any Order or Commission for King *James's* promoting the Assassination, for which I am condemned; neither do I know of any such Order or Commission.

Secondly, That this Design was not undertaken with any general Knowledge or Approbation of any Body of Men, either Catholick or Protestant.

Lastly, That I did not engage in it on Pre-sumption of any King-killing Principles that could justify such an Undertaking, but was drawn into it by my own Rashness and Passion; for which, and all other Sins, I heartily beseech God to forgive me.

And I hope, that such who think the Misfortune of their Imprisonment or Trouble is derived from my having been engag'd in this Enterprize, or such to whom it has any ways given Scandal, that they will admit me to their Pardon, as I freely and heartily forgive all Mankind. In this Disposition of a sincere Repentance, and true Charity, I commend my Soul into the Hands of God, and hope to find Mercy from him. And for this I beg all your Prayers.

EDWARD KING.

Mr. KEYES'S Paper.

I Am going to appear before the living God; I trust in his Mercy that he will forgive all my Sins committed to this last Moment of my Life. God is just in all his Judgments, and I accept of this Death as the Punishment of my Iniquities. I forgive all my Enemies, and hope, through a hearty Repentance, and the Merits of my Saviour to obtain Mercy.

Have Mercy on me, O Father of Mercy, and thro' thy only Son forgive me all my Sins.

THOMAS KEYES.

After which they were executed as Traitors, and their Quarters expos'd about the City.

CLI. *The Trial of Sir JOHN FREIND, Knight, at the Old-Baily, for High Treason, March 23. 1695. 8 WILL. III.*

Monday, March 23. 1695.

At the Sessions-House in the Old-Baily, this Day came on the Trial of Sir John Freind, Knight, for High Treason, upon an Indictment found by the Grand Jury for the City of London, upon the Sessions of Oyer and Terminer and Gaol-Delivery of Newgate, on Saturday the 21st Instant.

Clerk of Arraignments.



R Y E R, make Proclamation.

Cryer. Oyez, Oyez, Oyez, All Manner of Persons that have any thing more to do at this general Sessions of the Peace, Sessions of Oyer and Terminer, holden for the City of London, and Gaol-Delivery of Newgate, holden for the City of London, and County of Middlesex, adjourned over to this Day; Draw near, and give your Attendance, for now they will proceed to the Pleas of the Crown for the said City, and County; and God save King William.

Cl. of Arr. Make Proclamation again.

Cryer. Oyez, You good Men of the City of London, summoned to appear here this Day, to try between our Sovereign Lord the King, and the Prisoner that is to be at the Bar; answer to your Names as you shall be called every Man at the first Call, upon Pain and Peril that will fall thereon.

Then the Petty Jury were all called over, and the Appearances of those that answered to the Call were recorded.

About ten a Clock the Lord Chief Justice Holt, the Lord Chief Justice Treby, Mr. Justice Ne-vill, and Mr. Justice Rokeby, came into the Court; and there being a great Confluence of the Nobility and Gentry there present, the Prisoner was order'd to be brought to the Bar: Which was done accordingly.

Cl. of Ar. Sir John Freind, hold up thy Hand.

Freind. My Lord, I humbly move that I may have one William Courtney (who is to be a principal Witness for me at my Trial, and is now a Prisoner in the Gatehouse) sent for.

* Sir John Holt. * L. C. Just. Is he your Witness, Sir John?

Freind. Yes, my Lord, William Courtney is his Name.

L. C. J. Sir John, why did not you send, and desire this before?

Freind. My Lord, I did not hear of him while last Night; and I humbly beseech your Lordship, that you will please to let him be sent for.

The Judges consulted among themselves.

L. C. J. Look you, Sir John Freind, I'll tell you, if you'll appoint your Agent to come hither, you shall have an Habeas Corpus ad testificandum: But indeed you might have sent this Morning, and then the Writ might have been got ready.

Freind. My Lord, I did not know so much; for it was last Night before I understood that he was to be a Witness.

L. C. J. You might have sent last Night, or this Morning, and you should have had a Warrant for the Writ.

Freind. I assure your Lordship, I did not know so much.

L. C. J. Well, send your Agent, or your Solicitor, and you shall have a Warrant for the Writ.

Freind. I beseech your Lordship, that he may be sent for, and that the Messenger may make haste.

L. C. J. Let your Solicitor come to my Clerk, and he shall have it.

Freind. My Lord, if you please to give a Rule of Court for it, I suppose it may be done presently.

L. C. J. No, no, Sir John, it must be by Writ, the Keeper of the Gatehouse else cannot bring him.

Fr. My Lord, that will be a long time before it can be done, I desire nothing but that I may have him here to give his Evidence for me.

L. C. J. It will be got ready presently; I believe he will be here Time enough for you to make use of his Testimony.

Fr. But, my Lord, suppose he should not be here: It would be a great Hindrance to me, and a greater Injury to my Trial.

L. C. J. No, no, Sir John, you need not fear any Thing of that Nature, we are not in such Hast; we will not spur you on: But the Warrant shall be made; and do you make what Hast you can to get the Writ, and your Witness brought.

The Lord Chief Justice gave order to Mr. Mason his Clerk, to prepare a Warrant for an Habeas Corpus, directed for the Keeper of the Gatehouse, to bring William Courtney immediately hither to give Evidence.

Cl. of Arr. Sir *John Freind*, hold up thy Hand. (*Which he did.*)

You stand indicted in *London* by the Name of *Sir John Freind*, late of *London*, Kt. for that, Whereas there had been for a long time, and yet is, an open, and notoriously publick, and most sharp, and cruel War by Land, and by Sea, had, carried on, and prosecuted by *Lewis the French King*, against the most Serene, most Illustrious, and most excellent Prince, our Sovereign Lord *William the Third*, by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. All which time the said *Lewis the French King*, and his Subject were, and yet are Enemies of our said Lord the King that now is, and his Subjects. You the said *Sir John Freind*, a Subject of our said Sovereign Lord the King that now is, of this Kingdom of *England*, well knowing the Premises, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor against the said most Serene, most Clement, and most Excellent Prince, our said Sovereign Lord *William the Third*, now King of *England, &c.* your Supreme, True, Natural, Rightful, Lawful, and Undoubted Sovereign Lord; the cordial Love, and the true, and due Obedience, Fidelity and Allegiance, which every Subject of our said Sovereign Lord the King that now is, towards him our said Sovereign Lord the King, should and of right ought to bear, withdrawing, and intending utterly to extinguish, and contriving, and with all your Strength, purposing, designing, and endeavouring the Government of this Kingdom of *England*, under our said Sovereign Lord the King that now is of Right, duly, happily, and very well Established, altogether to Subvert, Change, and Alter, and his Faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery to the aforesaid *French King* to subdue and bring, the first Day of *July*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well as before as after, at *London*, in the Parish of *St. Peter Cornhill*, in the Ward of *Lime-street*, falsely, maliciously, devilishly, and traiterously, did compass, imagine, contrive, purpose, and intend our said Sovereign Lord the King that now is, then your Supreme, True, Natural, Rightful, and Lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England*, to depose, cast down, and utterly to deprive; and our said Sovereign Lord the King to Death and final Destruction to put, and bring, and the aforesaid *Lewis the French King*, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to invade, fight with, overcome, and subdue, to move, incite, procure, and help, and a miserable Slaughter among the Faithful Subjects of him our said Sovereign Lord the King, throughout this whole Kingdom of *England*, to make and cause; and that you the said *Sir John Freind* to the aforesaid Enemies of our said Lord the King that now is, then, and there during the War aforesaid, Traiterously were adhering and assisting; and the same your most impious, wicked and devilish Treasons, and traiterous Compassings, Intentions, and Purposes aforesaid, to ful-

fil, perfect, and bring to effect; and in Prosecution, Performance, and Execution of that traiterous Adhesion, you the said *Sir John Freind*, as such a false Traitor, during the War aforesaid, to wit, the same first Day of *July*, in the Year above said, at *London* aforesaid, in the Parish and Ward aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in *London* aforesaid, falsely, maliciously, advisedly, secretly, and traiterously, and with Force and Arms, &c. with one *Robert Charnock* (late of High-Treason, in contriving, and conspiring the Death of our said Sovereign Lord the King that now is, duly convicted and attainted) and with divers other false Traitors, to the Jurors unknown, did meet, propose, treat, consult, consent, and agree to procure from the aforesaid *Lewis the French King*, of his Subjects, Forces, and Soldiers, then and yet Enemies of our said Sovereign Lord the King that now is, great Numbers of Soldiers and armed Men this Kingdom of *England* to invade and fight with, and to levy, procure, and prepare great Numbers of armed Men, and Troops and Legions against our said Lord the King that now is, to rise up and be formed, and with those Enemies at and upon such their Invasion and Entry into this Kingdom of *England*, to join and unite, Rebellion and War against him our said Lord the King, within this Kingdom of *England*, to make, levy, and wage, him our said Lord the King so as aforesaid to depose, and him to kill and murder; and moreover with the said false Traitors, the same first Day of *July*, in the Year above said, at *London*, aforesaid, in the Parish and Ward aforesaid, Traiterously you did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from you the said *Sir John Freind*, and the same other Traitors unknown, unto and into the Kingdom of *France*, in Parts beyond the Seas, unto *James the Second*, late King of *England*, to propose to him, and desire of him to obtain of the aforesaid *French King*, the Soldiers and armed Men aforesaid, for the Invasion aforesaid to be made; and Intelligence and Notice of such their traiterous Intentions, and Adhesions, and all the Premises unto the said late King *James the Second*, and the said other Enemies and their Adherents, to give and exhibit; and them to inform of other particular Things and Circumstances thereunto relating; as also Intelligence from them of the said intended Invasion, and other Things and Circumstances concerning the Premises, to receive, and the same to you the said *Sir John Freind*, and the said other Traitors in this Kingdom of *England*, to signify, report and declare, in Assistance, Animation, and Aid of the said Enemies of our said Lord the King that now is, in the War aforesaid, and to incite and procure those Enemies the more readily and boldly to invade this Kingdom of *England*; and the Treasons and traiterous Contrivances, Compassings, Imaginations, and Purposes of you the said *Sir John Freind* aforesaid, to perfect and fulfil, and all the Premises the sooner to execute, manage and perform, you the said *Sir John Freind*, during the War aforesaid, so as aforesaid continued, to wit, the same first Day of *July*, in the above said seventh Year of the Reign of our said Lord the King that now is, at *London* aforesaid, in the Parish and Ward aforesaid, falsely and traiterously did procure and obtain to your self, and did receive

ceive and accept of a certain Commission or Writing purporting itself to be a Commission, under and from the aforesaid James the Second, late King of England, to constitute you the said Sir John Freind to be a Colonel of Horse in the Army by you and the other false Traitors against our said Lord the King that now is, within this Kingdom of England to be levied and formed; and in pursuance of the said pretended Commission by you the said Sir John Freind to obtained and accepted of and your Treasons and all your traitorous Intentions aforesaid, the sooner to execute, perform, fulfil, and perfect, you the said Sir John Freind afterwards, to wit the same first Day of July, in the seventh Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, falsely, maliciously, advisedly, secretly, and traiterously, divers Soldiers, and armed Men, and ready to be armed, with Force and Arms, &c. to raise, and lift, and War and Rebellion against our said Lord the King, within this Kingdom of England to make and wage; and to and with the said Enemies of our said Lord the King, Foreigners and Strangers, Subjects and Soldiers of the said Lewis the French King, being about to invade this Kingdom of England, at and upon their Invasion and Entry into this same Kingdom, then shortly expected to be made, themselves together with you the said Sir John Freind to join and unite, and in Troops and Legions to form, did raise, lift, and retain, and did procure to be raised, lifted, and retained; And divers Sums of Money, in and about the raising, listing, and retaining of the aforesaid Soldiers, and Men armed, and ready to be armed upon the Account aforesaid, upon the aforesaid first Day of July, in the seventh Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, falsely, maliciously, and traiterously, did give and pay, and cause to be paid; and those Soldiers and Men, for the Treasons, Intentions, and Purposes aforesaid, then and there, and long after you had in readiness. As also the same first Day of July, in the seventh Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, divers Horses, and very many Arms, Guns, Carbines, Pistols, Swords, and other Weapons, Ammunition, and warlike Things, and military Instruments, falsely, maliciously, secretly, and traiterously you did obtain, buy, gather, and procure, and cause to be bought, gathered, obtained and procured, and in your Custody had and detained, to that Intent to use the same in the said Invasion, War and Rebellion, against our said Sovereign Lord the King that now is, Him our said Lord the King of and from the Regal State, Crown and Command of this Kingdom of England to depose, cast down, and deprive, and him to kill and murder, and all the Treasons, Intentions, Contrivances and Purposes of you the said Sir John Freind, as aforesaid, to fulfil, perfect, and fully to bring to effect; against the Duty of your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity; as also against the Form of the Statute in this Case made and provided.

What say'st thou, Sir John Freind, Art thou guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Freind. Not Guilty, my Lord.

Cl. of Arr. Culprit, How wilt thou be tried?

Freind. By God and my Country.

Cl. of Arr. God send thee good Deliverance.

Freind. I don't know any thing of it, I am as Innocent as the Child unborn.

The Warrant for the Habeas Corpus was signed by the Lord Chief Justice Holt, and delivered to the Prisoner, who sent it away to the Crown-Office by his Solicitor, to get the Writ sealed.

Freind. My Lord, I have something to move, if your Lordship please to hear me, and the rest of my Lords the Judges; That if any Matter of Law do arise upon my Trial, I may be heard by my Council, that you may not destroy me without Law.

L. C. Just. Look you, Sir John Freind, if any Matter of Law do arise at your Trial, and you will tell us what that Matter of Law is, and the Court see that it is a Matter of Doubt, we can, and ought, and no question shall assign you Council; but that is time enough when such Matter does arise.

Freind. My Lord, It is well known to your Lordship, and all the Court, that I am not a Lawyer; but, I hope, as you are of Council for the King as Judges of Law, so you will be of Council for me; for I am not a Lawyer, and cannot know whether any Matter that arises be Law or no; and therefore I humbly beseech your Lordship to be so just and kind, as to tell me whether it be Law or not Law, and I submit myself to your Lordship's Direction.

L. C. J. Sir John Freind, We are bound to tell you when any thing of that Nature appears before us, and to let you have all the Benefit of the Law that possibly you can have; for we are obliged to be indifferent between the King and you.

Freind. My Lord, I don't question it. I desire also I may have Pen, Ink, and Paper.

L. C. Just. Yes, yes, by all means.

(And he had them.)

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez: You good Men of the City of London, summoned to appear here this Day, to try between our Sovereign Lord the King, and the Prisoner that is at the Bar, who have been called, and made Default, answer to your Names, and save your Issues.

Then the Defaulters were call'd over.

Cl. of Arr. You the Prisoner at the Bar, these Men that you shall hear call'd, and personally appear, are to pass between our Sovereign Lord the King, and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, before they be sworn.

Cryer. Call Thomas Clark.

Freind. Pray, Sir, how many may I challenge?

L. C. J. Look you, Sir John, you may challenge, that is, except against 35, without shewing any Cause: If you don't like them to be of the Jury, you may refuse them; and as many others, as you have Cause to except against.

Fr. My Lord, I humbly beseech you, that because perhaps I may mistake in numbring, that I may have timely Notice before the 35 be excepted against, or else it may occasion me a great deal of Prejudice.

L. C. J. Sir, the Clerk shall take care of that, he shall inform you how many you challenge, and you shall receive no Prejudice of that Kind, or by any Slip in point of Form.

Cl. of Arr.

Cl. of Arr. Cryer, call *Thomas Clark*.
(*Who appeared.*)

Fr. Pray, Sir, must I not see the Gentleman?

L. C. J. Yes, yes, by all Means.
(*He was shewn to him.*)

Fr. You may swear *Mr. Clark*; I do not except against him. I desire but honest Gentlemen, and I shall come off I warrant you: I am as innocent as the Child unborn.

L. C. J. Swear *Mr. Clark*.

Cl. of Arr. Hold him the Book; (*which was done*) look upon the Prisoner; You shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and Prisoner at the Bar, whom you shall have in Charge, according to your Evidence. *So help you God.*

Cl. of Arr. *Nathan Green*.

Fr. I except against him.

Cl. of Arr. *Thomas Emms*.

Fr. I accept of him for a Juryman, I have nothing to object against him. (*He was sworn.*)

Cl. of Arr. *Francis Byer*.

Fr. Pray let me see him (*he was shewn to him*) I do except against him, I challenge him.

Cl. of Arr. *Benjamin Dry*.

Fr. I except against him.

Cl. of Arr. *James Demew*.

Fr. I accept him, I have nothing to say against him, I would have him to be a Juryman.

Mr. Demew. My Lord, I am not a Freeholder.

L. C. J. Sir *John*, do you challenge him peremptorily, or do you challenge him for Cause?

Fr. My Lord, I do not challenge him at all, I accept of him.

* *Sir Thomas Trevor.*

* *Mr. Attorn. Gen.* If he have no Freehold, we that are for the King will except against him; for I would not have any Body that is not a Freeholder serve upon the Jury.

Cl. of Arr. *Henry Hunter*.

Fr. Pray, my Lord, is this Gentleman that was called before laid aside? He is not one that I challenge.

L. C. J. No, no, he is challeng'd by the King's Council, as no Freeholder.

Fr. Then he is only set aside, I suppose; I speak it for this Reason I would not be mistaken in my Number.

L. C. J. Care shall be taken of all that, he is not to be reckoned as one that you challenged, he is challenged for want of Freehold by the King's Council.

Cl. of Arr. What say you to *Mr. Hunter*?

Fr. I accept of *Mr. Hunter*, let him be sworn.
(*Which was done.*)

Cl. of Arr. *John Cox*.

Mr. Cox. My Lord, I have no Freehold in London.

Mr. Att. Gen. Then let him be set aside.

Cl. of Arr. *George Bodington*.

Fr. I except against him.

Cl. of Arr. *John Hedges*.

Fr. I except against him.

Cl. of Arr. You challenge him, Sir, do you?

Fr. Yes, yes, I do.

Cl. of Arr. *John James*.

Fr. I challenge him.

Cl. of Arr. *Thomas Poole*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Arr. *Peter Parker*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Arr. *George Grove*.

Fr. I except against him, for I have him not in my Pannel.

L. C. J. How comes that?

Fr. I can't tell, my Lord, I have been kept alone while *Saturday* last, only that worthy Gentleman (*bowing to Mr. Baker*, the Prosecutor for the King) was with me to give me Notice of my Trial before.

Cl. of Arr. *Nathaniel Wyersdale*.

Fr. I challenge him.

Cl. of Arr. *Samuel Blewitt*.

Fr. I challenge him.

Cl. of Arr. *James Bodington*.

Fr. I challenge him.

Cl. of Arr. *John Wolfe*.

Fr. Sir, I do assure you I have him not in my Pannel, upon my Word, I challenge him.

Cl. of Arr. *Samuel Jackson*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Arr. *Nathaniel Long*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Arr. *Richard Chiswell*.

Fr. I challenge him.

Cl. of Arr. *George Child*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Arr. *William Walker*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Arr. *John Wills*.

Fr. I challenge him.

Cl. of Arr. *John Hibbert*.

Fr. I challenge him.

Cl. of Arr. *John Pettit*.

Fr. I challenge him.

Cl. of Arr. *James Robinson*.

Fr. Sir, he is not in my Pannel upon my Word.

Cl. of Arr. He is in the Original Pannel.

Mr. Sheriff Buckingham. My Lord, here is the Original Pannel, and here's his Name here; and there is not a Person in this Pannel, but what was originally put in, except it be about five or six at the End, and this is none of them.

Fr. I challenge him.

Cl. of Arr. *Thomas Hollis*. [*He did not appear.*]

L. C. J. Pray, Sir *John*, who had you that Copy from? Who gave it you?

Fr. My Solicitor.

Mr. Trotman. My Lord, he had none from me I am sure: I received the Pannel from the Sheriff, but no Body, from Sir *John*, was ever with me for a Copy.

Fr. My Lord, my Solicitor brought it to me on *Saturday* Night.

L. C. J. Who is your Solicitor, that gave you that Copy?

Fr. His Name is *Mr. Burleigh*, my Lord.

L. C. J. Where is he? Let's see this *Mr. Burleigh*.

Fr. My Lord, he is gone to the Crown Office it seems, for the *Habeas Corpus*.

Mr. Justice Rokeby. It is your own Solicitor that has put the Abuse on you, if it be so.

Cl. of Arr. *Thomas Hollis*. (*He did not appear.*)

L. C. J. Pray, Sir *John Friend*, how many have you in all?

Fr. In Number, my Lord? would you have me tell you how many I have in Number?

L. C. J. Aye, in Number in your Copy of the Pannel.

Mr. Sh. Buckingham. In the Pannel there are above Fourcore.

Fr. I have seventy one, my Lord.

[*Then Thomas Hollis appeared.*]

Cl. of Arr.

Cl. of Ar. Do you challenge him, Sir?

Mr. Sh. *Buckingham*. Pray let the Secondary produce his Pannel that he had from my Brother and me, and I am sure the Court will find they were all named in that Pannel.

Mr. *Trotman*. My Lord, I have the Pannel, but they never came to me for a Copy, as I expected: I had got one ready; if Sir *John Freund*, or any Person for him, had sent to me, they might have had it.

Mr. Sh. *Buckingham*. And these People that are not in Sir *John Freund*'s Pannel, are none of the half Dozen that were added, when we came to the Knowledge of them, that they were Freeholders.

L. C. J. When were they added, Sir?

Mr. Sh. *Buck*. They were added on *Friday* in the Afternoon, and it seems he never came for the Pannel to the proper Officer, and those that he objects against were not added, but are in the original Pannel.

L. C. J. Truly I can't see any Body is to blame in this Matter but your own Solicitor.

Mr. *Trotman*. My Lord, I assure you I had made a Copy, and I wondered I did not hear of them: I do not know where he got this Copy.

L. C. J. *Treby*. In Truth if you would not send to the proper Officer for a Copy, when you might have had it, you must be content with what you have; for no Body is bound to give you a Copy unless you ask for it.

L. C. J. Well, what say you to *Thomas Hollis*?

Fr. I challenge him, my Lord, for he is not in my Pannel.

Cl. of Ar. *John Sherbrook*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. *James Blackwell*.

Fr. He is not in my Pannel, upon my Word, my Lord.

L. C. J. I can't help it, he is in the Sheriff's Pannel that is returned here.

Fr. I challenge him.

Cl. of Ar. *Thomas Gardner*.

Fr. I accept of him.

Mr. *Gardner*. My Lord, I am no Freeholder in the City.

Mr. *Justice Rokeby*. Mr. *Gardner*, have you not lately conveyed away your Freehold?

Mr. *Gard*. No, indeed, my Lord, I never had any.

Cl. of Ar. *William Prince*.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. *John Simons*.

Fr. I challenge him.

Cl. of Ar. *Robert White*.

Fr. I challenge him.

Cl. of Ar. *Joseph Morewood*.

Fr. I accept him; his Name is *John* I suppose, for so it is in my Pannel.

Cl. of Ar. No, it is *Joseph*.

Mr. *Morewood*. My Name is *Joseph*.

Fr. Well, Sir, I accept of you, I don't question but you are an honest Man. (*He was sworn.*)

Cl. of Ar. *Cryer*, countez. *Thomas Clark*.

Cryer. One, &c. (*So of the rest to the last.*)

Cl. of Ar. *Joseph Morewood*.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Jury were these.

<i>Thomas Clark,</i>	<i>Nathaniel Long,</i>
<i>Thomas Enms,</i>	<i>George Child,</i>
<i>Henry Hunter,</i>	<i>William Walker,</i>
<i>Thomas Poole,</i>	<i>John Sherbrook,</i>
<i>Peter Parker,</i>	<i>William Prince, and</i>
<i>Samuel Jackson,</i>	<i>Joseph Morewood.</i>

Cl. of Ar. *Cryer*, make Proclamation.

Cryer. Oyez. If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney General, or this Inquest now to be taken, of the High-Treason whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance; and all Jury-men of *London*, that have been called, and have appeared, and are not sworn, may depart the Court.

Cl. of Ar. Sir *John Freund*, hold up thy Hand, (which he did.) You that are sworn, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of Sir *John Freund*, late of *London*, Knight, (prout in the Indictment, *mutatis mutandis.*) And against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Tryal hath put himself upon God, and the Country, which Country you are; your Charge is to enquire, Whether he be Guilty of the High-Treason whereof he stands indicted, or Not Guilty; if you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the Time of the High-Treason committed, or at any Time since; if you find him not Guilty, you are to enquire if he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty; if you find him Not Guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. *Mountague*. May it please your Lordship, and you Gentlemen of the Jury; This is an Indictment of High-Treason, that is brought against Sir *John Freund*, the Prisoner at the Bar, for associating with, and aiding the King's Enemies, with a Design to procure an Invasion from *France*, and to raise a Rebellion within this Kingdom, and this was to depose the King, and to restore the late King *James*; and in order to the Effecting these his wicked Purposes, the Indictment sets forth, That the first of *July* last, he did meet, and consult, and agree with one Mr. *Charnock* (a Gentleman since tried, convicted and attainted of High-Treason) how they should procure an Army from *France*, to come and invade this Kingdom: And should raise a sufficient Number of Men, to facilitate the Landing of the *French*; and the Indictment particularly charges the Prisoner at the Bar, with sending Mr. *Charnock* into *France*, to the late King *James*, to acquaint him with the Design, and to desire him to procure a great Number of Forces from the *French* King, to come here, and land within this Kingdom: And the Indictment does likewise charge him with procuring and receiving a Commission from the late King *James* to constitute him, the Prisoner at the Bar, a Colonel of Horse; and likewise with laying out, and expending, and paying several Sums of Money in listing and keeping Soldiers and Men in pay under him, which were to be in his Regiment; and with laying out several Sums of Money in buying Arms and Horses for this Invasion and Rebellion that was thus designed to be made, and raised with-

in this Kingdom. To this, Gentlemen, he has pleaded Not Guilty; we shall call our Witnesses, and prove the Fact, and we do not doubt but you will find him so.

Freind. Prove this if you can; it cannot be.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury; the Prisoner at the Bar, Sir *John Freind*, stands indicted of High-Treason, in compassing, and imagining the Death of the King, and likewise in adhering to the King's Enemies.

Gentlemen, the Overt-Acts laid in the Indictment to prove this Treason, are these:

That the Prisoner at the Bar did accept a Commission from the late King *James*, to raise a Regiment of Horse in this Kingdom, in order to join with the *French*, when they invaded it; and there were several Meetings, and Consultations between him, and several others whom you will hear named by the Witnesses, upon which it was resolved to send a Messenger, one *Charnock*, into *France*, to desire the late King *James* to prevail with the *French* King to get a Number of Men, in all 10000, with an Assurance, that they would assist him with a Number of Horse when he came: And in Pursuance of this Design, the Prisoner at the Bar did raise Men, and pay some Sums of Money for their Subsistence, and listed, and had them in Readiness; and provided Horses and Arms. These are the Overt-Acts laid in the Indictment; the Evidence that will be produc'd to you, to prove this Treason, and these Overt-Acts, will be in this Manner.

Gentlemen, you will see by the Evidence, that there has been a Design and Conspiracy on Foot for several Years, to assassinate the King's Person, and to have an Invasion from *France* at that Time, by armed Force here to subdue this Kingdom. The Prisoner at the Bar, Sir *John Freind*, I think about two Years ago had a Commission sent him from the late King *James*, to raise a Regiment of Horse: There were several other Commissions sent likewise, but one was sent to the Prisoner, which he accepted of; and in Pursuance of it, he appointed several Officers, and listed several Men for that Purpose, and expended several Sums of Money for the raising, and subsisting of them.

Gentlemen, you will hear that his Lieutenant-Colonel was to be one *Blaire*, and his Major was to be one *Slater*; and this *Slater's* Father was a Clergy-Man, and he undertook to bring in a Troop of Clergy-Men that had refused to take the Oaths. One of his Captains was one *Evans*; one *Richardson* was another; and there were several other Officers whom you will hear named by the Witnesses, that were appointed, and engag'd to make up the Regiment.

Gentlemen, you will hear further by the Witnesses, that about *May*, or *June* last, they having raised a considerable Number of Men, there were several Meetings had between the Prisoner at the Bar, and several other Persons, in order to send some Person over to get Forces from *France*, to invade this Kingdom. The first Meeting, that you will hear of, was at the *Old King's Head-Tavern* in *Leadenball-Street*, and there were present the Prisoner at the Bar, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Perkins*, Mr. *Charnock*, (who was lately condemned and executed

for the Design of murdering the King) Mr. *Porter*, and one *Cook*. At that Meeting you will hear what their Debates were, and what their Resolutions: After several Debates, who they should send, they resolved to send Mr. *Charnock*, to go into *France*, to desire the late King *James* to get 10000 Men of the *French* Troops, to land upon our Coasts about 8000 Foot and the rest Horse and Dragoons: And they did impower him in their Names, to assure the late King *James*, that they would, whenever he landed with his *French* Troops, be ready to assist him with near Two thousand Horse among them.

Upon this, Gentlemen, Mr. *Charnock* undertook to go upon this Message: But about a Week after they met again, for he was unwilling to go upon such an Errand, without having a full Resolution and Assurance from these Gentlemen that were thus engaged, that he might satisfy the late King what they would certainly do. So they met again about a Week after, and that was at a Tavern in *St. James's-Street*, near Sir *John Fenwick's* Lodgings, one Mrs. *Montjoy's*; there was the Prisoner at the Bar, my Lord of *Aylesbury*, and most of the same Company that were at the Meeting before: And Mr. *Charnock* desired to know, if they did agree to what had been proposed and resolv'd on before; for he was unwilling, and did not care to go without a full Assurance of the Performance. They did all agree, and desired that he would go with all Speed, and that he should assure King *James*, they would be ready to meet him, if they had Notice where he would land.

Pray, Gentlemen, observe the Time when these Meetings were. It was in *May* or *June* last, soon after the King was gone to *Flanders*; and they thought this a fit Opportunity, when the King's Forces were drawn out of *England* into *Flanders*, for carrying on the Campaign, then was the proper Time, according as they discoursed the Matter, the People being as they said, generally dissatisfied, and but few Forces in *England* to oppose them.

Mr. *Charnock* accordingly went over into *France*, and about a Month after return'd again, and acquainted them that he had told King *James* their Resolution, and how they would assist him, and what they desired of him, and in short, had delivered his Message: But that King *James* told him, he thank'd them very much for their Kindness and Readiness to assist him; but at that Time the *French* King could not spare any Forces, nor could it be all that Summer, and so there was nothing to be done; and thereupon it rested till the last Winter.

Then, Gentlemen, you will hear, that the last Winter the Design was renewed again, about *January* last: For Sir *George Barclay* came over from the late King, being a Lieutenant in his Guards there, and then they entered into a Conspiracy to assassinate the King; and that was to be done first, to facilitate the Invasion, which was to follow immediately upon the Execution of the Assassination: For they thought they could have no Assurance of Success in their Invasion, as long as the King lived; and I hope every one will take Notice, how precious that Life is to us, when it is so apparent to all the World, that our Enemies cannot hope

for any Success to their Enterprizes and Designs to destroy us, but by taking that Life away.

Gentlemen, this very Conspiracy, you will hear the Prisoner at the Bar was acquainted with, and privy to, even this Assassination; tho' indeed you will hear he did not much approve of it, because he thought it would be a Diservice to the late King's Affairs; but he was at several Meetings with Mr. Porter, and Mr. Charnock, and Sir William Perkins, and several others that were Conspirators in that Design, and was acquainted with it, as you will hear by the Evidence.

Gentlemen, you will hear further, that about *January* last, the Invasion being intended to be quickly made, the Prisoner at the Bar, Sir *John Freind*, had frequent Meetings with *Blair*, that was Lieutenant-Colonel, and other Officers, to consider and prepare how to be in a Readiness. About that Time the Prisoner at the Bar, Captain *Blair*, and one Captain *Ridley*, met at a Place in *Exchange-Alley*, and there they discoursed among one another; and there *Ridley* said, there was a considerable *Roman-Catholic* that was sent to King *James*, and he would bring the last Orders; and Sir *John Freind* said he knew of it very well, it was so, and he hoped he should have them brought very quickly.

At another Time, the Prisoner at the Bar, and *Blair* his Lieutenant-Colonel, met at *Jonathan's Coffee-House*, and the Prisoner took him up in his Coach, and carried him along with him, and there they had a great Discourse of the Affairs of the Regiment. The Prisoner at the Bar, Sir *John Freind*, told *Blair* they must be very good Husbands of their Money: For if the Invasion should miscarry, he should not have Money enough to carry on his Trade, but he would take Care about some Officers that had not Money to mount themselves; but a great many were to prepare for themselves at their own Charges, and for those that were to be under them. They had likewise then some Discourse about the *Toulon* Fleet coming about, and that he thought it not advisable till the *Toulon* Fleet came round. He said he would not put a Foot in the Stirrup till that were done; and that he would keep out of the Way till all was in a Readiness, and advised Captain *Blair* to do so too.

Gentlemen, you will find it further proved, that about *May* last, the Prisoner at the Bar paid 20*l.* to this Captain *Blair*, who had laid out Monies in the Affairs of the Regiment, and this was to reimburse him what he had so laid out; and it was in this Manner: You have all heard, I suppose, of one Colonel *Parker*, who being taken upon his coming over from *France*, was a Prisoner in the *Tower*, but made his Escape from thence, to which Escape the Prisoner at the Bar was privy. This Escape cost 300*l.* as you will hear, and the Prisoner laid down 100*l.* of it. But this was to be repaid him again: But how was it? There was one *Johnson* a Priest, a Conspirator likewise in this Design of Assassinating the King, and he undertook and promised, that the late King should pay this 100*l.* And accordingly one *Piggott* went over into *France*, and had this 100*l.* paid him by King *James*, to repay it to Sir *John Freind*: But he thought fit to keep the Money, and Sir *John Freind* could not get it of him,

and he durst not ask it, because he knew the Consideration was not fit to be made publick. But he told Captain *Blair*, I cannot pay you the Money out of my own Pocket; but *Piggott* ought to pay me, who has receiv'd this Money of mine. If you will prevail with *Johnson*, who got this Money from the late King to be paid to *Piggott*, to persuade *Piggott* to pay 20*l.* I will allow it in Part of the Money he is to pay me, and you shall have it. Captain *Blair* did prevail with *Johnson* to persuade *Piggott* to pay this 20*l.* and Captain *Blair* did receive it, and Sir *John Freind* did agree to allow it to *Piggott* out of the 100*l.* due to him.

Gentlemen, at another Time, about *Christmas* last, there was another 20*l.* paid by Sir *John Freind's* Order and Direction, by *Piggott* to *Blair* upon the same Account, by the Mediation of *Johnson* the Priest; and this was paid and allow'd, as being laid out in the Affairs of the Regiment before, he being intrusted as Lieutenant Colonel, to look after the Regiment.

Gentlemen, I have now open'd the Substance of the Evidence; the Particulars you will hear from the Witnesses themselves. If I have open'd it amiss, you will take Care, when the Witnesses are produced, to observe what they say, who will tell you what really was done, and will rectify any Mistake of mine: For I would have no such Mistake do the Prisoner at the Bar any Prejudice.

Mr. *Sol. Gen.* [Sir *John Hawles.*] Gentlemen, Mr. Attorney has open'd the Nature and Course of our Evidence so fully, that I shall make no Repetition of any of the Particulars; but call our Witnesses and prove it in Order as it hath been open'd. And first, we call Captain *George Porter*.

(*Who came in.*)

Freind. My Lord, before Mr. *Porter* is sworn, I desire to know whether he is a Roman Catholic, or a Protestant?

L. C. J. Why do you desire that? Is not a Roman Catholic a Witness? Though he be a Roman Catholic, that's no Objection to his being a Witness.

Freind. My Lord, I desire to ask him the Question, whether he be a Roman Catholic or no?

L. C. J. Sir *John Freind*, it is not a proper Question.

Freind. My Lord, a Man ought to know what Profession they are of, that are Witnesses against him for his Life.

L. C. J. Will you ask him whether he be a Christian or no?

Freind. My Lord, I desire to know whether he be a Papist or a Protestant.

Mr. *At. Gen.* If Mr. *Porter* be willing to tell you, he may; but it is not a proper Question.

L. C. J. Especially before he is sworn; he is not intitled to ask any Questions whatever, till he be sworn.

Freind. My Lord, I beseech you let me have the Question answered.

Mr. *Sol. Gen.* Sure you don't consider, that the Answer to that Question is to accuse himself; you don't consider the Consequences of it.

Freind. Pray, my Lord, let me have my Right.

L. C. J. The Question is whether it is your Right or no.

Freind. My Lord, I would not trouble the Court

Court if I could help it, but my Life and All is at Stake, and I must make the best Defence I can.

L. C. J. Indeed your Question is improper in itself; but if he have a Mind to tell you, and answer voluntarily, he may.

Freind. I humbly beg your Lordship that he may answer the Question.

L. C. J. I cannot see you have a Right to have this Question answered you.

Freind. Mr. *Porter*, you are a Gentleman, and I desire you will answer whether you be a Roman Catholick or not?

Mr. Sol. Gen. Before he does answer, I desire he may be acquainted with the Danger: He was born a Protestant, no doubt, and then turning Roman Catholick, he subjects himself to a very severe Penalty.

L. C. J. Sir *John Freind*, I told you your Question was not proper to be ask'd.

Freind. Pray, my Lord, let him answer the Question, it will be of great Use to me in my Tryal; pray let me have my Right.

L. C. J. You shall have all the Right done you that can be; but in the first Place, if a Man be a Roman Catholick, notwithstanding his Religion, he is a good Witness: And besides that, it may be, his answering the Question may subject him to several Penalties; at least he is liable to Prosecution upon several Acts of Parliament that are very penal; and therefore it is by no Means to be ask'd.

Freind. My Lord, I pray only that he may answer the Question.

L. C. J. No Man is bound to answer any Question that tends to make him accuse himself, or subject him to any Penalties.

Fr. My Lord, I do with Submission desire it, and it is no great Matter for him to say whether he be Papist or Protestant.

L. C. J. If it be no great Matter, then why do you insist upon it? But perhaps it may be a great Matter in the Consequence of it to him; a Man therefore is not obliged to answer any such Questions.

Fr. I beseech your Lordship, let him answer the Question.

L. C. J. You have my Opinion; if you will, you shall have the Opinions of the rest of the Judges: My Opinion is, That the Question ought not to be answer'd.

L. C. J. Treby. Since your Lordship's Pleasure is, That we should deliver our Opinions upon this Point, I must declare, I am of the same Opinion, That no Man is bound to answer any Questions that will subject him to a Penalty, or to Infamy. If you should ask him, whether he were a Deer-stealer, or whether he were a Vagabond, or any other Thing that will subject him to Punishment, either by Statute or by Common-Law, whether he be guilty of a Petty Larceny, or the like, the Law does not oblige him to answer any such Questions.

Fr. Well, I hope the Jury will consider it, that he will not answer the Question; and therefore they are to take it for granted that he is so.

L. C. J. Treby. And now to this present Purpose, to ask a Man whether he be a *Popish* Recusant, is to subject him to Danger: For when you ask him that Question, if he were not bred up in that Religion, then for him to own himself of that Religion now, is to own as great a Crime as that you are charged with. If it were not so,

but he was always bred in that Religion, yet there are very great Penalties that he is subject to, as, the Confiscation of two third Parts of his Estate, and several other Things that he may be liable to, if he should disclose that upon his Answer to the Question, which without this Discovery could not be prov'd perhaps. We must keep the Law steady and even between the Prisoner and the Witnesses.

Mr. Justice Newil. I am of the same Opinion, it does subject him to a Penalty; and unless he will voluntarily answer it of himself, I think it cannot be demanded of him: For he may subject himself to a Prosecution by it.

Mr. Just. Rokeby. I think, it is not a Question that can of Right be imposed upon him; he may answer it, if he will; but he is under no Obligation to answer it, because it may tend to accuse himself of a Crime for which he may be prosecuted, and likewise will subject him to other Penalties, which the Law cannot compel him to subject himself to.

(Then Captain Porter was sworn.)

Freind. I hope, Gentlemen of the Jury, you'll consider this.

Mr. Sol. Gen. Mr. *Porter*, do you know Sir *John Freind*, the Prisoner at the Bar?

Capt. Porter. Yes, Sir.

Mr. Sol. Gen. Pray then will you give my Lords and the Jury an Account what Meetings you have had with him, where those Meetings were, and when, and what pass'd between you, about inviting the *French* over hither, or for a Rising here.

Capt. Porter. My Lord, about the latter End of *May* last or the Beginning of *June*, we had two Meetings, one was at the *King's-head* in *Leadenball-street*, the other at Mrs. *Mountjoy's* in *St. James's-street*. At the first Meeting there were present my Lord of *Ailesbury*, my Lord of *Montgomery*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Mr. *Cook*, Captain *Charnock*, and myself; after Dinner Mr. *Goodman* came in: Now at both those Meetings it was consulted of, and agreed, to send Captain *Charnock* into *France* to King *James*, to desire him to borrow of the *French* King 10000 Men to come over hither, 8000 Foot, 1000 Horse, and 1000 Dragoons. Captain *Charnock* said, he did not care to go upon a foolish Message, and therefore desired to know what they would have him to acquaint King *James* with, and assure him of. They all agreed to meet the King whenever they had Notice of his Landing, with a Body of 2000 Horse; of which every one in particular was to bring their *Quota* where-ever he would appoint.

Mr. Attorn. Gen. When was the second Meeting?

Capt. Porter. That was at Mrs. *Mountjoy's*.

Mr. Att. Gen. But I ask you when it was? how long after the first?

Capt. Port. I believe it was about a Fortnight after, or so.

Mr. Att. Gen. What was that Meeting for?

Capt. Port. The second Meeting was to confirm the first. Captain *Charnock* informed me, that he was to go within three or four Days, and therefore desired to have a Meeting before he went.

Mr. Att. Gen. What Discourse was there at that

that second Meeting? What Occasion was there for it?

Capt. Port. Capt. Charnock desired the Meeting once more before he went, to see whether we all kept our Resolution.

Mr. Soll. Gen. Pray, what do you know of Sir John Freind's agreeing to raise a Regiment of Horse?

Captain Port. I know nothing of that Matter, but what I have heard several People talk; but I have heard him say he would be as ready as any Man, whenever the King came; and I have heard from Capt. Charnock, and from Sir William Perkins, that he had a Commission to be a Colonel of Horse.

Mr. Att. Gen. Pray, Sir, upon that second Meeting, who were present?

Capt. Port. I told you, Sir, the Prisoner at the Bar was present at both Meetings.

Mr. Soll. Gen. Who else were there?

Capt. Port. My Lord of Ailesbury, Sir William Perkins, Capt. Charnock, and I cannot tell whether my Lord Montgomery and Mr. Goodman were there; Mr. Cook and myself were there, but the Prisoner at the Bar I am sure was there.

Mr. Soll. Gen. Pray, Capt. Porter, will you remember and recollect yourself, who were at the first Meeting?

Capt. Port. I have named them already, Sir.

Mr. Soll. Gen. Name them again then.

Capt. Port. My Lord of Ailesbury, my Lord Montgomery, Sir John Freind, Sir William Perkins, Sir John Fenwick, Capt. Charnock, Mr. Cook; and myself; we dined there, and after Dinner Mr. Goodman came in.

Mr. Att. Gen. Pray, Sir, when did you see Mr. Charnock after this, and what Discourse had you with him about his Journey and the Success of it?

Capt. Porter. I never saw him till 3 or 4 Days after our Riot Business in Drury-lane, upon the Account of which I had been a Prisoner in Newgate.

Mr. Att. Gen. Well, and what did he say to you?

Capt. Porter. He told me that he had been in France, but that King James told him, the French King could not spare so many Men that Year; and withal, that he had been with Sir John Freind, and the several other Persons, with Messages from the King, but I do not know whether he had been there or no, only as he told me, that he had been, and brought that Answer.

Mr. Att. Gen. Pray now tell us, what other Meetings you have had about this Matter this Winter.

Capt. Porter. I was once with Sir George Barclay and Sir John Freind, at the Nagg's-head in St. James's-street; I cannot tell what Discourse they had, they whispered among themselves.

Mr. Att. Gen. Who else was there?

Capt. Port. There was Sir George Barclay, Sir William Perkins, myself, Mr. Ferguson, and one Humes.

L. C. J. Where was that, do you say?

Capt. Port. At the Nagg's-head in St. James's-street.

Mr. Att. Gen. Was there any Body else there that you can remember?

Capt. Port. Capt. Charnock came in after Dinner, but I cannot say he din'd there.

Mr. Att. Gen. And who else do you remember?

Capt. Port. There came in one Harrison after Dinner; he is a reputed Romish Priest, and goes by the Name of Jobyson.

Mr. Mountague. Pray, Capt. Porter, what was that Meeting for?

Capt. Port. They had several Whisperings among themselves, but what they discoursed of I cannot tell.

Mr. Mountague. Pray, did Sir John Freind say any Thing that you heard at that Meeting.

Capt. Port. Sir George Barclay did say, that some People that were not so violent had written over into France to stop this Business; upon which, said I, I hope you will have no Letter to Night. Upon which Sir John Freind said, is there any thing that is hid behind the Curtain? If there be, I am not fairly dealt withal; I will proceed no further.

Mr. Att. Gen. If Sir John Freind has a mind to ask him any Questions, he may.

L. C. J. Pray, Capt. Porter let me ask you this Question, Did all that were present at the first Meeting, at the King's-head in Leadenhall-street, agree to send Mr. Charnock into France to the late King?

Capt. Port. Yes, my Lord.

L. C. J. All of them?

Capt. Port. Yes; we desir'd Captain Charnock to answer to the King for us that we would meet him at the Head of 2000 Horse.

L. C. J. Did Sir John Freind agree to it?

Capt. Port. Yes, I do positively affirm he did.

L. C. J. Then the second Meeting, which, you say, was at Mrs. Mountjoy's, what was said then?

Capt. Port. We did agree all, That Capt. Charnock should go on with the Massage that was resolved upon at the first Meeting; and we would go on with the Business, and he said he would go away in two or three Days.

Mr. Att. Gen. Will Sir John Freind ask him any Questions?

Fr. I will only ask him, if they have done, whether he has any thing more to say.

Capt. Port. No, Sir.

L. C. J. The King's Council have done with him.

Fr. Then, my Lord, I will hear all they can say, and when I have heard the whole Evidence, I shall know how to answer to it.

L. C. J. Before you go, Captain Porter, I would ask you, What Answer Mr. Charnock brought back from France?

Capt. Port. I say, I did not meet with Captain Charnock, till after I came out of Newgate for the Riot Business, and then he told me, he had been there, and he had acquainted the several Gentlemen with the Messages he had brought from King James, who thank'd them for their Kindnesses, but the French King could not spare so many Men that Year.

Mr. Sol. Gen. Then the next that we call is Brice Blair, (who was sworn). Pray, Sir, do you know the Prisoner at the Bar, Sir John Freind?

Capt. Blair. Yes, my Lord; and I am very sorry to come on such an Account as I do now against him. I am sorry for it with all my Heart—

Mr. Att. Gen. Well, Sir, pray will you give

an Account what you know of Sir *John Freind's* having a Commission from the late King to be a Colonel of Horſe, and when it was, and how; pray tell my Lord and the Jury the whole Matter.

Capt. *Blair*. All that I can ſay to this Buſineſs is written in my Paper, and I refer to my Paper.

Mr. *At. Gen.* You muſt not refer to your Paper, Sir, you muſt tell all what you know.

L. C. *J.* He may look upon any Paper to reſreſh his Memory.

Capt. *Bl.* I did ſee the Commiſſion, Sir, and I did read it.

Mr. *At. Gen.* What Commiſſion was it, Sir?

Capt. *Bl.* It was a Commiſſion from King *James*, to Sir *John Freind*.

Mr. *At. Gen.* Where did you ſee it, Sir?

Capt. *Bl.* I ſaw it in his Lodgings at the *Strand*, when he lived near the *Strand* in *Surrey-ſtreet*.

Mr. *At. Gen.* Who ſhew'd it you?

Capt. *Bl.* He ſhew'd it me himſelf.

Mr. *At. Gen.* What was it for?

Capt. *Bl.* It was for Raiſing a Regiment of Horſe.

Mr. *At. Gen.* When was it that you did ſee it? How long ago was it?

Capt. *Bl.* It is well near two Years ago, or thereabouts, as I remember.

Mr. *At. Gen.* Who was to have been Colonel of that Regiment?

Capt. *Bl.* He was nominated to be Colonel of it himſelf in the Commiſſion.

L. C. *J.* Who was the Commiſſion directed to?

Capt. *Bl.* It was directed to him, to Sir *John Freind*.

L. C. *J.* Well, and what was done upon it? who were to be the Officers?

Capt. *Bl.* He promiſed me to be his Lieutenant Colonel; and I had the ſame from Mr. *Harriſon*, and there were ſeveral Letters that I ſaw, that came from my Lord *Melford* and Secretary *Caroll*, who were with King *James*.

Mr. *At. Gen.* What other Officers were there appointed?

Capt. *Bl.* There was one *Richardſon* was to be one of his Captains, and there was one Mr. *Fiſher* was to be another, and one *Hall* another; *Fiſher* was to be his eldeſt Captain, and one Capt. *Evans* was to be his Captain Lieutenant, and one Captain *Vernatti* was to be another.

Mr. *At. Gen.* Do you remember who was to be his Major?

Capt. *Bl.* No, Sir, I think I cannot be poſitive as to that. I ſpoke to Capt. *Barnesby*, that had been a Lieutenant in King *James's* Service, to be a Lieutenant, and ſometimes he accepted, and ſometimes he reſuſed it.

Mr. *At. Gen.* Pray, what did you do as Lieutenant Colonel upon this Matter?

Capt. *Bl.* I endeavour'd all I could to get Officers for them; and to raiſe Troops. I endeavour'd to get what Men I could my ſelf.

Mr. *Sol. Gen.* Pray what did you do? what Officers did you procure for him?

Capt. *Bl.* I told you *Venatti* and *Fiſher*, and one Mr. *Hall* that lives at *Deal*.

Mr. *At. Gen.* What Troops did you get under you? Did you engage any to ſerve under you?

Capt. *Bl.* What? I my ſelf, Sir, do you mean?

Mr. *At. Gen.* Yes, I do.

Capt. *Bl.* Yes, Sir, I did.

Mr. *At. Gen.* Can you name any of them?

Capt. *Bl.* Yes, Sir, if I make uſe of my Paper.

Mr. *Sol. Gen.* You may make uſe of your Paper to reſreſh your Memory.

Capt. *Bl.* There is a Paper of Names that I gave in before the Council.

L. C. *J.* Mr. *Baker*, have you his Paper there? let him ſee it to reſreſh his Memory.

Mr. *Baker.* I have none of the Papers, my Lord; they are all ſent before the Council.

Mr. *At. Gen.* Pray, Sir, can you tell who was to have been your Lieutenant in your Troop?

Capt. *Bl.* One Mr. *Bertram*.

Mr. *Mountagne.* You ſay, Sir, you were conſtituted Lieutenant Colonel; pray, who conſtituted you, and made you ſo?

Capt. *Bl.* I had only a Promiſe of it from Sir *John Freind*.

Mr. *At. Gen.* Pray, did you lay out any Monies for Sir *John Freind*? or did he ever pay you any Money afterwards?

Capt. *Bl.* Yes, I have had ſeveral ſmall Sums of Money from Sir *John Freind*.

Mr. *At. Gen.* Pray, what was it for?

Capt. *Bl.* It was to drink with the Men that belonged to the Regiment, and encourage them.

Mr. *At. Gen.* Pray, did Mr. *Piggott* pay you any Sums of Money? and by whoſe Order?

Capt. *Bl.* Yes, he paid me firſt 20 *l.* and afterwards he paid me another 20 *l.*

Mr. *At. Gen.* By whoſe Order was that, Sir?

Capt. *Bl.* It was by the Order of Sir *John Freind*.

Mr. *At. Gen.* Pray, Sir, how do you know that Sir *John Freind* order'd him to pay it you?

Capt. *Bl.* Becauſe it was the Money that *Piggott* had received to repay Sir *John Freind*, what he had advanced for the furthering of *Parker's* Escape out of the *Tower*.

Mr. *At. Gen.* How do you know that he advanced any Money for procuring *Parker's* Escape?

Capt. *Bl.* He told me ſo himſelf.

Mr. *At. Gen.* How much did Sir *John Freind* ſay he advanced for that Purpoſe?

Capt. *Bl.* He told me 100 *l.*

Mr. *At. Gen.* How did he tell you he was to be paid it again?

Capt. *Bl.* He told me that King *James* ordered the Payment of it at *France*, when *Piggott* went over, which was immediately afterwards; and I had of that, firſt 20 *l.* and afterwards 20 *l.* by the Order of Sir *John Freind*.

Mr. *Sol. Gen.* Pray, Sir, did Sir *John Freind* tell you what *Piggott* had received in *France*?

Capt. *Bl.* Yes, he ſaid *Piggott* had received 100 *l.* in *France*; and he did not pay it him, but if I could get 20 *l.* of him, he would allow it.

Mr. *At. Gen.* Pray about what Time was it that the firſt 20 *l.* was received?

Capt. *Bl.* I have ſet it down in my Paper; there it is.

Mr. *At. Gen.* But can't you tell about what Time it was?

Capt. *Bl.* It was about laſt *May* or *June*, the firſt 20 *l.* was paid.

Mr. *At. Gen.* When was the laſt 20 *l.* paid?

Capt. *Bl.* It was after I was ſick, about *Michaemas*.

Mr. *Cowper.* Pray, Sir, who was by when the laſt 20 *l.* was paid?

Capt. *Bl.* Mr. *Piggott* paid me the laſt 5 *l.* of it, (for I received it at ſeveral Payments from Mr.

Piggott)

Piggott) but the last 5 l. was before Sir *John Freind*, at *Jonathan's Coffee-House*.

Mr. *Sol. Gen.* Pray, do you know any thing of Sir *John Freind's* Receiving any Letter from King *James*?

Capt. *Bl.* Yes, he told me he had a Letter from King *James*.

Mr. *Sol. Gen.* How long ago was that?

Capt. *Bl.* Truly, I cannot tell.

Mr. *Sol. Gen.* I don't ask you the precise Day, but was it within a Twelvemonth?

Capt. *Bl.* Yes, I believe it might be thereabouts.

Freind. My Lord, I desire he may speak out; for I don't hear half he says.

L. C. J. Repeat it to him again.

Capt. *Bl.* Sir, you told me you had received a Letter from King *James*.

Freind. My Lord, I shall answer to all this afterwards.

Mr. *Sol. Gen.* Pray, had you at any Time any Discourse with Sir *John Freind* about one *Slater*?

Capt. *Bl.* Yes, I had.

Mr. *Sol. Gen.* Pray tell what that was.

Capt. *Bl.* He told me he was to bring him in several Officers; and that he had intended to make two Lieutenant-Colonels, whereof Captain *Slater* was to be one; but when he saw I was not satisfied with that, he said he should command a Troop of non-swearing Parsons, and they should be an independent Troop.

Mr. *Sol. Gen.* You say that *Slater* was to command that Troop.

Capt. *Bl.* Yes, and it was to be an independent Troop.

Mr. *At. Gen.* I think you say that he and you met at *Jonathan's Coffee-House*.

Capt. *Bl.* Yes, we did so.

Mr. *At. Gen.* Pray what Discourse had you there?

Capt. *Bl.* I called him aside and desired to speak to him; and it was when Mr. *Fisber* told me of this Plot, and desired me to speak to him, a little before this horrible Conspiracy broke out. And I told him what I heard from *Fisber*, and from *Harrison* the Priest about it; and he told me that he had heard of it, and he was afraid it would ruin King *James*, and his Affairs.

Mr. *At. Gen.* What was it that you told him you had heard.

Capt. *Bl.* This last horrid Thing, the Conspiracy against the King's Life.

Mr. *Cowper.* Was it before it broke out that he told you he knew of it?

Capt. *Bl.* Yes, it was shortly before it broke out.

Mr. *At. Gen.* Pray, did you meet with him again? And did he carry you in his Coach at any Time?

Capt. *Bl.* Yes, he did, Sir.

Mr. *At. Gen.* What Discourse had you then, when you was with him in the Coach?

Capt. *Bl.* He took me in his Coach to *St. Martin's le grand*, and, says he, I will do nothing 'till the *Tboulon* Fleet meet with the *Brest* Fleet; at that Time, perhaps, we shall be all taken up; but, says he, you may sculk about the 'Town better than I can; and therefore I'll keep myself private; and we must be as good Husbands of our Money as we can; for Money will be very scarce. What do you think you shall need, says he? Truly, Sir, says I, I can't tell; that must

be according as I am mounted. For I found I had a few indigent Officers at that Time.

Mr. *At. Gen.* Pray, what were you to do?

Capt. *Bl.* We were to sculk up and down; and when he asked me what Money I should need, I told him I could not tell; for there were several indigent Officers, most of which begg'd at that Time; and here is a Letter that I had from Sir *John Freind*, to confirm my receiving Money from him.

Mr. *At. Gen.* Is that Sir *John Freind's* own Hand?

Capt. *Bl.* Yes, Sir, it is.

Mr. *At. Gen.* Then put it in, give it hither.

(It was delivered in to the Attorney General.)

Mr. *Sol. Gen.* Pray, what have you heard Sir *John Freind* say of Sir *John Fenwick's* being concerned in this Matter?

Capt. *Bl.* I heard him say, that he believed, that he should command the Party that he was engaged in, and that Sir *John Fenwick* had Four Troops of Horse, that lay near *Reading*, to be employ'd.

Mr. *Sol. Gen.* For what Purpose?

Capt. *Bl.* To be in Readiness upon the Descent.

Freind. Gentlemen of the Jury, I can't hear a Word, I hope you hear.

Mr. *At. Gen.* Pray, Sir, look upon that Letter; you say you had that Letter from Sir *John Freind*, pray, who is that *H.* mentioned in it?

Capt. *Bl.* It means *Harrison*, alias *Johnson*, the Priest.

Mr. *At. Gen.* Pray, what was that Letter written for?

Capt. *Bl.* It was about the last 20 l. that I was to receive from *Piggott*.

Mr. *At. Gen.* Is that Sir *John Freind's* Hand?

Capt. *Bl.* Yes, I think so.

Mr. *At. Gen.* Have you seen Sir *John Freind* write?

Capt. *Bl.* Yes, I have seen him write, and I think it is the same Hand.

Mr. *At. Gen.* Then we desire it may be read.

Then a Jury-man desired he might be asked, Whether he saw Sir *John Freind* write that Letter?

L. C. J. What say you, did you see him write that Letter?

Capt. *Bl.* No, my Lord; it came to my Lodging.

Mr. *At. Gen.* Did he ever own to you he had writ you such a Letter?

Capt. *Bl.* Yes, he did.

Mr. *At. Gen.* Pray, let it be read; read it all, for it is but short.

Cl. of Ar. (Reads)

For Captain *Blair*, These.

S I R,
TUESDAY MORNING.
YOU may much wonder you have not received an Answer of yours before now: I have been afflicted with the Gout in my Hand and Foot, that I have not been able to put Pen to Paper; (I thank God) I am somewhat better, and do hope to be in London a Thursday next, about the Hour of Twelve, at *Jonathan's Coffee-House*, if the Weather do not prevent me; if it do, I shall not come before Monday following: I do desire you for to meet me about that Hour; for it is not convenient for to write a Note to Mr. H. for some Reasons I shall

shall give you, when I see you. I wish you good Health. I am,

S I R,

Your affectionate Friend and Servant,

JOHN FREIND.

Jury-man. Pray, Sir, what Date is it of?

Cl. of Ar. It has no Date but *Tuesday* Morning.

Mr. At. Gen. Did Sir *John Freind* meet you on the *Thursday*, according to this Letter?

Jury-man. My Lord, I desire he may be asked, How this Letter came to him, whether by the Penny Post, or how?

Capt. Bl. I don't know, I believe it was by a Porter: It came first to me when I was in Bed, and my Wife brought it up to me.

Mr. At. Gen. Pray, Sir, answer my Question. Did Sir *John Freind* afterwards meet you at *Jonathan's* Coffee-House, according to this Letter?

Capt. Bl. Yes, Sir, he did.

Mr. At. Gen. And did you there speak about the Business that's contained in that Letter?

Capt. Bl. Yes, Sir, and accordingly I had the Order.

Mr. At. Gen. What Order?

Capt. Bl. An Order for the 20 *l.*

Mr. Sol. Gen. Captain *Blair*, do you remember that you dined with Sir *John Freind*, near the *Exchange*, in *January* last?

Capt. Bl. Yes, I think I did, Sir.

Mr. Sol. Gen. What Discourse was there between you then? Who was with you besides you Two?

Capt. Bl. I must refer that to my Paper.

Mr. Sol. Gen. Well then, what Discourse was between you and Sir *John Freind* there?

Capt. Bl. It is down in my Paper.

Mr. Sol. Gen. Do you know one *Capt. Ridley*?

Capt. Bl. Yes, Sir.

Mr. Sol. Gen. Was he at any Time present when you and the Prisoner at the Bar were together.

Freind. My Lord, I cannot hear a Word he says.

L. C. J. Here is a great Noise indeed, and he, it seems, is not well, and speaks but low; pray, order Silence in the Court.

(Which was done by Proclamation.)

L. C. J. Look ye, Sir *John Freind*, he speaks of a Letter that you sent to him that bears Date some *Tuesday* Morning, that you would be in Town, and meet him at *Jonathan's* Coffee-House upon *Thursday* following, at Twelve a Clock; and that Letter was read, and he says he met you accordingly, and there was Order taken for the Payment of the last 20 *l.* This is that he says; Did you hear it?

Freind. No, my Lord, I did not.

L. C. J. That is what he said. Then go on: You say he met you at *Jonathan's* Coffee-House according to that Letter.

Capt. Bl. Yes, my Lord.

L. C. J. What was done there, when you met?

Capt. Bl. Nothing but the Order.

L. C. J. Who did he give the Order to?

Capt. Bl. He gave the Order to *Harrison*.

L. C. J. Why, was *Harrison* there?

Capt. Bl. Yes, he came there before I came away.

L. C. J. But you say he gave the Order to *Harrison*?

Capt. Bl. Yes, my Lord.

L. C. J. What was the Order for?

Capt. Bl. It was to pay me that Money.

L. C. J. What Money was that?

Capt. Bl. It was the last 20 *l.*

Mr. At. Gen. Was the 20 *l.* paid you afterwards?

Capt. Bl. Yes, Sir.

Mr. At. Gen. Who paid it?

Capt. Bl. *Mr. Piggott*; he paid me the last 5 *l.* of it before Sir *John Freind's* Face.

L. C. J. Was this the first 20 *l.* or the last, do you say?

Capt. Bl. It was the last.

L. C. J. What was this Money paid for?

Capt. Bl. I believe it was to support me to go about the Business of the Regiment.

L. C. J. You believe; that's not enough: But are you sure it was so?

Capt. Bl. Yes, I am sure it was for that.

L. C. J. Had you ever demanded Money of him before?

Capt. Bl. Yes, I had.

L. C. J. For what was that Money that you demanded?

Capt. Bl. It was to drink with the Men that were brought in; to cherish, and keep them together.

L. C. J. To what Purpose were those Men kept together?

Capt. Bl. They were for his Regiment.

Mr. Sol. Gen. Pray, had Sir *John Freind* any Occasion to pay you any Money upon any other Account?

Capt. Bl. No, Sir, not out of that 100 *l.*

Mr. Cowper. You do not understand the Question. Had you any Dealings with Sir *John Freind*, but about this Matter concerning the Regiment?

Capt. Bl. No, never in all my Life.

Mr. At. Gen. Well, Sir, do you remember your meeting with Sir *John Freind* when one *Ridley* was there?

Capt. Bl. Yes, it was at the Chop-house.

Mr. At. Gen. Give an Account what pass'd there.

Capt. Bl. *Mr. Ridley* said, A Gentleman was lately gone over to *France*, about Ten Days before; and *Mr. Ridley* said, he was a very sensible Gentleman, a Roman-Catholick, an ancient Man, about 'Threescore Years of Age; what he was, I can't tell: He said, he believed he should bring the last Orders.

Mr. At. Gen. What did Sir *John Freind* say?

Capt. Bl. Sir *John Freind* said, He knew of it; but he named no more.

Mr. Sol. Gen. What was the Effect of those Orders, as you understood?

Capt. Bl. I cannot tell that, Sir, indeed.

Mr. Sol. Gen. Did you know *Mr. Charnock*?

Capt. Bl. Yes, I did.

Mr. Sol. Gen. What do you know of his going to *France*?

Capt. Bl. I met him upon the *Exchange* the last Summer, and I told him, I expected not to have seen him here at that Time, I thought he had been abroad; he told me he was come from *France*, but who sent him I cannot tell, I do not know upon my Life.

Mr. Sol. Gen. Pray, what has Sir *John Freind* said to you about *Ferguson*? Whether was not he to have been an Officer in his Regiment?

Capt. Bl. No; but Sir *John Freind* said, he would join, and *Mr. Ferguson* himself has told me so.

Mr. At. Gen. When did he tell you so?

Capt. Bl. A good while ago.

Mr. At. Gen. How long ago?

Capt. Bl. Two Years ago, and above.

Mr. Sol. Gen. Did Sir *John Freind* tell you any thing about *Ferguson*, that he would bring in any Men?

Capt. Bl. Yes, he said he would bring in a great many.

Mr. At. Gen. Will the Prisoner ask him any Questions?

L. C. J. Sir *John Freind*, will you ask this Witness any Questions?

Freind. Yes, my Lord, I shall by and by, if they have done with him.

L. C. J. Yes, they have done with him.

(Then he paused, and perused his Papers.)

Freind. First, as to the Commission you charge me with, that I should receive a Commission from King *James*; I desire to know, whether it was signed, or sealed, and what Date it was?

Capt. Bl. I cannot tell the Date, indeed, Sir *John*; for I never thought to come here upon such an Account as this: But I think it was in Paper, signed above *James Rex*, and below, By his Majesty's Command, *Melford*; and a little Seal upon the Margin.

Freind. This is the hardest Thing in the World upon a Man; here you have charg'd me with Money to subsist and encourage Soldiers.

Capt. Bl. Yes, Sir.

Freind. I would only say this; you were recommended to me for a very honest Man, and you have come to me several Times, and told me, Sir, my Necessities are very great, I am ready to starve, I have a great Charge; for God's Sake will you be pleased to bestow something upon me, to relieve my Necessities? It's true, I have given you Money several Times, but I never gave it for any other Use but Charity; God knows my Heart. I desire you, to consider with yourself and answer it. There is a God above where you must give an Account as well as I, and I hope you will consider of it. Pray declare the Truth, Whether you have not writ those Lines to me several Times, that you were ready to starve, and begg'd of me to relieve your Necessities?

Capt. B. I have so, Sir, I acknowledge it.

Freind. Pray take me right, and was not that Money I gave you, only upon pure Charity?

Capt. B. Yes, you did give me Charity, but I had expended so much Money in your Business, that reduced me to that, God knows my Heart. I have laid out many a Pound upon this Affair.

Freind. It is the hardest Thing in the World; this is a Roman Catholick too.

Capt. B. I am sure it cost me many a Pound more than ever I had of you.

Freind. You say you list'd a great many Men, who were the Men? What are their Names? who were they For?

Capt. B. I have given a List of them to the Council.

Freind. Who are they? for God knows, I know nothing of them.

L. C. J. You have a List there, let it be produc'd.

Capt. B. I gave it to the Council; and, Sir *John*, I brought in several Officers to you.

Mr. At. Gen. Remember, and name as many as you can.

Capt. B. I have named the Officers already.

Mr. At. Gen. Name them again.

Capt. B. Did not I bring Captain *Fisher* to you? and did not you promise to make him your eldest Captain?

Freind. No, you never did.

L. C. J. These are Questions of your own asking, so you must hear him.

Capt. B. I brought Captain *Fisher* to you, and accordingly we dined at Captain *Simons's*, and there was Captain *Ridley*, Mr. *Richardson*, and Mr. *Fisher* and you talked together, and you list'd to him, and in my own Hearing you promised he should be eldest Captain, upon Condition, that he would bring in a Troop; and this is true, so help me God.

Freind. Pray, where are your Men? and what are your Men that you list'd?

Capt. B. I never spoke of List'ing, I only spoke of Encouraging?

Freind. Did not you say you had list'd a great many Men for to be of my Regiment?

Capt. B. No, Sir, I did not.

Mr. At. Gen. I think you do mistake, Sir *John*, he did not say List.

Capt. B. I had Money from you upon the Account of Encouraging, and Treating, and Drinking with a great many of the Men: And you said it was impossible to keep them together, but that I must have Money to treat them, and drink with them; but you desired me to be as good a Husband as I could.

Freind. I never said so; these are very hard Things upon me.

Capt. B. Did not I bring Captain *Cole* and Captain *Neale* to you, and his Brother-in-Law Mr. *Robinson*, and Mr. *Gellibrand*? and did not we dine together?

Fr. I know nothing of all this, I declare to you.

L. C. J. If you will ask him any more Questions, do.

Capt. B. I brought those three Gentlemen, and we dined together.

L. C. J. Where did you dine then?

Capt. B. At *Hackney*, when Sir *John* lived there, at his own House.

Freind. When was it?

Capt. B. It is above a Year ago. Pray, Sir *John*, don't think to dash me out of Countenance, tho' I am very Ill; I speak nothing but the Truth, and therefore I will not be dash'd out of Countenance. You know what I say to be true; you then drank a Glas of Wine to Capt. *Cole*: And did not you promise him, because he was one of your Mother's Name, that he should have a Place in the Excise next one of the Commissioners. Says I, Sir *John*, what will you give me? O, says he, you shall have the Regiment, Man. This was before *Robinson*, his Mother-in-Law, and Mr. *Gellibrand*.

L. C. J. Who was to have the Place in the Excise?

Capt. B. Captain *Cole*.

Freind. I know not a Word of all this.

Mr. J. *Rokeby*. Capt. *Blair*, be not dash'd, but speak the Truth, and you need fear nothing.

Capt. B. This, I say, was before Mr. *Robinson* and Mr. *Gellibrand*.

Fr. I don't know *Gellibrand*, nor none of them.

L. C. J. Was that *Cole* to be any thing in the Regiment?

Capt. B. Yes, he was to have been a Captain, and to bring in a Troop.

Mr. At. Gen. Sir *John*, will you ask him any more Questions?

Freind. No, I must depend upon the Jury, for I cannot remember half what he has said.

Mr. Sol. Gen. Do you remember any Discourse between

between you and him, about some brisk Men that were to follow him?

L. C. J. But before you ask him, Mr. Solicitor, we must know whether he will ask him any more Questions, for he is now his Witness. Do you ask him any more Questions, Sir *John*?

Freind. I can ask about no more than what I hear.

L. C. J. But ask him what you will.

Freind. My Lord, I have not heard half what he has said, I hope the Jury will take Care in it.

L. C. J. Some Part of it was twice repeated to you.

Freind. As to that, my Lord, I would ask him a Question or Two. Was that my Letter?

Capt. B. Yes, it was.

Freind. Did you see me write it?

Capt. B. No, it came to my Hands by a Porter, as I believe, when I was in Bed, my Wife brought it up to me.

Freind. What was that Letter for?

Capt. B. In order to pay the last 20 *l.* and I did see a Return of a Letter that you writ to King *James*.

Mr. Att. Gen. Who shewed you that Letter to King *James*?

Capt. B. He shewed it me himself.

L. C. J. How long ago is that?

Capt. B. A Year and a half ago, as near as I can remember.

L. C. J. Did he say any Thing of an Answer he had to it?

Capt. B. Yes, but I cannot remember what it was directly.

Juryman. He was pleased to say he saw a Letter from King *James*.

L. C. J. No, no, Sir, it was a Letter to King *James*.

Juryman. My Lord, I desire he may be ask'd, if he knows the Contents of that Letter?

L. C. J. Did you see him write the Letter, or did he shew you the Letter he had writ?

Capt. B. I did not see him write the Letter, I see his Hand to the Letter, and he shewed me the Letter, that he said he had written to King *James*; and there is this particular Passage to confirm it, it was at *Mr. Piggott's* Mother's House; I dined with him there that Day, and when he shewed me the Letter, I told him I was so well pleased with the penning it, that I believed *Mr. Ferguson* had a Hand in it; and he was very angry, that I should think, he was not able to write, and did not write the Letter himself.

Juryman. My Lord, since it seems he perused the Letter, I desire he may be asked, whether he can remember the Contents of that Letter, or any of it?

Capt. B. Really, my Lord, I cannot tell that particularly: But I am apt to think it was about the Business of the King, and about the Regiment.

L. C. J. Can you tell truly any of the Contents of it?

Capt. B. That it was about the Affairs of the Regiment, I am positive.

Mr. Cowper. My Lord, before he goes away (that the Jury may not go away with a Mistake,) I desire it may be observed, he does not say, he saw Sir *John Freind* write the Letter.

L. C. J. No, No, but that he shewed it him himself.

Freind. When was that Letter writ that I shewed to you?

Capt. B. It was about a Year and a Half ago.

Freind. I declare in the Presence of God, I never writ one.

Juryman. He says you shew'd him the Letter, therefore it is very fit we should see it.

L. C. J. Nay, Sir, you must not talk to the Prisoner; if you have any Questions to ask, you must propose them to the Court.

Freind. I declare in the Presence of God, I never writ any such Letter, as this he now charges me with.

Capt. B. And I do declare in the Presence of God you shewed me such a Letter.

Freind. Yes, you may, but I am a Protestant, you are a Papist, you may do any thing.

Mr. Att. Gen. You may ask any Questions of him, Sir *John*, but you must not rail at the Witness.

Freind. But when you charge me with the writing of a Letter to King *James*, I ought to speak to it. It seems I am not to ask whether he is a Papist.

Mr. Att. G. He says, you shew'd him a Letter, that you said you had written to King *James*, which he read, and liked the Penning of it so well, that he thought *Ferguson* had a Hand in it; at which you were offended that he should think you could not write such a Letter yourself.

Freind. I declare in the Presence of God I never writ any such Letter.

Mr. A.G. I suppose you'll disprove him by and by.

Freind. I can have no Witnesses to this Matter.

Mr. Att. Gen. And you can't expect your own Denial should go for Proof. If you will ask him no more Questions, let him go down and ease himself.

Freind. He must not be asked whether he is a Papist, but I hope you will take Notice, Countrymen, that these Witnesses are *Papists*, and they think they merit Heaven by swearing against Protestants, whom they call *Hereticks*.

L. C. J. Indeed Sir *John*, I don't hear you: Pray speak so loud that the Court may hear what you say.

Freind. I will my Lord; I say he is a Roman Catholick, and I have Witnesses to swear he is so, and desire I may prove that he is a Roman Catholick, and therefore he is not to be heard against a Protestant.

Mr. Att. Gen. Then the next Witness we call is *Mr. Bertram.* (*Who was sworn.*)

Freind. But I have not done with *Mr. Porter*.

L. C. J. Well, you shall have him by and by, let the King's Council go on in their Method.

Mr. Att. Gen. Pray, *Mr. Bertram*, do you know Captain *Blair* that was here just now?

Bertram. Yes.

Mr. Att. Gen. How long have you known him?

Bertram. About Eight or Nine Years.

Mr. Att. Gen. What Discourse have you had with him about any Regiment that was to be raised for the late King *James*?

Bertram. Captain *Blair* had told me for two Years last past, that Sir *John Freind* was to have a Regiment of Horse, that were to be raised, and he posted about the Town, and Captain *Blair* was to be Lieutenant Colonel of the Regiment, and I was to be Lieutenant to Captain *Blair* in his Troop.

Mr. Att. Gen. My Lord, we only call him to confirm what Captain *Blair* has said, that he was to be his Lieutenant, and that this was talked of two

two Years before. Did he tell you Sir *John Freind* was to have a Regiment of Horſe?

Bert. Yes, Sir, and he obliged me to bring in as many Men and Horſes as I could into this Regiment, and he told me *Capt. Fiſher*, *Capt. Vernatti*, and *Capt. Cole* were to be Captains in the Regiment.

L. C. J. And what were you to be?

Bertram. A Lieutenant.

L. C. J. To whom?

Bertram. To Captain *Blair*; he has told me ſo ſeveral Times, and talked to me about the Affairs of the Regiment a great deal, that I cannot now remember, relating to that Purpoſe.

L. C. J. This is no Evidence againſt Sir *John Freind*; he is only called to confirm the Teſtimony of Captain *Blair*; that *Blair* ſpoke of it long before he gave his Evidence, and ſo it is not a new thing now invented by him.

Mr. Sol. Gen. Sir *John Freind* did ask what Men he had engaged, and among others he named this *Mr. Bertram* to be his own Lieutenant, and he now tells you *Blair* promiſed him ſo to be two Years ago, and then told him Sir *John Freind* was to have a Regiment.

Freind. Do you know me, Sir?

Bertram. No, Sir, I never was in your Company in my Life; I only tell you what I have heard from Captain *Blair*; I do not know that ever I ſaw your Face.

L. C. J. His Evidence, Sir *John Freind*, hurts you not, as to any particular Thing that he knows againſt you; he is only brought to confirm what Captain *Blair* ſaid, that he was to be his Lieutenant in his Troop.

Mr. At. Gen. Then, my Lord, we leave it here.

L. C. J. Look ye, Sir *John Freind*, the King's Council have done, and now you may ſpeak, and ſay what you have a Mind to ſay in your own Defence.

Mr. J. Rokeby. And call what Witneſſes you have a Mind to call.

Freind. My Lord, in the firſt Place, I deſire to know whether *Mr. Courtney* is come.

L. C. J. Your Sollicitor can beſt tell that.

Freind. I perceive he is not come.

L. C. J. Well, go on: I ſuppoſe he will not be long before he comes, we will ſtay for him.

Freind. My Lord, I muſt wait for my Witneſſes: But in the mean Time, as to *Mr. Porter's* Evidence, I own I was at the Meeting at the King's Head in *Leadenball-Street*; I declare I was at that Place, and there were ſome Gentlemen there, but how many or whom I cannot ſay; but I declare there was not one Word ſpoken there of any railing of Men, nor any thing of that Nature, that he ſpeaks of, but only we were drinking a Glaſs of Wine, and eating a Diſh of Meat together, and Sir *John Fenwick* at that Time coming in, ſaid to us, I deſire you to come to our End of the Town, and take a Diſh of Meat with us. And there was nothing ſpoke of any Thing relating to the Government. Gentlemen, theſe are Papiſts, and I am a Proteſtant, they don't care what they ſay, for they think they merit Heaven by deſtroying Proteſtants; and they are not to be believed: and that is the Reaſon that I was not to ask them the Queſtion, for by Law they are not Witneſſes, and for that I appeal to your Lordſhip.

L. C. J. H. Why are they not Witneſſes?

Freind. Nay I appeal to your Lordſhip.

L. C. J. H. Truly I think they are Witneſſes, I know nothing to the contrary.

Freind. My Lord, Papiſts are not good Witneſſes againſt Proteſtants for this Reaſon that I ſhall tell you; I am adviſed, my Lord, that a Papiſt is not a good Witneſs to prove a Proteſtant a Traytor within the *Stat. of 25 of Ed. 3.*

L. C. J. H. Who ſays ſo?

Freind. My Lord, I deſire to know whether there is ſuch a Statute?

L. C. J. H. Yes, no doubt of it, there is ſuch a Statute as that of the *25 Ed. 3.* about Treasons.

Freind. Pray, my Lord, does not that make it ſo?

L. C. J. H. No indeed, I know no ſuch Thing.

Mr. Sol. Gen. That cannot be, my Lord, that any ſuch Thing ſhould be, for all were Papiſts then, there was no ſuch Thing as a Proteſtant in the Time of *Ed. 3.*

Freind. My Lord, there is the Statute of the Third of *James* the Firſt, *Cap. 4th.* and other Statutes made in the Time of King *Charles* the Second, particularly in the 30th Year of his Reign *Cap. 2d.* whereby it is plain they are not to be believed againſt Proteſtants, becauſe they believe them Guilty of damnable *Heresy*; and by thoſe Statutes they are reputed Infamous.

L. C. J. Where is your Statute?

Freind. My Lord, I have no Statute-Book, I deſire it may be inquired into, this Advice was given me by my Lawyer; I am no Lawyer my ſelf: there is the Statute of 3 *James* the Firſt, *Cap. 4.* and the next is 30 *Car. 2. Cap. 2.*

L. C. J. Well the Statute-Book ſhall be looked into.

Freind. My Lord, the Perſon is not come, who is to give Evidence againſt Captain *Blair*, the principal Witneſs, he is a Priſoner at the *Gate-houſe*, and your Lordſhip was pleaſed to ſay you would have Patience till he came.

L. C. J. Yes, yes, we will ſtay a while.

Freind. I pray my Lord do, for it will be very material for me.

L. C. J. Treby. Have you any thing to fill up the Time with in the mean Time?

(Then *William Courtney* appeared.)

L. C. J. Is your Sollicitor returned with this *Habeas Corpus*?

Freind. I believe he is in or about the Court, but I cannot get him to me the Croud is ſo great. (After much ado *Courtney* came in.)

L. C. J. Is this the Witneſs you would have?

Freind. Yes, my Lord, it is.

L. C. J. Then what do you ſay to him?

Freind. My Lord, muſt I ask him the Queſtions?

L. C. J. Yes, you muſt propoſe your Queſtions to the Court, and they will ask them of the Witneſſes. If this be the Perſon you ſpeak of, you had beſt examine him.

Freind. My *Courtney*, I deſire you would ſpeak what you know of Captain *Blair*.

Courtney. Gentlemen, I have been a Priſoner in the *Gate-houſe* about a Month, and while I was there Captain *Blair* at the ſame Time came in as a Priſoner, as mentioned in the Proclamation; being my old Acquaintance, (I was in Bed, being in upon ſome other Accounts) and when they told me Captain *Blair* was brought in, I deſired him to come into my Chamber. I told him I was ſorry to ſee him there; I told him I hoped he was none of thoſe concerned in this Plot; he ſaid he was in the Proclamation, but that he was innocent, and knew nothing of the Plot, nor of the Aſſaſſination, nor any thing like it; there were ſeveral other Perſons in that Place at the ſame

Time, and he said he was as innocent as the Child unborn.

Freind. Did he mention any thing of me then?

Courtney. At that Time he said nothing of you.

Freind. Pray, Sir, do you believe he is a *Roman Catholick*?

Courtney. I do not know his Religion indeed.

Freind. But don't you know him to be a *Roman Catholick*.

Courtney. He bore the Character of one, but I never saw him at any Church.

Mr. J. Rokeby. Pray, Sir, how long have you known Captain *Blair*?

Courtney. By sight, I have known him 6 or 7 Years.

Mr. J. Rokeby. Pray, upon what Account did you call him Captain?

Courtney. It was a common Name among all the Company: He was called so.

L. C. J. What all the Time that you knew him?

Courtney. Yes, all the Time that I knew him, I knew no other Name that he had.

Freind. But did not you hear that he was reputed to be a *Roman Catholick*?

Courtney. I have heard that Character of him among those that I have known, but I have very little Knowledge of his Religion.

L. C. J. Is this what you can say?

Courtney. There are several others that were Witnesses of this, as well as I; I never saw you, Sir *John Freind*, before in my Life, to my Knowledge, nor ever spoke to you.

Freind. Sir, a Note was sent to me, that you could do me some Service, and that was the Reason I sent for you. I desire Mr. *Carpenter*, Mr. *King*, and Mr. *Payne* may be called.

L. C. J. Have you done with this Man then?

Freind. Do you know Captain *Porter*, Sir?

Courtney. Yes, I do, Sir.

Fr. Sir, do you know him to be a *Roman Catholick*?

Courtney. Sir, I have heard that he has such a Character.

L. C. J. What Character has he?

Courtney. That he is a *Roman Catholick*.

L. C. J. That's only by Hear-say.

Freind. My Lord, I have done with this Man.

L. C. J. If you have done with him, then the Keeper may carry him back again.

Courtney. Sir, I have something else to say.

Fr. My Lord, he says he has something else to say.

L. C. J. Then set him up again: (*which was done*) Well, Sir, what is it you have more to say?

Courtney. Two or three Days after that Time, there was a Prisoner then in the Gate-house, who was an Ensign in the Army, was reading the *Flying-Post* in my Chamber, and in that *Flying-Post*, there was News that Capt. *Blair* was making a great Discovery, and that he had accus'd Sir *John Freind*, for having receiv'd a Commission for a Regiment in which he was to be Lieutenant Colonel, and said a great deal about that Regiment, how he had received Subsistence Money for them from Sir *John Freind*. A little after Captain *Blair* came into the Room, and ask'd me if I had got the News; I told him yes; and Captain *Blair* then ask'd what was the Import of it? I told him it was there, that he was making a great Discovery, and particularly, that he was to be Lieutenant-Colonel to Sir *John Freind*, and had receiv'd Subsistence Money from Sir *John Freind* for the Men

of the Regiment. Captain *Blair* answer'd, that they might put what they would in the News, but he knew nothing of it, nor did not receive any Money; and this was a great Surprize upon me, and upon those others that heard him, when we were told he was to be the main Evidence against Sir *John Freind*.

Freind. Well, Sir, do you know any thing else?

Courtney. Captain *Blair* was bemoaning himself afterwards, that he went against his Conscience in this Thing, and his Wife told me that he was very much concerned, because he was going to do this against his Conscience, and she was sure it would break his Heart.

Fr. Do you know any thing more?

Courtney. And he told me in his Chamber upon *Friday* Night last, about Nine a-Clock I came to see him, he lay upon his Bed very ill, and his Wife was with him; I ask'd him how he did, and he clapt his Hands, and said he was very ill. Pray, said I, what ails you? Sure you have gotten some very great Cold. Oh! no, says he, Life is sweet, I don't know what it is I ail, but were it not for Life, I should never do what I do.

L. C. J. Did he tell you, he went against his Conscience?

Courtney. His Wife and he spoke at first, that he went against his Conscience, and he believed his Conscience was in a miserable State, and this I spoke innocently among some of the Prisoners, and I did not know that it was taken Notice of, but it seems some Body has acquainted Sir *John Freind*, and so I am brought here; I know nothing of being a Witness, I assure you.

Mr. Just. Rokeby. Pray, who were present when this Discourse was between you and *Blair*? You say there were two other Persons present when this Discourse was between you, and Capt. *Blair* and his Wife, who were those two Persons?

Courtney. What Discourse do you speak of, my Lord?

L. C. J. You said there were two Persons in your Chamber.

Courtney. Does your Lordship mean at the Reading of the *Flying-Post*?

L. C. J. Yes.

Courtney. My Lord, this Gentleman that I was speaking of was lying down upon the Bed, and Captain *Blair* came into my Room just after the News was read, and ask'd me, if I had got the News, I told him yes, he ask'd what was the Import of it? I told him, they said he was making a great Discovery, and particularly against Sir *John Freind*.

L. C. J. Well, and who were there then?

Courtney. This Ensign that is now a Prisoner in the Gate-house, who I suppose can say the same Thing.

Mr. At. Gen. Pray, my Lord, let Mr. *Blair* be call'd while he is here, and let him know what this Witness says, that the Court and Jury may know what he has to say to it.

L. C. J. Yes, pray let Mr. *Blair* be brought in again (*which was done*.)

L. C. J. Treby. Now, let Mr. *Courtney* repeat what he said now before about Captain *Blair's* Declarations to him.

Courtney. My Lord, I tell your Lordship, there was one *Tooley* a Prisoner in the Gate-house; when he heard the *Flying-Post* cry'd, bought it, or it was order'd to be bought, and it being brought into my Chamber, I desir'd him to read it, and I

was walking about the Room: In the mean Time Capt. *Blair* came in, and ask'd if we had got the News? we said yes; and he ask'd what News there was in it? I reply'd, It is said that you are making a great Discovery, that you were to be Lieutenant-Colonel to Sir *John Freind*, and had receiv'd a great deal of Subsistence Money for the Regiment: Says he, They may put what they will in their News, but I know of no Regiment, nor any Subsistence, nor of any Commission. 'Tis the Man that read the Book, will say the same that I do.

Mr. *Att. Gen.* When was this?

Courtney. This was one Day when the Flying-Post came out, the last *Saturday* but one I think.

L. C. *J.* But you talk'd of something he should say to you of going against his Conscience?

Courtney. That was upon *Friday* Night last, I came to see Capt. *Blair*, and his Wife was with him, and Captain *Blair* was very ill, and clapping his Hands, and groaning, and moving himself, and in a very miserable Condition, truly I thought he was giving up the Ghost. I ask'd him upon what Account he was so sad, and told him I thought he had got some great Cold; he told me No. Well, said I, Captain *Blair*, I understand you are going to-morrow to *Hicks's-Hall*, and I pray God direct you. Says he several Times, I pray God direct you all; Life is sweet. Oh! says his Wife, dear Sir, he would never do it, but to save his Life; but it goes against his Conscience: So said I to him, you have had the Character of an honest Gentleman; I hope you will shew yourself such, and I pray God direct you: I wish no Man's Blood may lie at your Door. Says he, I am an unfortunate Man, that is the thing that troubles me, or something to that Purpose; which shewed all the Remorse of Conscience which could be in the World. I spoke of this innocently among the Prisoners, and it seems, it was communicated to Sir *John Freind*, and so I am brought here to testify it.

Mr. *Att. Gen.* Pray what say you to this, Capt. *Blair*? you hear what he says; do you give an Account what you know of it.

L. C. *J.* You hear what Discourse he says he had with you, what say you to it?

Capt. *Bl.* My Lord, this Gentleman crouded himself in upon me, my Wife was with me, and he told me he had a Cup of Brandy, which would be good for me if I had a Cold. God knows my Heart, I desired no Company might come to me. Says he, Capt. *Blair*, I have heard you have been an honest Gentleman all along, and you are going to *Hicks's-hall* to-morrow, and a great deal of such Discourse as that, and I pray God Almighty direct you: That's all that I know pass'd. I was very ill, very sick, as I am far from being well now; but as for any thing of Remorse of Conscience, as I hope for Mercy and Salvation, I never express'd any such thing to him.

L. C. *J.* Did your Wife say, that you were troubled, that you were going to do that which went against Conscience, and you would not do it but to save your Life?

Capt. *Bl.* No, I am sure she did not.

L. C. *J.* Did that Gentleman thrust himself into your Company, or did you desire him for to come to you?

Capt. *Bl.* No, he thrust himself into the Room.

Courtney. The Sink was hard by, and I heard Captain *Blair* groan, and so I went in to see him; every Body had Access to him.

Capt. *Bl.* Pray, where is the Keeper?

Keeper. Here I am, Sir.

Capt. *Bl.* Did not I beg of you for God's Sake, that no one should come to me but my Wife?

Mr. *Att. Gen.* If the Keeper of the Gate-house be there, pray swear him.

(*The Keeper of the Gatehouse was sworn.*)

Mr. *Soll. Gen.* What do you say as to Captain *Blair's* desiring that no Body should come to him, but his Wife?

Keeper. No Body was to come to him unless they forced themselves upon him.

Mr. *Soll. Gen.* Do you know of that Man's coming to him?

Keeper. No, Sir, I know nothing of it.

Capt. *Bl.* I always desir'd to have the Door lockt with the Key on the Inside, that no Body might come to me but whom I had a Mind to.

Keeper. He did so, because he was ill, and no Body did come to him that I know of.

Capt. *Bl.* My Wife being with me came to me to the Bedside, while this Man was with me, and I was lying upon my Back; and said she, for Christ's Jesus's Sake, dear *Blair*, do not speak any thing.

L. C. *J.* When was this?

Capt. *Bl.* When this Gentleman was with me, she desired me not to say any thing before him; because said she, I do not know but he may be a Trepan.

Courtney. Upon the Word of an honest Man, and my Reputation is as dear to me, as yours is to you, she said nothing of that. She told me, you were going to do that which was against your Conscience, and you would not do it but to save your Life.

Mr. *Att. Gen.* Pray, what is this Man committed for, you Keeper?

Keep. He is committed for Suspicion of Treason.

Courtney. I have been taken up five times upon Suspicion, and this last Time I was committed to the Gatehouse.

Mr. *Att. Gen.* Where do you live, Sir?

Courtney. In *Old Southampton Buildings*.

Mr. *Att. Gen.* How long have you lived there?

Courtney. I have lodged there about four Years and an half; there are several Persons can come and give a Testimony of me.

Mr. *Soll. Gen.* How came you, Sir, to be brought as a Witness here?

Courtney. I was surpriz'd at it: for my part what I did was by Way of Pity, seeing him in such a Condition; I pitied your Soul, because you and your Wife both shewed so much Trouble and Remorse of Conscience: As for Sir *John Freind*, I never saw him till to Day in all my Life, that I know of.

Mr. *Att. Gen.* What Countryman are you, Sir?

Courtney. I am an *Irish* Man born.

Mr. *Att. Gen.* Have you any Estate in *Ireland*?

Courtney. No, Sir, I have not.

Mr. *Soll. Gen.* Pray, How came you to go to Mr. *Blair*?

Court. I have known him a long time; I have been often in his Company at the Coffee-house; I cannot say I am intimately acquainted with Capt. *Blair*, but only as I have seen him in the Coffee-house a great many Times.

Mr. *Soll. Gen.* But I ask you how you came to go to him; because it seems he desir'd no Body should come to him but his Wife?

Courtney. He may say what he pleases; for he lay first in one Room, and then in another, and he could never go to the necessary House, but he

must

must go thorow my Room; but if you please to send for Mr. *Tooley* and Capt. *Courtney*, they will say and swear that these things pass'd in their Presence, or to the same Purpose, except what pass'd between him and me in his own Chamber. Ensign *Tooley* did read the Paper of the Flying Post; and as for what he said of his knowing nothing of the Plot, it was talk'd of up and down in the Prison, and so it came to me; and I invited him into my Chamber, as my old Acquaintance; though I was not very familiar with him; and as he declared, he knew nothing of the Matter.

L. C. J. You hear what he says; Capt. *Blair*, did you tell him you knew nothing of the Plot?

Capt. *Bl.* Yes, I believe I might at first; as we were talking when I first came in, and I told him the Truth: For I was innocent as to the Assassination, for indeed I was so, and as to the Invasion there was only some general Discourse, and I was not willing to explain myself among such People as they were, when they asked me any Questions about it: I had to do with the King and Council.

L. C. J. Sir *John Freind*, have you any more Witnesses to examine?

Freind. Yes, my Lord, I desire Mr. *King* may be called. [*Which was done, and he appeared.*]

L. C. J. There he is, Sir, what would you ask him?

Fr. I desire to know of him, whether he does not know Captain *Blair* and Captain *Porter* to be Roman Catholicks, and whether he does not know me to be a Protestant.

King. I am of Opinion Mr. *Porter* is a Papist; he was always taken to be so at *Epsom*, where I used to go, and where he used to go, and he was never look'd upon as a Protestant.

L. C. J. And what do you take Sir *John Freind* to be?

King. I take Sir *John Freind* to be a Protestant; so he is, and so he ever was.

Fr. But when you have been in my Company, and they have been speaking of the Government, what have I said or done?

King. Whenever they started any reflecting Words upon the Government, he was used to say, Forbear, I do not admit of any such Discourse.

Mr. Att. Gen. How long have you known him?

King. He has been my Acquaintance this fifteen Years, and married a Relation of my Wife's Husband. (*At which there was very great Laughing.*)

King. I mean her former Husband.

L. C. J. He has reconcil'd the Matter very well for this Point; for he tells you he meant her first Husband.

Freind. Ay, my Lord, no doubt of it, he will recover it; it was her former Husband. Mr. *King* don't you mean it was her former Husband?

King. Yes, Sir, I have told you it was so; her former Husband's Name was *Thomas Case*.

L. C. J. Mr. *Tanner*, you are to look upon two Statutes, the one is 3 *Jac.* 1. *Cap.* 4. and the 30th *Car.* 2. *Cap.* 2.

King. My Lord I have heard him say, if I had not taken the Oaths to King *James*, which Oaths are binding to my Conscience I could as freely take the Oaths to the present Government, as any Man in *England*; but I will live peaceably and quietly under the Government: but because I do not take the Oaths, I am double taxed, and I will pay it.

Freind. My Lord, I desire Capt. *Kaines* may be call'd. [*Who appeared.*]

L. C. J. What do you ask him, Sir?

Fr. Capt. *Kaines*, I desire to know of you, whether Mr. *Porter* and Mr. *Blair* are Roman Catholicks; and I desire you to speak as to myself, what I am.

Kaines. They are so reputed to be at *Epsom*; it was always so reported there; and I have been acquainted with Sir *John Freind* several Years, being concern'd together in the Train'd-bands of the Tower-Hamlets, and I have been in his Company several times since the King came in, and never heard him give any reflecting Language against the Government in my Life.

L. C. J. Have you done with him, Sir?

Fr. My Lord, I did not hear him; but I suppose he has declar'd, as to Capt. *Porter* and Capt. *Blair*, that they are Catholicks.

L. C. J. He says, *Porter* and *Blair* are reputed Papists; and he has known you a long time, and been concern'd with you in the Train'd-bands, and never heard you reflect upon the Government since the King came in.

Fr. My Lord, I desire to know, whether he believes me to be a Protestant?

Kaines. I did always take Sir *John Freind* to be a Protestant.

Fr. Then, next, I desire Mr. *Carpenter* may be call'd. [*Who appeared.*]

L. C. J. What do you ask him, Sir?

Fr. I desire, Mr. *Carpenter*, that you will acquaint the Court, whether you know Capt. *Porter* to be a Roman Catholick, and what you know of me.

Carpenter. I have been at *Epsom* several Summers, and usually am there in Summer-time, and he was so reputed there: But as to Sir *John Freind*, I have known him above these twenty Years; I keep a Brew-house, as he does, and we have been concerned together, and have had several Occasions, upon the Account of Trade, to meet him upon Particulars of Appraisement, when any Partners came in, and I never knew him but very orderly and civil; I never heard him reflect any thing upon the Government but was always peaceable and quiet: He was always looked upon as a Protestant, and went to Church. That's all that I can say.

Freind. My Lord, as to the Statute-Book, will your Lordship please that the Statute-Book be sent for?

L. C. J. Yes, yes, we do not forget it. Have you any more Witnesses? Call all your Witnesses, and we will consider of that afterwards.

Fr. I desire Mr. *Hawkins* may be called.

[*Who appeared.*]

L. C. J. What say you to this Gentleman?

Fr. I desire you, Mr. *Hawkins*, to give an Account what I am; whether you know me to be a Roman Catholick or a Protestant?

Hawkins. I have known Sir *John Freind* these twenty odd Years, and have had Dealings with him many times before the Change of Government, and since, I never heard him reflect upon the Government; nor never heard him to speak slightly of it: And as to his being of the Protestant Religion, I do know as much as any Man, as much as another; I always believed him to be a Protestant of the Church of *England*, as good as any Man alive; he always went to Church.

L. C. J. What, since the Revolution?

Hawkins. I have not been so conversant with him since that, because I went out of Town, and liv'd out of Town; but I believe there are those

at *Hackney*, that can give an Account of that Matter.

Fr. I desire Major *Mould* may be called?

L. C. J. Then I suppose you have done with Mr. *Hawkins*?

Fr. Yes. (*Then Major Mould stood up.*)

L. C. J. Well, what say you, Sir?

Mould. My Lord, I have known Sir *John Freind* many Years, above these twenty Years, and I always look'd upon him as a sincere Protestant; and I have often been in his Company since the Revolution, and I never heard him speak diminishingly of the Government. I believe him to be as good a Protestant as any in *England*.

L. C. J. How! as any in *England*? That's a great Character.

Fr. Then, I desire Dr. *Hollingsworth* may be called? [*But he did not appear*]

Fr. Then, my Lord, I desire Mr. *Lupton* may be called.

L. C. J. There is Mr. *Lupton*, what would you have with him?

Fr. I desire he will give an Account what he knows of me, what Religion I am of.

Lupton. My Lord, as to Sir *John Freind*, I have known him this ten Years; he was pleased to employ me as a Chaplain in his House a considerable Time, both before and after the Revolution; and after the Revolution we always used the Prayers according to the Church of *England*, and we did always pray for the present King, and the late Queen *Mary*, at which Sir *John* was many times present.

Mr. Att. Gen. How long is it since you left him?

Lupton. About four or five Years, as I remember: Then Sir *John's* Family lessened; he was pleased to say to me, Mr. *Lupton*, I am going to *Cambridge*, and my Family lessens, (this is about five or six Years ago,) and I shall have no Occasion for you at present; but if ever I make use of a Chaplain again, I will make use of you: This he was pleased to say.

L. C. J. How long is it, do you say, that you have left him?

Lupton. About five Years; and as to any Objection of his being a Papist, I have often discoursed with Sir *John Freind* about the Popish Religion, and he has often spoken with Detestation of the Principles of the Papists.

Freind. What have you heard me speak of the *French*; and about any thing of an Invasion, how I would venture my Life for the Protestant Religion, or any thing of that?

Lup. I have often heard you say, as to the present Government, that though you could not comply with it, yet you would live peaceably under it. When we have been talking of these Things, you said you never would be in a Plot; and tho' you could not comply with the present Government, yet you would never concern yourself in any Design against it. For my part, my Lord, I know nothing by him, but that he is an honest and a worthy Gentleman, tho' he be so unfortunate to be under this Acculation.

Fr. I desire Mr. *Hoadley*, may be called?

[*Who appeared.*]

L. C. J. Well, what say you, Sir?

Fr. Pray, Mr. *Hoadley*, will you give an Account to the Court what you know of my being a Protestant, and of my Life and Conversation?

Hoadley. I believe Sir *John Freind* is a very settled Protestant of the Church of *England*; and I have

Reason to believe so, because I have frequently discoursed with him, because I have had a Couple of Children that were his Nephews, upon whose Account I have been forced several times to wait upon him; and he has often said he never would be in any Plot, and his Words that he used to me were really very remarkable, *Catch me in the Corn, and put me in the Pound.*

L. C. J. What were his Words, Sir?

Hoadley. He used to say he would never be in any Plot; for says, he, *Catch me in the Corn, and put me in the Pound:* and I have heard him express himself with a great deal of Detestation of King-killing, and those Principles of the Papists, the Assassinating of any crowned Head.

Mr. Att. Gen. Pray, Sir, how came you to discourse with Sir *John Freind* about King-killing and Plots? You are a Schoolmaster it seems, how happen'd this Sort of Discourse between you?

Hoadley. There will be Discourses about these Things sometimes.

Mr. Att. Gen. But, pray, how was the Discourse introduced? What was the Occasion of the Discourse? Sure there was some Occasion extraordinary for him to express himself to you.

Hoadley. I cannot remember the particular Occasion, but such Discourse there was.

Mr. Att. Gen. Pray, how long ago is this time that this Discourse was?

Hoadley. I believe it was five or six times within these two Years.

Mr. Att. Gen. What, have you had the same Discourse five or six times one after another?

Hoadley. I cannot say that; but those used to be his Words.

Mr. Att. Gen. What in common Discourse?

Hoadley. He said he would never be in any Plot.

Freind. My Lord, I can bring a great many more Witnesses of this kind, and I believe I could have a thousand to prove me a Protestant.

L. C. J. Call whom you will, Sir *John*, we will hear them.

Fr. My Lord, I am very loth to trouble you.

Mr. Justice Rokeby. No, it will not be reckoned any Trouble, we will hear all your Evidence.

Freind. There is one Mr. *Willis* and one Mr. *Hemings*; but I desire it may not be forgotten as to the Acts of Parliament, for they are very material for me, as I shall shew by and by.

[*Mr. Willis appeared.*]

L. C. J. Well, what say you to this Gentleman?

Fr. Mr. *Willis*, I desire you'd give an Account to their Lordships, what you think of me, as to my being a Protestant, and how I have behaved myself in every Respect all along.

Willis. My Lord, I have always taken it for granted, that those that come to Church are Protestants; and I did always take Sir *John Freind* to be a Protestant. The Acquaintance I had with him was since he lived in the Parish of *Hackney*, and we have had some Converse together; and there have past friendly Visits between us; and I do not remember any Discourse while I was there that tended to the Government one Way or another. I was never very often with him, but his Discourse was always very obliging, discreet, and prudent, whenever I was there.

L. C. J. Pray, Sir, when did you see him at Church?

Willis. Truly, my Lord, I cannot call to mind when it was.

L. C. J. Cannot you name any time?

Willis. He may be at Church sometimes, and I not see him; our Seats are at a Distance from one another, and there are Pillars between, that one can't see every Body; and I cannot call to mind when I did see him last at Church.

L. C. J. Has he been there within this Year or two?

Willis. He has been gone from *Hackney* a Year and above.

Mr. Mountague. Pray can you say you have seen him at Church within these four Years?

Willis. Truly I cannot call to mind whether I have or no.

Freind. I desire *Mr. Hemings* may be called. I could call a great many more, but they are much to the same Effect as these are.

L. C. J. Call whom you will, *Sir John*, if you think fit to call them, we will hear them.

Fr. Being they are not here, I will not trouble you farther; it is all to the same Purpose.

L. C. J. Well, take your own Courle; if you'll call them, the Court will be sure to hear them.

Fr. But, my Lord, here is one Thing that I must desire your Lordship's Direction in: If these Gentlemen, my Lord, *Capt. Porter* and *Capt. Blair*, who are the two Witnesses, and none but those two, against me, if they are Papists, they are not good Witnesses against a Protestant, to prove him a Traitor within the Statute of the 25th of *Edward* the Third. For that Statute says, He that is indicted must be proveably attainted; which cannot be by the Evidence of Papists, and those that refuse to take the Oaths of Obedience, which are required to be taken: And therefore I humbly beseech you, that you will please to tender them the Oaths, for there is a Statute in the 3^d *fac. I. Cap. 4.* which appoints the tendering of the Oaths to them.

L. C. J. That is not our Business at this Time.

Fr. Then I must beg your Pardon that they are not substantial Witnesses; for this is the Law, as I am inform'd. I humbly submit to your Lordship, whether this be not the Law. I only speak it to know whether it be convenient for me to rehearse it. I ask'd the Question before they were sworn. I know not whether it be convenient for me to move it now.

L. C. J. Ay, ay, it is very convenient now; now is the proper Time.

Freind. Before ever they were sworn I would have ask'd them the Question, whether they were Papists or not, but it was not allowed, it was over-ruled: Now, my Lord, there is such a Statute, and I humbly beseech you to tender them the Oaths, and that would be a Demonstration, that they were Papists, and then they could be no good Witnesses.

L. C. J. You say well, if we could find such a Statute, that no Papist should be a Witness; but there is no such.

Freind. My Lord, I beg your Pardon, and I hope you will not take it amiss; I offer what I am advis'd to offer.

L. C. J. No, no, by no Means, there will be nothing taken amiss.

Freind. For the Statute of the 25th of *Edward* the Third, and that of the 30th of King *Charles* the Second, and that of the 3d of King *James* the First, *Cap. 4.* here it is plainly demonstrable, that Papists are not be liev'd against any Protestant, who is with them esteem'd a damnable Heretick; and then they believe the Pope and their Priests

can absolve them from all Oaths, and they are declared to be given to Evasions, and Equivocations, and mental Reservations, and can have Dispensations for all their Villanies; and therefore they are not be credited: Their Evidence is of no Value, unless they will in this Manner upon their Oaths renounce these Principles: Therefore I humbly beg they may have the Oaths tender'd them.

L. C. J. That is not our Business now.

Freind. And, my Lord, your Lordship was pleas'd to promise me that if any Matter of Law did arise, my Council should be heard.

L. C. J. First, let us know, whether there be any such Law as this you mention, or to any such Purpose.

Freind. My Lord, I desire my Council may come in, and speak to it: For my Life is in Danger, and so is every honest Gentleman's Life every Day. I am as clear as the Child unborn, I have no Witnesses to prove any thing, and therefore I desire my Council may be heard.

L. C. J. If the Court did think there were any Colour in this Objection that you make, we would let you have Council: We would do it; nay, we are desirous to do it if it could.

Freind. What, my Lord?

L. C. J. To allow you Council, if there were any Colour in this Objection in Relation to Papists not being Witnesses. I would be glad to see the Council that would own this Objection; but indeed, I see no Colour in it: The Statute shall be produced that you quote, and then we shall see, whether there be any thing like it in that Statute. Pray will you read those Words that you say are in that Statute to that Purpose.

Freind. I am not so expert to know the Words before and after; and therefore I think it is requisite I should have Council.

L. C. J. It is supposed you have had Council, and I suppose your Council that have advis'd you to make this Objection, have instructed you whereabouts in the Statute it is.

Fr. My Lord, I desire my Council may be call'd in and heard to it.

L. C. J. I tell you, that by Law we cannot hear Council to any such Matter that has no Colour of Objection in Law in it; tho' for my Part, I wish we could, because I would fain hear what any Council can say to make out such an Objection, that Papists are not good Witnesses.

Fr. My Lord, I wish you would hear my Council to it.

L. C. J. Look ye, *Sir John Freind*, you have desir'd that this Statute may be turned to, and you desire to have them read, and they shall be all read from the Beginning to the End.

Fr. I desire the Statutes of the 25th of *Edward* the Third, the 3d of *K. James* the First, *Chap. 4.* and the 30th of *K. Charles* the Second, may be read.

L. C. J. What Chapter is that of the 30th of *K. Charles* the Second?

Fr. Really it is not put down in my Paper.

L. C. J. Then look out the Chapter, while he is reading the other. Look ye, Gentlemen of the Jury, *Sir John Freind* does desire the Statute of the 25th of *Edward* 3. may be read, which is the Statute about Treasons, and the Statute upon which he is indicted, and it shall be read, therefore pray hearken to it.

Cl. of Ar. (Reads it.) This is made in the 25th Year of King *Edward* the Third. *A Declaration which*

which Offences shall be judged Treason. Item, Whereas divers Opinions have been before this Time, in what Cases Treasons shall be laid, and what not.

Fr. My Lord, I beg the Favour I may speak one Word before it go on to be read.

L. C. J. Yes, with all my Heart.

Fr. I speak it, my Lord, because it will be to the very Thing now in Question; I am advised that Consultation to levy War is no Treason, without Rebellion and Insurrection; and inviting Men to come from beyond Sea is no Treason, unless a Foreign Prince be invited to come with his own Subjects; for *English, Scotch, and Irish* are not Enemies, but Rebels, and to be dealt with otherwize; therefore I leave it to your Lordships, for I am no Lawyer, only I am advised to insist upon these Things.

Then the Statute of the 25th of Edward 3. about Treasons was read throughout, only about the middle the Prisoner made some Interruption.

Fr. I believe this Statute is not the Statute I go upon; that which I mainly insist upon, is the Statute of the Third of King James the First, Cap. 4.

Mr. Just. Rokeby. This is the same Statute you are indicted upon, the great Statute for Treasons; and as to your Objection last mentioned, what is Treason and what is not, he is not yet come to that Part.

Fr. Well then, let him go on with it.

(It was read to the End.)

L. C. J. Now it has been read, is this the Statute you would have?

Freind. There must needs be a Mistake as to the Chapter, it is set down the 25th of Edward 3d. but there is no Chapter.

L. C. J. Yes, this must be the Statute, it relates to Treasons, and it has those Words in it, that what you read out of your Papers relates to. Well, that we may go on in Order of Time, what Statute of King James is it that you mention?

Fr. It is the 3d of King James 1. Cap. 5. it is upon Account of tendering the Oaths appointed to be taken by that Statute, and (reading out of a Paper) to tell the Court that they ought to have the Oaths tendered them.

L. C. J. That is the Business of another Time; read the Statute.

Cl. of Ar. An Act for the Discovering and Repressing Popish Recusants. What Part is it?

Fr. Truly my, Lord, I can't tell.

L. C. J. It is a long Statute, but if he'll have it read, it must be read all.

Fr. My Lord, I would not give the Court any Trouble, but it is about having the Oaths tender'd to them.

Cl. of Ar. I believe this is the Paragraph, And for the better Trial how his Majesty's Subjects stand affected in Point of their Loyalty and due Obedience, &c.

(A great Part of the Statute was read, relating to that Matter.)

L. C. J. What else would you have read, Sir John Freind?

Fr. I only gather from thence, that no Roman Catholick is capable of Swearing against a Protestant, because the Pope and the Priests can absolve them from their Oaths.

L. C. J. Well, what have you more to say?

Fr. My Lord, I only speak this as to Roman Catholicks, they do not regard an Oath against a Protestant, because they have their Priests that can absolve them, and therefore how such a Man's

Oath can weigh any thing, I cannot apprehend; therefore if I have omitted any thing, I hope your Lordship will supply it, as you are my Council; for you are a Council for me, as well as the King.

L. C. J. Yes, yes, I would help you in any thing I could.

Fr. My Lord, I thank you, I desire you to help me, for I am as innocent as the Child unborn, whatsoever these Men have sworn: These are hard Things that are laid upon a Gentleman, and no Man is safe at this Rate, they being sworn by two Papiests, who will swear any thing against Protestants.

L. C. J. Look ye, Sir John Freind, have you any Witnesses to produce, that these two Men have any Displeasure or Malice against you, that they should accuse you falsely?

Fr. My Lord, I am sorry I have not my Witnesses; I have been so kept up, that I had not Time for People to come to me; I had not my Council come to me before Saturday.

L. C. J. How happen'd that?

Fr. My Lord, there was a Mistake in that, I think it was Friday, either Friday or Saturday; I had them not till Friday in the Afternoon: I was kept so close that none were permitted to come at me: On Thursday I had an Order, but there was a Mistake in the Order, and I desired to get another Order, but I could not get any Body to get another Order for me, to have my Friends to go and enquire into Things, or else I should have found out enough Witnesses.

Mr. At. Gen. I am sure he had an Order for Council, at the same Time that Notice was given him of his Trial.

L. C. J. When was that?

Mr. At. Gen. On Tuesday, my Lord.

L. C. J. What say you to it, Mr. Baker?

Mr. Baker. My Lord, I did attend Sir John Freind on Tuesday last, to give him Notice of his Tryal as this Day; and I at the same Time told him if he would name his Council to me, I would procure an Order for them to come to him. The next Morning he was pleased to name to me Sir Bartholomew Shower; I took the Liberty to tell him, that he being so concerned at the House of Lords, and at the Committee about Parliamentary Business, some other Persons that had named him of their Council, notwithstanding Orders were procured for him to go to them as their Council, yet by that Means they were disappointed of him, and great Delay was given to the Prisoners; and therefore I desir'd him to consider of it, and to send to Sir Bartholomew Shower, and any other Council that he had a Mind to, and know their Pleasures, whether they would attend him; and if he would send me Word, I would procure an Order for him. But not hearing from him, I went on Wednesday to him again, and he said he had sent to Mr. Northey, but he would not come to him till he had spoke with Sir Bartholomew Shower, but he would send me Word that Night, yet he did not. But the next Day came Mr. Burleigh to me to the Duke of Shrewsbury's Office, and brought me the Names of the Persons that he would have assign'd him of Council, and immediately I procured an Order for it, and away he went with it. This was upon the Thursday; Mr. Weiden, and Mr. Cresset, or one of them were named in the Order, I am not positive which, and Mr. Underbill, and Mr. Burleigh were to be admitted

mitted to him. Mr. *Burleigh* had the Order, if he did not carry it to him I can't help that.

L. C. J. When was that Order for the Council?

Mr. *Baker*. It was upon *Thursday*, my Lord.

Fr. My Lord, may I speak?

L. C. J. Yes, yes, what you will.

Fr. My Lord, the Reason why I had not my Witnesses was this: There was a Gentleman, one Colonel *Cash*, Lieutenant to my Lord *Lucas*, he undertook to go, and put in his Name, and three more, one *John Neale*, and one *Phillips* to have an Order to go about to look after my Witnesses; but they did not put in any one of these Names, but they took up and secured my Kinsman *Cash*, and put him into the Messenger's Hands, and would not suffer me to have any of his Assistance; therefore I saw what a Design there was upon me.

Mr. *At. Gen.* As for Mr. *Cash*, there was very good Reason for it, he was secured for Suspicion of Treason.

L. C. J. If you had wanted any Witnesses, and had not been so fully prepared as you expected to be, you should have moved before the Tryal came on to put it off.

Mr. *Just. Rokeby*. But my Lord put a Question to you before, Can you shew any Reason why these Persons should have any Malice against you?

Freind. My Lord, I was not so much a Lawyer as to know these Things; but it's a hard thing, that a Man that's innocent must suffer at this Rate: I have been disappointed in every thing; for these Gentlemen have not been permitted to answer, whether they are Roman-Catholics or no.

Mr. *J. Rokeby*. Nor have your Witnesses prov'd that they are Roman-Catholics, but only that they are reputed so.

L. C. J. Well, I can't tell what Avail that would have been of, if they had been proved so. Have you any more to say, Sir *John Freind*?

Fr. No, my Lord, I leave it to God, and you, and the Jury to consider of it.

Mr. *Sol. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King, against Sir *John Freind*, the Prisoner at the Bar; and it comes to my Turn to sum up the Evidence that has been given. Sir *John Freind*, the Prisoner at the Bar, cannot but own, that he hath hitherto had a very fair Trial, and he shall have no Reason to complain, that I do him any Injury in my Part. I am sure both he, and you, and all of us, very well remember, when Persons of as good Quality as he is, or better, had not the same Usage or Liberty of Defence, in such Cases as this Gentleman has had: And though all Things are very well now, yet the Time was, within all our Memories, when Innocency was no Safety for a Man's Life, much less for his Liberty; and when those two are taken away, and are invaded, Property signifies nothing. The Time was, when the Protestant Religion, and the Church of *England*, of which the Prisoner boasts himself to be, (and for a very good Reason, because it is the best of Religions,) I say, the Time was, when that was in Danger; and when Popery (for which he now reflects upon the Witnesses) was like to have over-run both us and it; and if his Majesty, with the Hazard of his Life, and at a great Expence, had not rescued us, there is nobody

doubts, but that all that we feared at that Time, would have been made good upon us ere now. And it is a melancholy thing to consider, that there should be a sort of People amongst us, so in Love with what we then dreaded, as to be continually endeavouring to bring it about again. And it is an ungrateful thing, when his Majesty ventured his Life then, and has done it several Times since to defend us, and does all that he can to keep our Enemies at a Distance, there should be a Party of Men, that do what they can to invade their Country, to destroy his Majesty's Subjects, and to fall upon himself, when he is present amongst us. I will not accuse the Prisoner at the Bar particularly, though it is plain he knew of it.

Fr. Know of it? I declare before God, and the World, I know nothing of it.

Mr. *Sol. Gen.* This, if it were among Equals, were certainly a most ungrateful thing, when another Person is fighting in my Defence, that I should design against his Life, or when he does what he can to protect my Estate, I should be invading and spoiling his.

Gentlemen, if the Prisoner at the Bar is not guilty of what he is accused of, and what you have heard the Witness give Evidence of, then nothing of this doth relate to him: But if what has been given in Evidence against him is true, then the Prisoner at the Bar is one of those Persons, that has done all he can to make this Country, which has been the Place of Retreat for all Protestants to fly to, from Persecution in their own Countries; I say, to make it as unsafe for them, as that from which they came.

Gentlemen, The Evidence against him is, first, Mr. *Porter*, and he gives it in Evidence, that at the *Old King's Head* in *Leadenhall-street*, there was a Meeting of the Prisoner, and *Porter*, and several others, in order to consider the best Means, how to bring back the late King *James*; and they concluded at last, that the best Means would be to send some body into *France*, to advise the late King *James* to borrow of the *French King* 10000 Men, 1000 Horse, 1000 Dragoons, and 8000 Foot, and that he should make what Speed he could to land with them here; and to encourage and invite him to do so, they promised him their Assistance, and they did not doubt, but to be ready to meet him with 2000 Horse at his Landing.

Gentlemen, The Person that was pitched upon to go upon this Errand, was Mr. *Charnock*, a Person lately executed for the Treasons of which he was attainted. Mr. *Charnock* was diffident whether this was the Effect of sober Consideration, and therefore would not undertake to carry this Message, 'till there had been another Meeting of the same Persons; to see whether they continued in the same Mind. Another Meeting accordingly was appointed, and agreed upon, and that was at Mrs. *Mountjoy's* Tavern at St. *James's*, and there, he says, there were almost all the Persons that were in *Leadenhall-street*; and at that Meeting the Question being ask'd, Whether they were of the same Opinion, that Mr. *Charnock* should go to *France* to the late King upon that Message, that I told you of before, they did all agree to abide by the old Resolution; that he should go, and make as speedy a Return as he could, and bring back the late King's Answer.

Captain Porter tells you, that Mr. *Cbarnock* did go to *France*, and comes and brings Word back, that the *French King* could not at that Time spare that Force that was then desir'd; and so it was delay'd at that Time, because the *French King* was not at Leisure then to employ his Men in this Service; but it was likely to have taken Place, but very lately, if the Providence of God had not prevented it.

Gentlemen, our next Witness is Captain *Blair*, and he tells you, That about Two Years ago, Sir *John Freind*, the Prisoner at the Bar, shew'd him a Commission that he had received from the late King *James*, to raise a Regiment of Horse, of which he was to be Colonel; that this was signed *James Rex* at the Top, and countersigned by my Lord *Melford*, and it was in Paper. And that there was a great many Consultations between Sir *John Freind*, himself, and others, about the Raising of this Regiment, and providing Officers for it. He tells you he was to have been Lieutenant Colonel, and was to procure as many Officers and Troopers as he could; and he tells you, he did procure several Officers; and he names them; one *Fisber* was to be eldest Captain, one *Vernatte*, and one *Hall*, and one *Bertram*, and that *Bertram* was to be Lieutenant to *Blair* in his own Troop.

Gentlemen, a great deal of the Evidence which Captain *Blair* has given, is indeed out of Sir *John Freind*'s own Mouth, and that is as strong an Evidence as possibly can be given; and he does for that Purpose tell ye, that he said one *Evans* was to be a Captain of Horse, and one Colonel *Slater* was grown so much in Sir *John Freind*'s Favour, that he rivalled Captain *Blair*, in the Opinion of Sir *John Freind*; and Sir *John Freind* for that Reason would have two Lieutenant Colonels, whereof *Slater* was to be one. Captain *Blair* says, he took that amiss, that any one besides himself should be in that Post, and resented it to Sir *John Freind*; and therefore Sir *John Freind* found out another Office for *Slater*; and that was to be a Captain of a Troop of Horse, that should consist of Non-swearing Parsons, and which were to be an independent Troop.

Gentlemen, He tells you that he did list several Men, but the particular Persons, tho' he has named the Officers, he did not so distinctly remember, but they are in the Paper that he delivered to the Council, which he has not about him: He tells you, that Sir *John Freind* told him, that one *Richardson* was another Captain of Horse, and the like of one Mr. *Cole*, that he was to be a Captain likewise.

He also acquainted you, Gentlemen, that he did receive from Sir *John Freind* several Sums of Money, and he acquaints you in particular with the Manner how; he says that Sir *John Freind* had expended 100 *l.* towards the 300 *l.* that was paid for the Escape of Colonel *Parker* out of the Tower; and that Sir *John Freind* was to be reimbursed by Monies that were to be transmitted from King *James* at *St. Germain*. He tells you that *Piggott* had received the Money, but did not deal with Sir *John Freind* so fairly as to pay it to him; but when Captain *Blair* was pressing on Sir *John Freind* for some Money, Sir *John Freind* was contented that he should have 20 *l.* provided he got it from *Piggott* out of this 100 *l.* Captain *Blair* had not Interest enough it seems to get it himself from *Piggott*, but he applies

himself to one *Harrison* or *Johnson*, (for it seems he goes by both those Names) a Priest, who had an Interest in *Piggott*, by which Means he got 20 *l.* of *Piggott*, and this he says was in *June* or *July* last.

Then, Gentlemen, he tells you afterwards, he was pressing upon Sir *John Freind* to have another 20 *l.* and Sir *John Freind* was contented he should have it, provided he had it from *Piggott*, and he produces ye a Letter that was from that very Person, the Prisoner at the Bar, which is to that Purpose; excusing himself that Captain *Blair* had not heard from him, but that he would meet him at such a Time, and at such a Coffee-house. The Matter indeed is not directly express'd in Words, but at the Time and Place the Prisoner did meet *Blair*, and there was *Harrison* and this *Piggott*, and there 5 *l.* of the last 20 *l.* was paid him; and the other 15 *l.* was paid him afterwards; and he swears these Two Twenty Pounds were paid to him by Sir *John Freind*, upon Account of the Charge that *Blair* had been at in drinking with and treating those Men who were to be engaged with Sir *John Freind* in his Regiment.

Gentlemen, he tells you likewise, that Sir *John Freind* told him he had written a Letter to King *James*, and he shewed him this Letter, and this was at that *Piggott*'s Mother's House; and when *Blair* read it, he tells you he thought it was so well penned, that he did apprehend *Ferguson* must have a Hand in it, and that it was none of Sir *John Freind*'s own; and that upon this Sir *John Freind* was angry, that he should suspect that Sir *John* was not the Writer of this Letter; all this shews an Intelligence with King *James*, and makes out all the rest of the intended Invasion by King *James*, and a *French Force* here.

Captain *Blair* likewise tells you, Gentlemen, that Sir *John Fenwick* had Four Troops of Horse, as Sir *John Freind* told him, by way of Encouragement, which were all ready for the Service; and that *Ferguson* undertook to bring a Number of Men, and was to be one himself in that Party; and all this was to be put in Practice when the *Thoulon Fleet* came about, and join'd the *Brest Fleet*. And lastly he tells you, when he went in the Coach with Sir *John Freind*, Sir *John* told him they must act very warily, and be very good Husbands, for in truth it had cost him so much, that if the Fleet did not come soon, or the Design should miscarry, he should want Money to carry on his Trade. All this positive Evidence is of the Witnesses own Knowledge, from the Prisoner's own Mouth.

Against this Evidence, Gentlemen, he takes Exception; that the Two Witnesses are *Roman Catholicks*; but this is no Exception to their Evidence at all; for it was never yet allowed, or indeed objected, that I know of, before, that *Roman Catholicks* were not good Witnesses. A *Roman Catholick* may be an honest Man, notwithstanding his Religion: But, I think, that every body knows that Men who have been ill in other Things, tho' *Roman Catholicks*, may, as to those particular Things, be good Witnesses. Nay, not long ago, but on *Wednesday* last we produced some Witnesses, who were *Roman Catholicks*, and yet allowed for good Evidence, tho' engaged in that horrid Conspiracy against the Life of the King; and if any thing would have taken off their Evidence, certainly the Guilt of such a

Crime would do it, more than the Pretence of any particular Persuasion of Religion. Nay, I must crave Leave to say farther, that this Argument is so far from making him no Witness, that it makes it the more likely he does speak the Truth, and therefore is a good Witness. For tho' Roman Catholicks may be honest Men, yet they are more likely to engage in such a Design than any other Men. And I think I may very safely add, Sir *John Freind* would not have found so many that he could engage in such a Business as this, that were of any Religion but the *Roman* Catholick, and therefore he applied himself to these Persons, as most likely to embark with him on such a Bottom.

Gentlemen, as to what *Courtney*, that was brought from the *Gate-house*, says about his Discourse with Captain *Blair* in the Prison; Captain *Blair* has upon his Oath declared, that he did not go so far as to say, he did any thing against his Conscience, but only *Courtney* bid him take care what he swore, and press'd him no farther. He pretends he came casually into *Blair's* Chamber, but it is plain he intruded into his Room; for it is sworn by the *Jaylor*, and *Blair* himself, that he had given Directions none should come into his Room but his Wife, so that does not discountenance the Evidence of *Blair* at all, and if you do believe what our Witnesses have said, Captain *Porter* and Captain *Blair*, then Sir *John Freind* is guilty of all the Crimes that are charged upon him in this Indictment, and I hope you'll be so just to your Prince, to your Country, and to your selves, as to find him Guilty accordingly.

Mr. *Cowper*. If your Lordship pleases, spare me a Word on the same Side. My Lord, I do not trouble your Lordship out of an Apprehension that there is any thing necessary to be said to the Court in this Matter, or for the Satisfaction of the Jury, but, if possible, that we might convince the Prisoner at the Bar, that he has had no hard Measure, in this Prosecution, meted to him, but that he is proved Guilty of the Crime of which he stands accused, and that really there is no Weight at all, in the Defence which he has made.

The first Part of it goes to discredit one of our Evidences, Captain *Blair*, from some Discourse that he would object to have pass'd between him and the Person here produced, in the Prison of the *Gate-house*. And the first Part of that Discourse was, upon *Blair's* first coming into the Prison; and as to that Time, the Objection amounts to no more than this; that Captain *Blair* would not confess, when he was pump'd by a Fellow Prisoner, that he was engaged in so horrid a Design: What Weight there is in such an Objection, truly I cannot see, but will leave it to any Man's Judgment to consider, That a Man, when he is freshly taken upon such an Occasion, does not immediately confess his Guilt to every Body that meets him, nay, to Persons that would not have lik'd him for making such a Confession, but perhaps would have destroy'd him in Prison for so doing.

The other Discourse was upon *Friday*, the next Day, I think, before Captain *Blair* went to *Hicks's-Hall*, to his Examination; and then he intrudes himself into *Blair's* Chamber, when he lay very ill upon the Bed, accosts him with a Cup of Brandy in his Hand, and with good Advice at the same Time, that he should take

great Care in what he should say at *Hicks's-Hall*, and the like: And then Captain *Blair*, it seems, did express some Reluctancy in the Thing he was going about, as if it were against his Mind and Inclination. If that were true, (though Captain *Blair* denies it positively upon his Oath) yet it was no more than, I am willing to observe for the Prisoner, Captain *Blair* did express here, when he first came into Court; and it is no more than what is natural, since the Prisoner had been his Friend and Intimate, and he was going to depose that against him, which was likely to prove fatal to him.

My Lord, As to another Part of his Defence, it consists chiefly in this: The Evidence brought to prove, that the King's Witnesses are reputed Roman Catholicks, and that the Prisoner is a reputed Protestant of the Church of *England*. If that be true too, all that can be rationally and fairly collected from thence is this, that they (the Witnesses I mean) when they engaged in such a black and execrable Design, might be very good Papists; but I am sure it will be agreed, That the Prisoner in so doing was a very bad Protestant.

My Lord, he objects to their Evidence this likewise, That, if they be Papists, they may be absolv'd by the Pope, or their Priests, though they should swear falsely. Possibly that may be so, for ought I know; I confess, I am not very well acquainted with the Principles of that Religion: But this I dare say, that every one, who has heard what has been sworn by them, will think it so great a Disservice to the Popish Cause and Interest, that it will be one of the last Things their Priests will ever absolve them of.

My Lord, there's another Matter the Prisoner has thought fit to insist upon; he has brought two or three Clergy-men to depose, that when ever he discoursed with them (it seems at all Times) he was talking about being in a Plot, and very readily told his Resolution not to be in any. It seems it still swam uppermost; his Professions were made very causelessly: For they all say nothing introduc'd them; but of his own meer Motion he was always declaring he was not then in a Plot, nor ever would be. I have heard, that one Way, weak Men and Children often discover their Knowledge of a Secret intrusted to them, is, by a repeated and unnecessary declaring, that they know nothing of the Matter.

My Lord, in the next Place for his Defence, he just offered a Point of Law; but the Court so well satisfied him in that, that I think he levied it. He alledged, that a bare Conspiracy to levy War is not Treason; and the Court did him right in declaring (as God forbid but they should) that it is not Treason: But I desire the Gentlemen of the Jury would consider that the Prisoner at the Bar is not accus'd barely of a Conspiracy to levy War, but you are told to what End that War was to be levied, to join the late King upon his Descent into this Kingdom with a *French* Power, in order to drive his Majesty out of the Kingdom, and to depose him from the Crown; which is a Killing him in the Eye of the Law: And that is High-Treason by whatever Means they intended to effect it; whether by War or a Stab, or any other Manner, it is indifferent.

In the next Place, my Lord, I would not take Notice of another Part of his Defence, which had been better let alone, wherein he admits that he was present at the two Meetings he is accused to have been at by *Porter*; but he only differs in one Point, that there was nothing talked then but general and indifferent Discourse. The Witnesses have sworn what the Discourse was, and you will weigh the one against the other; his Affirmation of a Thing unlikely in Defence of himself, and what is deposed upon Oath by the King's Witnesses to the contrary.

My Lord, there is one thing more I would take Notice of, and that is the Evidence of *Mr. Bertram*, which we do not produce as a direct Evidence against the Prisoner at the Bar, but as a Confirmation of what was sworn by *Blair*. And it does shew that the Matter sworn by *Blair*, was not of late devised out of Malice, or otherwise, to destroy the Prisoner; for that *Blair* acquainted *Bertram* with, and discoursed him about the principal Matters of Fact, that are now sworn, at least Two Years ago; and besides his Evidence and the Evidence of *Blair* concur in this Particular, that he was to be Lieutenant in *Blair's* Troop.

My Lord, such a Concurrence of Evidence and other Circumstances in this Matter, greatly increase the Weight of the Proof against the Prisoner, especially when there is nothing material alleged by him in his Defence, and therefore I shall trouble your Lordship no further.

L. C. J. Look ye, Gentlemen of the Jury, Sir *John Freind*, the Prisoner at the Bar, is indicted for High-Treason. The Treason that is mentioned in the Indictment is Conspiring, Compassing, and Imagining the Death and Destruction of the King. To prove the Conspiracy and Design of the King's Death, there are two principal Overt-Acts that are mainly insisted upon. The one is the Consulting and Agreeing with divers others to send *Mr. Charnock* into *France* to King *James*, to desire him to persuade the *French* King to send over Forces here to assist them; who were to furnish other Forces for the raising of a War within this Kingdom, in order to depose the King; and accordingly *Mr. Charnock* was sent upon that Design. The other Overt-Act is the Prisoner's having a Commission from the late King, and preparing and directing Men to be levied, and to be ready to be in a Regiment, of which Sir *John Freind* was by that Commission to be Colonel, and this was always to assist in the Restitution of King *James*, and in order thereunto in the Deposing and Expulsion of King *William*.

These, Gentlemen, I tell you, are the two Overt-Acts that are principally insisted upon; and to prove Sir *John Freind* guilty of these there are two Witnesses that have been produced, the one is *Capt. Porter*, who speaks to the first, the other is *Capt. Blair*, who speaks to the second.

Captain Porter tells you, that the latter End of *May*, or the Beginning of *June* last, that he and Sir *John Freind*, and others that he mentioned, were at the *King's-head Tavern* in *Leadenball-street*, and there they entered into a Discourse about the Returning of the late King *James*; and they did consider among themselves which was the most effectual Way, and what were the most probable Means to have him restored: And thereupon it was agreed among them, that they would send

a Messenger into *France* to him, to desire him that he would solicit the *French* King to furnish him with 10000 Men, to be sent into *England*, 8000 Foot, 1000 Horse, and 1000 Dragoons; and they did agree, that when these Forces were sent, consisting of this Number of Men, then they would be ready to meet and join them with 2000 Horse, every one of them was to furnish his Quota; to which Sir *John Freind* did expressly agree. The Messenger that they agree to send was with them in Company, and heard the Consult, which was *Mr. Charnock*, who was lately tried and since executed.

This being at that Time determined, *Mr. Charnock* intended to go upon the Execution of that Design, and made ready for his Journey: But before he went, he had a Desire to meet with the Company again, and have a further Discourse upon this Matter, to see whether they did persevere in the Resolution they had so taken. There was another Meeting about a Week or a Fortnight after, which was at *Mr. Mountjoy's*, a Tavern in *St. James's-street*, where met Sir *John Freind*, *Captain Porter*, and divers others of the Company that were before at the *King's-head*. And there they entered into a Debate of the Matter again; the Question there was, whether *Mr. Charnock*, should be sent into *France*, as it was formerly agreed, and there it was again determined he should go, to which he agreed, and *Capt. Porter* says, that he did go about two or three Days after.

Mr. Porter tells you farther, that about the time that *Mr. Charnock* came back, *Mr. Porter* was in Prison, and he did not see him upon his first Return, but afterwards he met and spoke with him, and asked him what was the Effect of his Negotiation, and *Mr. Charnock* told him, that he had done as he was directed; that he had been with King *James*, and he had spoke to the *French* King, but the Answer returned was this, That the *French* King had Occasion for his Forces that Year to be otherways employed, and therefore he could not furnish such a Number of Men that Year; and *Mr. Porter* asked him whether he had been with the rest of the Gentlemen, and acquainted them therewith; and he said he had. This is the Substance of *Mr. Porter's* Evidence; whereby you may perceive what the Meetings were for, what Resolutions were there taking, and what was the Issue and Effect of them.

The next Witness is *Captain Blair*, and his Evidence goes to the other Part, that is, to Sir *John Freind's* having a Commission from the late King *James*, and engaging him and others to be in his Regiment, whereof Sir *John* was to be Colonel, and the providing of Officers. And for that the Evidence stands thus.

Captain Blair tells ye, that about two or three Years ago, he was with Sir *John Freind* at his Lodgings in *Surrey-street*, and there he did produce a Commission that he had from King *James* to be Colonel of a Regiment of Horse; he was to raise it himself, and was to appoint, and provide what Officers he thought fit. He says, he read the Commission and it was signed at the *Top James Rex*, and countersigned at the *Bottom Melfort*; this he is positive in, and farther that Sir *John Freind* did promise that he should be Lieutenant-Colonel of this Regiment, and also desired that *Captain Blair* would get as many Men as he could, and that there were other Officers that were appointed in that Regiment, and particularly one

Fisher was brought to Sir *John Freind* by Captain *Blair*, to be his first Captain, and one Colonel *Slater*, who was much in Favour with Sir *John Freind*, was to have been another Lieutenant Colonel; for, said Sir *John Freind*, I have a mind to him to be my Lieutenant Colonel, and though you are so too, yet it is no Matter if we have two in this Regiment; at which *Blair* took very great Offence, and expressed as much to Sir *John Freind*, whereupon Sir *John Freind* told him, it should not be so, but said he would make another Provision for Mr. *Slater*; that he should be a Captain of an independent Troop, that should be composed of Non-Swearing Parsons, and that shall satisfy him.

And Sir *John Freind* did intrust Captain *Blair* with the providing of Men and managing of them. And Captain *Blair* tells you, he was at a great deal of Charge, and laid out diverse Sums to care for them, and keep them together, and wanting Money to proceed in that Affair, he came to Sir *John Freind*, and made great Complaints, that he wanted Money to carry on the Design, by obliging the Men to keep together, and therefore pressed to Sir *John Freind* to furnish him with some Money; says Sir *John*, There is 100*l.* due to me, because I laid down 100*l.* to further the Escape of Colonel *Parker*, and *Piggot* has received it, and had Directions to pay it me, but I cannot yet get it. You shall have 20*l.* out of that 100*l.* if you can get it. Well, but how is that 20*l.* to be had? It seems there was one *Harrison* or *Johnson* a Priest, who had some Interest in this *Piggot*, and he was to help him to it; and thereupon the 20*l.* was actually paid the latter End of *June* or the Beginning of *July* last. This 20*l.* he swears he did receive upon that Account, by the Direction of Sir *John Freind*, to be so employed as you have been told.

Then Captain *Blair* had Occasion for more Money, which was some time after *Michaelmas* last, which was to be employed as the former was: and he was very importunate to obtain it of Sir *John Freind*; at length he did obtain it, as he tells you, and the Manner how. He produces a Letter under Sir *John Freind's* own Hand, which seems to be an Answer to a Letter that Capt. *Blair* had sent to him before, he thinks it to be his own Hand, for he is acquainted with his Hand-writing. But that is not all to prove it his Hand, for the Contents of the Letter are remarkable, which are about the Payment of Money to *Blair*: The Letter bears Date on a *Tuesday* Morning, and is directed to Captain *Blair*; and a Porter brought it, as he thinks, to his House; and thereby it was appointed they should meet on *Thursday* next at *Jonathans*'s Coffee-house about the Hour of Twelve. And accordingly Captain *Blair* came to *Jonathans*'s Coffee-house, where he accordingly met with Sir *John Freind*, and there was *Harrison* the Priest, and *Piggot*, and there he does receive a Sum of Money upon the same Account: So that now the Proof of this Letter does not depend barely upon the Knowledge of the Hand, but the Contents of it, and the subsequent Meeting at the Time and Place mentioned in the Letter, is a great Evidence that it was Sir *John Freind's* Hand-writing, and more Money is proved to be actually paid in the Presence of Sir *John Freind*, which is the most material Part of the Evidence. And you are told further, that as Sir *John Freind* and Captain *Blair* were going together in a Coach, from *Jona-*

thans's Coffee-house to St. *Martins le grand*, there was a Discourse between them; and Sir *John Freind* said, For his part he would not stir till such time as the *Brest* Fleet was come about; and joined with the *Brest* Fleet. That he did think he was in Danger of being apprehended when it came about, and therefore Captain *Blair* was to sculk till then, as he himself told him he would do, but yet he should get what Men he could. And this is a great Argument of his being concerned in the intended Invasion, and that his making Preparation for his Regiment, had Relation to the *French* Invasion which was expected.

It seems two Years ago, there being a great Intimacy between *Blair* and Sir *John Freind*, as appears by all the Evidence, *Blair* was acquainted with this Design. For you are told of the Letter that was writ by him to King *James*, which he shewed to Captain *Blair*, and it was concerning his Regiment; he says, that Sir *John Freind* own'd he writ that Letter himself, that *Blair* did read the Letter and finding it so well penn'd, he said, that he thought *Ferguson* had a Hand in it, at which Sir *John Freind* was angry; but *Blair* says, the Letter was concerning the Regiment of which Sir *John Freind* was Colonel.

Then, Gentlemen, you have *Bertram* called to prove, that *Blair* did tell him, that he was to be his Lieutenant Colonel, which was long before there was any Thoughts of any Discovery of this intended Invasion, and before the Discovery of the Plot of Assassination, which Sir *John Freind* did own he had some Knowledge of, but he disliked it, and said it would ruin King *James's* Affairs. So that, Gentlemen, I think this is the Sum and Substance of the Evidence that has been given upon this Occasion against Sir *John Freind*, to induce you to believe him to be guilty of this Crime with which he now stands charged.

But now you are to consider what Sir *John Freind* says on behalf of himself. In the first place, he makes an Objection against the Credit of all these Witnesses, that they are not to be believed, because, says he, they are known or reputed to be Roman Catholics and Papists, and their Consciences and their Oaths are large, especially when they think they can do an Injury to any Protestant; and therefore they are not to be allowed as Witnesses, at least their Credit is not sufficient to induce a Jury to believe them. At first indeed, he urged there was a Statute and a Law that did disable them from being Witnesses; but I must tell you there is no such Statute, nor indeed is their being Papists any Diminution at all to the Credit of their Testimony: For Papists are legal Witnesses, and though there are severe Laws to punish them for their Non-conformity to the Church of *England*, and for other their Popish Practices; yet I know of no Law that renders them infamous, or incapable of being Witnesses. For you are to consider Papists are Christians, and swear by the same Evangelists that Protestants do; and as for that Supposition, that they look upon Protestants as Hereticks, and can have a Dispensation for any Oaths that they take against them; you are to consider, as it has been very well observed by the King's Council, that they are never like to obtain any Dispensation or Pardon, if they should forswear themselves to defeat the Designs of the Popish Party; and therefore it is a very inconsiderable Objection, and in this Case hath no Weight.

But then he does insist upon it, that Captain *Blair* is not to be believed; and there are two Objections he makes against him. First, That he did deny that he knew any thing of the Plot. For *Blair* being upon this Occasion brought Prisoner to the *Gate-house*, and afterwards upon a Discourse of some News in the Flying Post, wherein it was mentioned, that Captain *Blair* had confess'd all, and made a full Discovery, and thereupon he should say, He was innocent of the Plot, and knew nothing of it. You, Gentlemen, are to consider the Weight of this Objection. First, Suppose he had said so, it might be, he was not willing (as he was not oblig'd) to own it, and would not confess it at that time, and to those Persons. It was not his Interest and Prudence to be too open; and therefore it does not follow, but because a Man would not trust others with his Confession, but deny'd his Knowledge of a Plot when there was no Occasion for him to own it, that now he swears it positively, therefore he should swear falsely.

But Secondly, Captain *Blair*, who was called for the Vindication of himself, and his Testimony, has upon his Oath declared to you, that he did not say he knew not any thing of the Plot, but did deny any Concern in, or Knowledge of the Assassination. Now this Business, for which Sir *John Freind* is tried, is not for being a Party in the designed Assassination, but of a Design with Force to depose the King, and restore King *James*.

Then as to the other Matter that was upon *Friday* Night last; *Courtney* the Witness says, that he came to Captain *Blair's* Chamber, and took Notice of his being to be a Witness at *Hicks's-ball* the next Day, and said, I pray God direct you; and he says his Wife, then present, said it was against his Conscience, and he seem'd to be in very great Trouble about it, and owned as much. But now Captain *Blair* himself, being examined upon his Oath, does deny positively, that either he or she said any such thing as that it was against his Conscience: He says, that *Courtney* got in to him on Purpose to surprize him, and he was aware of it, and his Design being to keep himself free from all Company, he gave Directions to the Keeper (as the Keeper himself swears) to let no Body come to him but his Wife; and Mr. *Courtney* intruded himself upon him.

Besides, Gentlemen, you are to consider the Probability of that which Mr. *Courtney* saith: When a Man is to be a Witness the next Day upon a Bill of Indictment before a Grand Jury, that he should be so indiscreet, as to tell any Body he was going to swear against his Conscience, is strange and very unaccountable. You are therefore to consider of this whole Matter, what Evidence Captain *Blair* has given, and the Import of it, and the Weight and Credibility of that Evidence which is given against him.

Then Sir *John Freind* insists upon another Matter: Says he, I am a Protestant, and it is not likely, that I that am a Protestant should conspire with Papists against Protestants; and for that he has called eight Witnesses, who tell you they have known him, some twenty Years, some more, others ten, and that they have frequently conversed with him, and never knew that he was ever popishly affected, and they have been frequently in his Company since the Revolution, and

they never knew that at any time he reflected upon the Government; nay, I think one said, that once he did reprove a Man for talking undecently of the Government; that he used constantly to go to Church four or five Years ago (though there is no Account of that since). And particularly there is one Mr. *Lupton* that was his Chaplain, and he tells you he was in his House; and there he read the Common-Prayer in the Family since the Revolution, and pray'd for the King and the late Queen, and Sir *John Freind* was often present at the Prayers, and particularly when he pray'd for the present King, and the late Queen; but he says he himself has been gone thence five Years, and has been little conversant with him since.

There is another Witness tells you, he has been in Sir *John Freind's* Company divers times, whom he believes to be a Protestant of the Church of *England*, and hath had a Discourse concerning the present Government; and that Sir *John Freind* said, that tho' he could not take the Oaths, and thereby conform to the Government, yet he was resolv'd to live quietly under it; and would not engage in any Manner of Plot; for he that catch'd him in the Corn should put him in the Pound.

This is the Sum and Substance of the Evidence on both Sides; and you, Gentlemen, are to consider the Weight of this Part of his Defence too; whether it be a sufficient Answer to the Evidence given against him, and has Weight enough to out-balance what the Witnesses for the King have sworn? For although he was a Protestant, yet it is plain he had no great Liking to the Government; and therefore would not take the Oaths; and though he was present at the Common-Prayer, when the King and Queen were pray'd for, yet whether he joined in those Prayers is very uncertain. There are a great many, who are not very well affected to the present Government, that come to Church, and are present at the publick Prayers; but it may be a very great Doubt whether they join in their Prayers for the present Government or no; his Conscience that scruples the taking the Oaths, might scruple that too; but whether Sir *John Freind's* being a Protestant, and his Declaring he would never be in a Plot, be a sufficient Proof, that therefore he never was in one; and that his former Discourse of that Kind should discredit these Witnesses, that have sworn he has been so much concerned in a Plot, you are to consider; and comparing the Weight and Nature of the Evidence on the one Side, and the other, it must be left to your Determination.

Then there is another Thing that he did insist upon, and that is Matter of Law. The Statute of the 25th *Ed.* 3. was read, which is the great Statute about Treasons; and that does contain divers Species of Treason, and declares what shall be Treason. One Treason is the Compassing, and imagining the Death of the King; another is the levying of War: Now, says he, here is no War actually levied; and a bare Conspiracy or Design to levy War, does not come within this Law against Treason. Now for that, I must tell you, if there be only a Conspiracy to levy War, it is not Treason: But if the Design and Conspiracy be either to kill the King, or to depose him, or imprison him, or put any Force or Restraint upon him, and the Way and Method of effecting of these, is by levying a War, there the Consultation

tion, and the Conspiracy to levy a War for that Purpose, is High Treason, tho' no War be levied: For such Consultation and Conspiracy is an Overt-Act, proving the Compassing the Death of the King, which is the first Treason mentioned in the Statute of the 25th of *Ed.* 3. For the Words of that Statute are; *That if any Man shall compass, or imagine the Death of the King.* Now because a Man designs the Death, Deposition, or Destruction of the King, and to that Design, agrees and consults to levy War, that this should not be High-Treason, if a War be not actually levied, is very strange Doctrine, and the contrary has always been held to be Law. There may a War be levied without any Design upon the King's Person, or endangering of it; which, if actually levied, is High-Treason; but a bare Designing to levy War, without more, will not be Treason. As for Example *; if Persons do assemble themselves, and act with Force in Opposition to some Law, which they think inconvenient, and hope thereby to get it repealed; this is levying a War and Treason, though purposing and designing it is not so: So

* Rising with Force to pull down all Inclosures, to expell Strangers, to pull down Bay-ay-Houses, is levying of War, and Treason; but a bare Purposing and Designing to raise such a Force, for such a Purpose, is not Treason.

great Numbers with Force to make some Reformation, of their own Heads, without pursuing the Methods of the Law, that is a levying of War, and Treason, but the Purposing and Designing it, is not so.

But if there be, as I told you, a Purpose and Design to destroy the King, and to depose him from his Throne, or to restrain him, or have any Power over him, which is proposed or designed to be effected by War that is to be levied, such a Conspiracy and Consultation to levy War for the bringing this to pass, is an Overt-Act of High-Treason. So that, Gentlemen, as to that Objection, that he makes in Point of Law, it is of no Force, if there be Evidence sufficient to convince you, that he did conspire to levy War for such an End.

Gentlemen, the Evidence you have heard what it is, you may consider the Weight of it, and the Circumstances that do attend it; and likewise the Answers that have been given by the Prisoner to invalidate that Evidence, and to prove the Improbability of what they have testified against him. You have heard, I say, the Evidence on the one Side, and the other; if you are not satisfied, that what the Witnesses have sworn is true, that Sir *John Freind* did engage in such a Design for such a Purpose, then you are to acquit him; but on the other Side, if you believe that Sir *John Freind* is guilty of what the Witnesses have deposed against him, then you are to find him Guilty.

Juryman. My Lord, we desire we may have that Letter with us that was produced here.

L. C. J. No, no, you cannot have it by Law.

Juryman. May it not be left with the Foreman, my Lord?

L. C. J. No; but you may look upon it in Court before you go away, if you will.

Then the Letter was handed to the Jury, and one of them handed it to the Prisoner.

L. C. J. Why do you do so? You should not give the Prisoner the Letter.

Juryman. It was done to see whether it was his Hand; and we desire, if there be any Body here that knows his Hand-writing, or that saw him write it, may be produced.

L. C. J. Why? Did not he own the Letter to the Witnesses afterwards? It was sworn to you he did; and that he met according to the Appointment in the Letter, and that Money was paid.

Then the Jury withdrew to consider of their Verdict, and an Officer was sworn to keep them according to Law, till agreed; and about a Quarter of an Hour afterwards they returned into Court, and the Prisoner was brought to the Bar.

Cl. of Arr. Gentlemen, Answer to your Names. *Thomas Clark* ———

Mr. Clark. Here.

(And so did all the rest of the Twelve.)

Cl. of Arr. Gentlemen, are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Sir *John Freind*, hold up thy Hand, *(which he did)* Look upon the Prisoner: How say ye, is he guilty of the High-Treason whereof he stands indicted, or Not guilty?

Foreman. Guilty, my Lord.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the Time of the High-Treason committed, or at any Time since?

Foreman. None to our Knowledge.

L. C. J. *Jaylor*, look to him, he is found Guilty of High-Treason.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it. You say that Sir *John Freind* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, nor Chattels, Lands, nor Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge.

L. C. J. Discharge the Jury.

Cl. of Arr. Gentlemen, the Court discharges you, and thanks you for your Service.

L. C. J. Then we had best to adjourn the Court till to Morrow Morning.

Cl. of Arr. *Cryer*, make Proclamation.

Cryer. Oyez, Oyez, Oyez: All Manner of Persons that have any thing more to do, at this General Sessions of the Peace, Sessions of *Oyer* and *Terminer*, holden for the City of *London*; and *Gaol-Delivery* of *Newgate*, holden for the City of *London*, and County of *Middlesex*, may depart hence for this Time, and give their Attendance here again, to morrow Morning at seven of the Clock, and *God save the King.*

Then the Prisoner was carried back to Newgate, and was brought the next Day to the Bar to offer what he had to say for Stay of Judgment; and afterwards received Sentence of Death, as a Traitor.



CLII. *The Trial of Sir WILLIAM PARKYNS, Knight, at the Old Baily, for High Treason, March 24. 1695. 8 W. III.*

Tuesday, March 24. 1695.

This Day the Trial of Sir William Parkyns, Knt. came on at the Sessions-House in the Old-Baily, for High Treason.

Clerk of the Arraignments.



RYER, make Proclamation.

Cryer. Oyez, Oyez, Oyez. All Manner of Persons that have any thing more to do at this General Sessions of the Peace, Sessions of Oyer and Terminer, holden for the City of London; and Gaol-Delivery of Newgate, holden for the City of London, and County of Middlesex, and were adjourned over to this Day, draw near, and give your Attendance, for now they will proceed to the Pleas of the Crown for the same City, and County; and God save the King.

Cl. of Ar. Middlesex. Cryer, make Proclamation.

Cryer. Oyez, You good Men of the County of Middlesex, summoned to appear here this Day, to try between our Sovereign Lord the King, and the Prisoner that shall be at the Bar, answer to your Names as you shall be called, every Man at the first Call, upon Pain and Peril shall fall thereupon.

Then the Jury that were returned in the Panel, were all called over and the Appearances of those who answered to the Call, were recorded.

About ten of the Clock the Judges (to wit) the Lord Chief Justice Holt, the Lord Chief Justice Treby, and Mr. Justice Rokeby came into the Court.

Cl. of Ar. Set Sir William Parkyns to the Bar. (Which was done.) Sir William Parkyns, hold up thy Hand.

Parkyns. My Lord, if you please, I humbly beg the Favour of one Word before I am arraigned. My Wife coming to see me in my Distress, sent up a Trunk of Linnen for our Use, and the Sheriffs of London have seized it, and do detain it. It has Linnen in it, and all her necessary Things, and all Things have been torn from me, since I was apprehended, but what is there; I have nothing to subsist upon but what is there; for no Money can I get from any Body, no Body will pay us a Farthing.

Mr. Sheriff Buckingham. My Lord, we were sent for to Mr. Secretary Trumball's Office, and when we came there, there was a Trunk that had been seized, as belonging to Sir William Parkyns; and when we came thither it was opened, and there was in it some Household Linnen, and some Plate? and Mr. Secretary Trumball was pleased, after having searched the Trunk, to seal it up, and deliver it to my Brother and me, to be kept; and this is all we know of it.

* L. C. J. Where was this Trunk seized? * Sir John Holt.

Mr. Sh. Buckingham. We found it in the Secretary's Office, and it was delivered to us there, and we gave a Receipt for it to bring it down again when called for; we did not seize it.

L. C. J. Look ye, Sir William Parkyns, your Trunk was seized I suppose in order to search for Papers.

Parkyns. Yes, I believe it was; but I hope it shall be delivered back now they have found nothing in it, and I have nothing else to subsist upon but what is there.

L. C. J. Is there any Plate there? What is there in the Trunk?

Mr. Sh. Buckingham. There is some Diaper and Damask Linnen, a Carpet, and some Pieces of Plate, two or three hundred Ounces of Plate, for ought I know. We had it from the Secretary's Office; we did not seize it.

[Then the Judges consulted among themselves.]

L. C. J. He ought to have his Plate to sell, to support him that he may have Bread.

Parkyns. Will your Lordship please to direct the Sheriff to deliver it back.

L. C. J. Well, some Care or other shall be taken in it.

Parkyns. My Lord, I have nothing to subsist upon, unless I can make something of what is there; I have a Wife and four Children, and nothing to subsist upon.

L. C. J. Let your Wife make Application for it at the Secretary's, it cannot now be done here. Why did you not make Complaint of it before? If you had, Care had been taken in it.

Park. I was told there was a Petition; for, my Lord, I was a close Prisoner, and they told me there was a Perition; but my Wife never mentioned any thing of it to me while afterwards; and they talk'd of an Order of Council that they had for the Sheriff's seizing it; but when I came to enquire into it, there was no Order about it, but only to search and examine it.

L. C. J. Well, some Order shall be taken about it.

Mr. Sh. Buckingham. My Lord, we have given a Receipt to the Secretary for it.

L. C. J. But he must have wherewithal to subsist and buy him Bread while he is in Prison.

Mr. Sh. Buckingham. My Lord, I see Mr. Burleigh there, who was Sir John Freind's Solicitor; I would humbly move your Lordship, that it may be inquired into, how he came by the Panel of the Jury yesterday? For it seems to reflect upon us, as if we had given the Prisoner a wrong Panel.

Mr. Just. Rokeby. No, I think there can be no Reflection upon you; but I think it would be very proper to have the Matter examined.

L. C. J.

L. C. J. Ay, let *Burleigh* come in; [*which he did.*] Pray, how came you by the Pannel which you gave to Sir *John Freind*?

Burleigh. My Lord, I had three several Copies sent me by Sir *John Freind's* Friends, to the *Horn Tavern* about three or four a Clock, and I deliver'd one of them to Sir *John Freind*; but he had one before I delivered mine.

L. C. J. Who sent them to you, or brought them to you?

Burleigh. I had them brought to me by a Porter.

Mr. *Baker.* You know you might have had it from the proper Officer, for asking.

Burl. I had them brought me from Sir *John Freind's* Friends.

L. C. J. Can you tell who had it from the Sheriff?

Burl. My Lord, I know not: I had three Copies sent me in a Quarter of an Hour's Time; whence they came I know not; the Sheriff knows me, and every Body else.

Mr. *Sh. Buck.* I do know you, and would have you be fair in your Practice.

Mr. *Baker.* The Inquiry is made, because a false Copy is put upon him; you might have had a true Copy, if you had applied yourself right.

Burl. I sent to Mr. *Farrington* for it.

L. C. J. The Sheriff delivered it the Secondary, who is the proper Officer.

Mr. *J. Rokeby.* Sir *John Freind* said he had it from him yesterday.

Burl. But he had one before; how he came by it, I can't tell; nor whence those came that were brought to me.

Mr. *J. Rokeby.* If you will not take care to go to the right Place, it is no Body's Fault but your own, if you suffer by it.

Burl. I was with my Lady, and delivered a Petition for this Trunk.

L. C. J. But it seems it was under the Conuzance of the Secretary, and Direction was given to go thither; some Care or other must be taken in it, and shall; but go on now to Arraign the Prisoner.

Cl. of Arr. Hold up thy Hand, (*which he did.*) Thou standest indicted in *Middlesex*, by the Name of Sir *William Parkyns*, late of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Kt. For that, Whereas an open, and notoriously publick, and most sharp, and cruel War, for a long time hath been, and yet is, by Sea and by Land had, carried on, and prosecuted by *Lewis the French King*, against the most Serene, most Illustrious, and most Excellent Prince, our Sovereign Lord *William the Third*, by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. During all which Time, the said *Lewis the French King*, and his Subjects were, and yet are Enemies of our said Lord the King that now is, and his Subjects, You the said Sir *William Parkyns*, a Subject of our said Sovereign Lord the King that now is of this Kingdom of *England*, well knowing the Premises, nor having the Fear of God in your Heart, not weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor against the said most Serene, most Clement, and most Excellent Prince, our said Sovereign Lord *William the Third*, now King of *England, &c.* your Supreme, True, Natural, Rightful, Lawful, and

Undoubted Sovereign Lord; the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King, should bear, and of Right ought to bear, withdrawing, and utterly to extinguish intending and contriving, and with all your Strength purposing, designing and endeavouring the Government of this Kingdom of *England*, under him our said Lord the King that now is, of Right, duly, happily and very well established, altogether to subvert, change and alter; as also the same our Sovereign Lord the King to Death and final Destruction to put and bring; and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery, to the aforesaid *French King*, to subdue and bring; the first Day of *July*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *St. Paul Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly and traiterously did compass, imagine, contrive, purpose, design and intend our said Sovereign Lord the King that now is, then your Supreme, true, natural, rightful and lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England*, to depose, cast down, and utterly to deprive; and the same our Sovereign Lord the King, to kill, slay, and murder; and the aforesaid *Lewis the French King*, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to invade, fight with, conquer, and subdue, to move, stir up, procure and aid; and a miserable Slaughter among the faithful Subjects of our said Lord the King throughout all this whole Kingdom of *England*; to make and cause; and that you the said Sir *William Parkyns*, to the aforesaid Enemies of our said Lord the King that now is, then and there, during the War aforesaid, traiterously were adhering and aiding; and the same most abominable, wicked and devilish Treasons, and traiterous Compassings, Contrivances, Intentions, and Purposes of yours aforesaid, to fulfil, perfect and bring to effect; and in Prosecution, Performance, and Execution of the traiterous Adhesion aforesaid, you the said Sir *William Parkyns*, as such a false Traitor, during the War aforesaid, to wit, the same first Day of *June* in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, and traiterously, and with Force and Arms, with one *Robert Charnock*, (late of High-Treason, in contriving and conspiring the Death of our said Sovereign Lord the King, that now is, duly convicted and attainted) and with divers other false Traitors, to the Jurors unknown, did meet, propose, treat, consult, consent, and agree, to procure from the aforesaid *Lewis the French King*, of his Subjects, Forces, and Soldiers, then and yet Enemies of our said Lord the King that now is, great Numbers of Soldiers and armed Men, this Kingdom of *England* to invade and fight with, and to levy, procure and prepare great Numbers of armed Men, and Troops, and Legions against our said Sovereign Lord the King that now is, to rise up and be formed; and with those Enemies at

at and upon such their Invasion and Entrance into this Kingdom of *England*, to join and unite; Rebellion and War against him our said Sovereign Lord the King, within this Kingdom of *England*, to make, levy, and wage; and the same our Sovereign Lord the King so as aforesaid to depose, and him to kill and murder. And further, with the said false Traitors, the same first Day of *July*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, traitorously you did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from you the said *Sir William Parkyns*, and the same other Traitors unknown, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, to *James* the second, late King of *England*, to propose to him, and desire of him to obtain of the aforesaid *French* King, the Soldiers and armed Men aforesaid, for the Invasion aforesaid to be made; and Intelligence and Notice of such their traitorous Intentions, and Adhesions, and all the Premises to the said late King *James*, and the said other Enemies and their Adherents, to give and exhibit; and them to inform of the said Things, Particulars, and Circumstances thereunto relating; as also Intelligence from them of the late intended Invasion, and other Things and Circumstances concerning the Premises, to receive, and them to you the said *Sir William Parkyns*, and the said other Traitors in this Kingdom of *England*, to signify, report and declare, in Assistance, Animation, and Aid of the said Enemies of our said Sovereign Lord the King that now is, in the War aforesaid, and to stir up and procure those Enemies the more readily and boldly this Kingdom of *England* to invade, the Treasons and traitorous Contrivances, Compassings, Imaginations and Purposes of you the said *Sir William Parkyns* aforesaid, to perfect and fulfil, and all the Premises the sooner to execute, manage and perform, and the Invasion aforesaid to render and make the more easie, you the said *Sir William Parkyns* afterwards, to wit, the 10th Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, traitorously and with Force and Arms, with the aforesaid *Robert Charnock*, and very many other false Traitors, to the Jurors unknown, did meet, propose, treat, consult, consent and agree, him our said Sovereign Lord the King that now is, by lying in wait and deceit, to assassinate, kill and murder; and that execrable, abominable and detestable Assassination and Killing the sooner to execute and perpetrate, afterwards, to wit, the same Day and Year, there traitorously you did treat, propose and consult with those Traitors, of the Ways, Methods, and Means, and the Time and Place where, when, which Way, and how our said Sovereign Lord the King, so by lying in wait, the sooner might be killed and slain, and did consent, agree and assent with the same Traitors, that forty Horsemen or thereabouts of those Traitors, and others by them and you the said *Sir William Parkyns*, to be hired, procured and paid, with Guns, Carbines and Pistols, with Gun-Powder and Lead-Bullets charged, and with Swords, Rapiers and other Weapons armed, should lie in wait and be in Ambush our said Lord the King in his Coach being, when he should go abroad, to attack, and that a certain and competent Number

of those Men so armed, should set upon the Guards of our said Lord the King then and there attending him, and being with him, and should over-power and fight with them, whilst others of the same Men so Armed, him our said Lord the King should kill, slay, and murder; and that you the said *Sir William Parkyns*, then and there, did take upon you to provide five Horses for those Men which should kill and murder our said Sovereign Lord the King; and also that you the said *Sir William Parkyns*, your Treasons, and all your traitorous Intentions, Designs and Contrivances aforesaid, to execute, perpetrate, fulfil and bring to Effect, afterwards, to wit, the Day and Year last aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Carbines, Rapiers and Swords, and other Weapons, Ammunition and Warlike Things, and Military Instruments, falsely, maliciously, secretly, and traitorously did obtain, buy, gather, and procure, and to be bought, obtained, gathered, and procured did cause, and in your Custody had and detained with that Intention them in and about the detestable, abominable and execrable Assassination, Killing, and Murder of our said Lord the King, and the Invasion aforesaid, as aforesaid, to use, employ and bestow; and also your Treasons and all your traitorous Intentions, Purposes, and Contrivances aforesaid, to execute, perpetrate, fulfil and fully bring to Effect; you the said *Sir William Parkyns*, afterwards, to wit, the Day and Year last aforesaid, at the Parish aforesaid, in the County aforesaid, falsely, maliciously, advisedly, secretly and traitorously, divers Soldiers and Men Armed, and ready to be Armed, after the said detestable, abominable and execrable Assassination, Killing, and Murder of our said Sovereign Lord the King, so as aforesaid should be done, perpetrated and committed, to rise, and muster, and War and Rebellion within this Kingdom of *England* to make and wage, and with the Enemies of our said Lord the King, Foreigners and Strangers, Subjects and Soldiers of the said *Lewis* the *French* King, being about to invade this Kingdom of *England*, at and upon their Invasion and Entrance into this Kingdom then expected to be shortly made, themselves, together with you the said *Sir William Parkyns*, to join and unite, and into Troops and Legions to form, you did levy, list, and retain, and did procure to be levied, listed, and retained, and those Soldiers and Men for the Treasons, Intentions and Purposes aforesaid, then and there, and afterwards in Readiness you had, against the Duty of your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, His Crown and Dignity; as also against the Form of the Statute in this Case made and provided.

How say'st thou, *Sir William Parkyns*, Art thou Guilty of this High-Treason whereof thou standest indicted, or Not Guilty?

Parkyns. Not Guilty.

Cl. of Arr. Culpritt. How wilt thou be Tried?

Parkyns. By God and my Country.

Cl. of Ar. God send thee good Deliverance.

Parkyns. My Lord, If your Lordship pleaseth to favour me with a Word or two.

L. C. J. Aye, What say you Sir?

Parkyns. My Lord, I have been kept in hard Prison ever since I was committed, no Body has

been suffer'd to come to me till *Friday* last, then my Council came to me; and being charged with many Facts as I see in this Indictment, it will be necessary to have divers Witnesses to clear my self of these Particulars; they are dispers'd up and down, and I have had no Time to look after them, and therefore I beg your Lordship to put off my Trial till another Day.

L. C. J. When had you first Notice of your Trial?

Parkyns. The first Notice of my Trial was on *Wednesday* last, in the Afternoon.

L. C. J. That is a sufficient Time of Notice, sure you might have provided your Witnesses, and prepar'd for it by this Time.

Parkyns. But, my Lord, being kept so close Prisoner, I had no Opportunity for it; for it was not possible for me to get any Body to come to me, till *Friday* Noon, not so much as my Council, and then there was but two Days, *Saturday* and *Monday*, (for *Sunday* is no Day for any Business) and it is impossible for me to be ready in the Manner that I ought to be. It is a perfect Distress, and Hardship upon me, to be put so soon upon my Trial, without my Witnesses, and what should enable me to make my Defence; therefore I humbly intreat your Lordship to put it off till another Day.

L. C. J. What Witnesses do you want, Sir *William*?

Parkyns. I have divers Witnesses, my Lord, that can give an Account where I was from time to time, but they are many of them out of Town, and I have sent about every Way, but cannot get them together in so short a Time.

L. C. J. When had he Notice of his Trial?

Mr. Baker. On *Wednesday* I told him, that he must expect to be try'd this Day, and withal, that if he would name me any Council, that he would have come to him, he should have an Order next Morning for them.

L. C. J. You were told, it seems, on *Wednesday* that you might have what Council you would.

Mr. Baker. And he had an Order upon *Thursday* Morning for his Council.

Parkyns. I could not have it without Application to the Court at *White-Hall*, and could have no Body come to me till *Thursday*, and it was *Friday* before I could get my Council to me.

L. C. J. You might have sent for your Witnesses on *Thursday*, and employ'd some body about that Matter then.

Parkyns. The Solicitor that I employ'd, was employ'd otherways, and I could not employ any Body else.

L. C. J. Yes, you might have employed any other about that Business.

Parkyns. I had no Body to send, I was kept close, and no Body permitted to come to me.

L. C. J. Your Solicitor you desir'd had Leave to come to you.

Mr. Baker. You know that those you sent for, you had an Order for.

Parkyns. I could not get him till *Thursday* to me, I had no Messengers to send till then.

Mr. Baker. I gave the Keeper Direction, to let him have Persons come to him to send on any Errand.

L. C. J. The Keeper had Orders, it seems, to let any Messenger come to you, and he would have help'd you to some Body to send of this Errand to be sure.

Keeper. I always did it, as soon as I know they have Notice of their Trial.

Parkyns. But the Keeper is not always in the Way, and besides, when I had Notice given me of my Trial, it was Execution Day, and he was not at home that Day.

L. C. J. He names no Witnesses, only he says he has divers Witnesses, neither is there any Oath made of any Witnesses: Pray how long is it since you were committed?

Parkyns. I was committed this Day Fortnight.

L. C. J. Your Commitment charged you with High-Treason, and therefore you knew what you stood accus'd of; were you not committed for High-Treason?

Parkyns. Yes, my Lord, I believe I was.

Mr. Sol. Gen. (Sir Jobu Hawkes.) my Lord, he had a very fair Time to prepare for his Defence, for he saw his Name in the Proclamation a good while before he was taken, and there it is declar'd, what he stands charg'd with.

L. C. J. You might have had a Copy of your Commitment, you had a Right to have it, and thereby you might have seen what you were accus'd of.

Keeper. We never do deny it, if it be demanded.

L. C. J. You cannot deny it, you know what Penalty you are under if you do.

Parkyns. No Body was permitted to come to me.

L. C. J. You might have ask'd for a Copy, or any Body else, for you had Notice of your Trial so long ago as *Wednesday* last.

Mr. Baker. I gave him Notice of his Trial on *Wednesday*, and then told him he must prepare for it against this Day; he said he would endeavour to petition for a longer Time, I told him it would be in vain, for he must prepare for his Trial to Day, and could have no longer Time.

L. C. J. Sir *William*, truly we do not see any Reason to put off the Trial upon these Suggestions.

Parkyns. My Lord, it is very hard; then I humbly beg I may have the Favour, that I may have Council allow'd me, I have no Skill in Indictments.

L. C. J. We cannot allow Council.

Parkyns. My Lord, if I have no Council, I do not understand these Matters, nor what Advantage may be proper for me to take in these Cases.

L. C. J. You are not ignorant, Sir *William*, that Council has been always refused when desired in such Cases.

Parkyns. My Lord, there is a new Act of Parliament that is lately made, which allows Council.

L. C. J. But that does not commence yet, Sir *William*.

Parkyns. my Lord, it wants but one Day.

L. C. J. That is as much as if it were a much longer Time: For we are to proceed according to what the Law is, and not what it will be.

Parkyns. But it is declarative of the Common Law, because it says it was always just and reasonable.

L. C. J. We cannot alter the Law till Law-makers do it.

Parkyns. Will your Lordship be pleas'd to let it be read?

L. C. J. Ay, if you have a Mind to it, it shall be read.

Parkyns. Yes, if your Lordship pleas'es.

L. C. J. Read it.

Cl. of Ar. (Reads.) An Act for Regulating of Trials in Cases of Treason, and Murther of Treason, —

All the first Paragraph of the new Act was read.

L. C. J. Look ye, Sir *William Parkyns*, this Law has not taken any Effect as yet; but the Law stands as it did before the making of this Act.

Parkyns. But, my Lord, the Law says it's just and reasonable that it should be so.

L. C. J. We go according to the Law as we find it is.

Parkyns. And, my Lord, what is just and reasonable to Morrow, sure is just and reasonable to Day, and your Lordship may indulge me in this Case, especially when you see how streight Notice I have had, and what a little Time has been allowed me, that I am not able to make my Defence.

L. C. J. We cannot make a Law, we must go according to the Law, that must be our Rule and Direction.

Parkyns. Yes, my Lord, but what is just and reasonable, sure is Law: the Law is grounded upon Reason.

L. C. J. The Parliament has thought fit to make such a Law, which is to commence from the 25th of this Month: It is not a Law till the Time comes, that the Parliament hath appointed for its being a Law.

Parkyns. But, my Lord, if my Notice had been a convenient Notice, I had been within the Time limited by the Act of Parliament; and no one can want the Advantage of that Act from henceforward, nor suffer for such Want but my self, which is a particular Hardship upon me.

L. C. J. We cannot alter the Law, we are bound by our Oaths to proceed according to the Law, as it is at present.

Parkyns. Pray, my Lord, let the Trial be put off till another Day then.

L. C. J. You shew no Reason for it; you name no Witnesses that you want, nor have we any Oath as we ought to have in such a Case.

Parkyns. I will do both if your Lordship will oblige me to it.

L. C. J. There ought to be an Oath certainly, but we think you have had fair and convenient Notice: For you have had as much Notice as Sir *John Freind* had, who was tried Yesterday.

Parkyns. As I am inform'd he was charged with single Facts about the Town, but I am charged with many particular Things more than he was.

L. C. J. The Act of Parliament says nothing of Notice of Trial; that still continues as it was before; and you have had very convenient Notice: Go on, Mr. *Hardesty*, to swear the Jury.

Cl. of Ar. Sir William Parkyns, you the Prisoner at the Bar, Those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you upon Trial of your Life and Death; if therefore you will challenge them or any of them, you are to speak unto them as they come to the Book to be sworn, and before they be sworn.

Parkyns. I hope your Lordship will be of Council for me then.

L. C. J. So we will; we will do you all the Right we can. Look ye, you know you may challenge 35 without Cause, and as many as you will with Cause, but no more than 35 without Cause.

Cl. of Ar. Sir Goddard Nettborp.

Parkyns. I except against him.

Cl. of Ar. Leonard Hancock, Esq;

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Parkyns. I except against him, he is the King's Servant.

Cl. of Ar. William Withers, Esq;

Par. I challenge him.

Cl. of Ar. Samuel Powell, Esq;

Par. I challenge him.

Cl. of Ar. William Northbey, Esq;

Par. Well, I don't except against him.

Cl. of Ar. Hold Mr. *Northbey* a Book, (*which was done.*) Look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, according to your Evidence; So help you God.

Cl. of Ar. Thomas Tench.

Par. I challenge him.

Cl. of Ar. John Wolf.

Par. I challenge him.

Cl. of Ar. James Bodington.

Par. I challenge him.

Cl. of Ar. John Smith.

Par. I challenge him.

Cl. of Ar. Edward Gould.

Par. I have no Exception against him.

(*He was sworn.*)

Cl. of Ar. John Raymond.

Par. I challenge him.

Cl. of Ar. Daniel Thomas.

Par. I have no Exception against him.

(*He was sworn.*)

Cl. of Ar. Isaac Honeywood.

Par. I challenge him.

Cl. of Ar. William Underwood.

Par. I challenge him.

Cl. of Ar. Aribur Bayley.

Par. I challenge him.

Cl. of Ar. Nehemiah Erming.

Par. I challenge him.

Cl. of Ar. John Webber.

Par. I challenge him.

Cl. of Ar. John Cane.

Par. I have no Exception to him.

Mr. At. Gen. We challenge him for the King.

Cl. of Ar. Thomas Glover.

Par. I challenge him.

Cl. of Ar. Henry Whitcott.

Par. I have no Objection against him.

(*He was sworn.*)

Cl. of Ar. Timothy Thornbury.

Par. I challenge him.

Cl. of Ar. Dormer Sheppard.

Par. I challenge him.

Cl. of Ar. John Temple.

Par. I challenge him.

Cl. of Ar. Nathaniel Gold.

Par. I have no Exception against him.

Mr. Gold. My Lord, I am no Freeholder in this County.

Mr. Baker. Nor have you no Copyhold, Sir?

Mr. Gold. Yes, Sir, I have.

Mr. At. Gen. However, let him be set by.

Cl. of Ar. Robert Brendon.

Par. I challenge him.

Cl. of Ar. Thomas Taylor.

Par. I challenge him, he is the King's Servant.

Cl. of Ar. Joseph Blissett.

Par. I challenge him.

Cl. of Ar. John Billier.

Par. I challenge him.

Cl. of Ar. Francis Chapman.

4 K 2

Par.

Par. I challenge him.

Cl. of Ar. *John Cleeve.*

Par. I challenge him.

Cl. of Ar. *Robert Bampton.*

Par. I have no Exception to him.

(*He was sworn.*)

Cl. of Ar. *William Atlee.*

Par. I challenge him.

Cl. of Ar. *Thomas Sutton.*

Par. I have no Exception to him.

(*He was sworn.*)

Cl. of Ar. *Thomas Edling.*

Par. I have no Exception against him.

(*He was sworn.*)

Cl. of Ar. *Robert Sanderfon.*

Par. I have no Exception against him.

(*He was sworn.*)

Cl. of Ar. *Ralph Marfb.*

Par. I have no Exception against him.

(*He was sworn.*)

Cl. of Ar. *Richard Bealing.*

Par. Pray, Mr. *Hardesty*, how many have I challeng'd?

Mr. *Hardesty*. I will tell you presently, Sir.— You have challeng'd 25.

Par. But there are two that I gave Reason for? Do you put them in among them? that is, Mr. *Hancock* and Mr. *Taylor* as the King's Servants.

Cl. of Ar. You may speak to my Lord about it; but if that be allow'd, then there are but 23.

Par. Well, Sir, Go on then.

Cl. of Ar. *Richard Bealing.*

Par. I challenge him.

Cl. of Ar. *William Partridge.*

Par. I challenge him.

Cl. of Ar. *Nicholas Roberts.*

Par. I challenge him.

Cl. of Ar. *Peter Lavigne.*

Par. I challenge him.

Cl. of Ar. *Joseph Whiston.*

Par. I have no Objection to him.

(*He was sworn.*)

Cl. of Ar. *Andrew Cook.*

Par. I challenge him.

Cl. of Ar. *Samuel Hooper.*

Par. I challenge him.

Cl. of Ar. *Thomas Heames.*

Par. I have no Exception to him.

(*He was sworn.*)

L. C. J. Sir *William Parkyns*, you have challeng'd two, and have assign'd the Cause of your Challenge, that is, *Hancock* and another, and the Reason of your Challenge is, because they are the King's Servants. I am to acquaint you, that is no Cause of Challenge; but however, the King's Council do not intend to insist upon it, if there are enough besides. They are willing to go on with the Panel; and I speak this, because I would not have it go for a Precedent, nor have it understood that the Cause you assign is a good Cause: But however, they will not stand with you, if there be enough to serve.

Par. My Lord, I submit to it; the Jury is full, I think.

Cl. of Ar. No, there are but Eleven sworn yet.

Par. But how far have I gone in my Challenges?

Cl. of Ar. There are Four, which you may challenge more.

Par. There are Two allow'd me, tho' it be not a Precedent: Are there Four still?

Cl. of Ar. Yes, you may challenge Four more, and no more. *Edward Townsend.*

Par. I challenge him.

Cl. of Ar. *Nicholas Rufford.*

Par. I have no Exception of him

(*He was sworn.*)

Cl. of Ar. *Cryer*, countez. *William Northey.*

Cryer. One, &c. (*and so the rest 'till the Twelve.*)

Cl. of Ar. *Nicholas Rufford.*

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

Cl. of Ar. *Cryer*, make Proclamation.

Cryer. Oyez, If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney-General, or this Inquest now to be taken, of the High-Treason whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance. And all Jury-Men of *Middlesex* that have appear'd, and are not sworn, may depart the Court.

The Names of the Twelve sworn were these;

<i>William Northey</i> , Esq;		<i>Thomas Edling</i> , Gent.
<i>Edward Gold</i> , Esq;		<i>Robert Sanderfon</i> , Gent.
<i>Daniel Thomas</i> , Esq;		<i>Ralph Marfb.</i> , Gent.
<i>Henry Whitecot</i> , Esq;		<i>John Whiston</i> , Gent.
<i>Robert Bampton</i> , Gent.		<i>Thomas Heams</i> , Gt.
<i>Thomas Sutton</i> , Gent.		<i>Nicholas Rufford</i> , Gent.

Cl. of Ar. Sir *William Parkyns*, hold up thy Hand. (*which he did.*) You that are sworn, look upon the Prisoner, and hearken to his Cause: He stands indicted by the Name of Sir *William Parkyns*, late of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Knight, that whereas (*prout in the Indictment, mutatis mutandis.*) and against the Form of the Statute made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to inquire, whether he be Guilty of the High Treason whereof he stands indicted, or Not Guilty; if you find that he is Guilty, you are to inquire what Goods and Chattels, Lands, Tenements, he had at the Time of the High Treason committed, or at any Time since: If you find him Not Guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Mr. *Mountague*. May it please your Lordship, and you Gentlemen of the Jury—

Parkyns. My Lord, your Lordship was pleased to say, you would be my Council. I am ignorant in Matters of Indictments, I beg if there be any Fault in it, you will let me know it.

L. C. J. Truly, I have observ'd no Fault in it; I do not know of any.

Mr.

Mr. *Mountague*. Gentlemen, this Indictment does contain as heavy an Accusation, as can be laid upon any Man, for it not only charges the Prisoner with a traitorous Design of subverting the Government, and raising War and Rebellion within this Kingdom; which was to be done by adhering to the King's Enemies, and promoting a Foreign Invasion, but likewise with a Conspiracy against the Life of the King, which was to have been taken away by a bloody Assassination.

Gentlemen, the Indictment sets forth, That Sir *William Parkyns*, the Prisoner at the Bar, did meet several Times with *Charnock*, and other false Traitors; and there it was consulted, and agreed how they should procure *French* Forces to land within this Kingdom, and then they were to raise Rebellion amongst his Majesty's Subjects, to join with the Invaders. Mr. *Charnock* was sent from the Prisoner at the Bar, and the rest, as a Messenger into *France*, unto the late King *James*, to acquaint him with this bloody Design, and to desire him to borrow of the *French* King as many Troops as he could spare, to make a Descent upon this Kingdom, and they at the same Time were to facilitate the Descent, by getting as many Men as they could to make the Assassination; and the Number of Forty was pitched upon, who were to be provided for that Purpose, of which the Prisoner at the Bar was to find Five, who were to lie in wait with the rest, and set upon the King as he came along in his Coach, upon his Return from Hunting. Some were to assault and attack the Guards, while others were barbarously to assassinate and murder the King in his Coach: and particularly it charges the Prisoner with undertaking to procure and provide Five Horses, and Arms that were to be employ'd in this bloody Assassination; and also with gathering together great Quantities of Arms and Ammunition that were to be used in the Insurrection. To this Indictment the Prisoner has pleaded Not Guilty; if he be not guilty, God forbid he should be convicted: But if he be guilty, and we prove the Fact, the Nation expects that you will do Justice to the King and Kingdom, and find him so.

Mr. *At. Gen.* (Sir *Thomas Trevor*.) May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, Sir *William Parkyns*, stands indicted of High-Treason, for Compassing the Death of his Majesty, and Adhering to his Majesty's Enemies; and the Overt Acts laid in the Indictment to prove this Treason are, That he with others had several Meetings and Consultations about this Design, and sent a Messenger over to *France* to the late King *James*, to procure *French* Forces to invade the Kingdom, to depose the King, and subject the Kingdom to a *French* Power: And likewise that he did enter into a Conspiracy with several Persons for the Assassination of his Majesty's Royal Person. These are the Overt Acts mentioned in the Indictment, to prove this Charge of Treason against the Prisoner.

Gentlemen, the Evidence to prove these Overt Acts, and which we shall produce, will be in this Manner. It will appear that the Prisoner at the Bar, Sir *William Parkyns*, has had a Commission from King *James* to raise a Regiment of Horse, and about *May* last, he with several others had a Meeting at the *Old King's Head* in *Leadenball-street*, where were present my Lord of *Ailesbury*,

my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Freind*, Sir *John Fenwick*, Mr. *Charnock*, Mr. *Porter*, and one Mr. *Cook*; and *Goodman* came in to them after Dinner. And at that Meeting it was consulted and concerted among them, how they should bring back the late King *James*, and depose his present Majesty; and in order to that, they did resolve to send Mr. *Charnock* as a Messenger to the late King *James*, to desire him to obtain from the *French* King 10000 Men to invade this Kingdom; 8000 Foot, 1000 Horse, and 1000 Dragoons; and to encourage the late King to this, they did assure him by the same Messenger, that they would meet him with 2000 Horse upon his Landing; and they did all undertake and agree that they would do it; and Mr. *Charnock* undertook to go of this Message.

Gentlemen, about a Week after this Meeting, Mr. *Charnock* not being willing to go upon this Errand without a good Assurance, that they intended to perform what they had resolved upon, they therefore had another Meeting of most of the same Persons that were at the former, and particularly the Prisoner at the Bar was one; and that was at Mrs. *Mountjoy's* a Tavern in *St. James's-street*. And at that Meeting they did all agree, as formerly, and continued in their former Resolution, to send Mr. *Charnock* to assure the late King, that they would meet him, according as they had promised, if he would give them Notice where he was to land, and he should not fail of their Assistance. And at these Meetings they did take Notice, that then was the most proper Time for such an Invasion: For the King was gone to *Flanders*, most of the Forces were drawn thither, and the People were dissatisfy'd, and so it would be the fittest Opportunity to accomplish their Design. And they desired Mr. *Charnock* to make haste to carry this Message, and to intreat King *James* that he would be speedy and expeditious in his Coming, that they might not lose this Season.

Gentlemen, after these Meetings, Mr. *Charnock* did within a few Days go over into *France*, and did deliver his Message to the late King *James*, who took it very kindly, but said that the *French* King could not spare so many Forces that Year, having other Work to employ them about: Upon which, within a Month's Time, or less, he came back again, and brought an Account of his Message to those Gentlemen who sent him. This was in *May* or *June* last, and so the further Prosecution of the Design ceased at that Time.

But Gentlemen, the last Winter it was revived again, and attempted, and carried on very near to the obtaining a fatal Success. And you will hear that the Prisoner at the Bar, Sir *William Parkyns*, has had too great a Hand, and been a very great Instrument in both the Parts of this wicked Conspiracy and Treason; not only in the Invasion, which he with others sent the Messenger over to procure; but also in the other Part, the blackest Part, even the Assassination of the King's Person.

About *January* last Sir *George Barclay*, a Lieutenant of the Guards to King *James* in *France*, was sent over into *England* to engage Persons to join in the Conspiracy and Assassination; and for his Assistance there were sent over with him, and before and after him, some 20 Troopers of the late King's, that were his Guards in *France*. And

Sir *George Barclay*, to encourage the Persons that were to join, and whom he had brought over with him, pretended an Authority to justify it, that is, a Commission from the late King *James*, and he communicates this Design to Mr. *Charnock*, Mr. *Porter*, and several others, and amongst the rest to the Prisoner at the Bar, Sir *William Parkyns*, having a great Confidence in him, and did acquaint him he had such a Commission, and he shewed it him, and that Commission was to levy War against the King's Person; which they took to be a sufficient Authority for them to assassinate the King's Person.

Gentlemen, in order to the accomplishing this horrid Conspiracy, there were several Meetings, and Consultations had, at which the Prisoner at the Bar was present, and very active. Sometimes they met at Captain *Porter's* Lodgings, at another Time at the *Nagg's Head* in *Covent-Garden*, at another Time at the *Sun* in the *Strand*, and another Time at the *Globe* in *Hatton-Garden*, in order to accomplish this Design: And at these Meetings you will hear, they did propose several Ways and Methods for the Execution of it; and several Persons, particularly one of them that have suffered the Punishment of the Law for this, were appointed to go and view the Ground, where the King's Person might most conveniently be assaulted. Mr. *King*, that was executed for it, was one, Captain *Porter* was another, and one *Knightley* was the third; and these did go to see the Ground. And the Day before they went, there was a Meeting, at which was present the Prisoner at the Bar, and others, wherein 'twas concluded upon, that they should go; and they went accordingly to see the most convenient Place for it. They went to *Brentford*, and afterwards to the other Side of the Water to *Richmond*, and survey'd all the Ground, and the Place they pitched upon as the most proper for their Purpose, was, when his Majesty should return from Hunting, to do it in the Lane betwixt *Brentford* and *Turnham-Green*. And accordingly, when they return'd in the Evening, they came by Appointment to the Place where the rest of the Accomplices were to meet, at the *Nagg's Head* Tavern in *St. James's*, and gave an Account of their Proceedings; and at that Meeting likewise was Sir *William Parkyns*, the Prisoner at the Bar, Mr. *Charnock*, and several others, and upon the Report of Captain *Porter* and Mr. *King's* Expedition, they did resolve the Thing should be done in that Place, and that it should be done in this Manner.

Sir *George Barclay* with about Eight or Ten in his Party, who were to be chosen out of all the other Parties, were to assault the King's Coach, and endeavour to kill the King, and all the rest that were in the Coach with him, whilst the others in two Parties, were to attack the Guards; and the Number in all was to be about 40. This was fully agreed upon.

And, Gentlemen, the first Time that they resolved to put this traitorous Design in Execution, was the Fifteenth of *February*, which was a *Saturday*, the usual Day that the King was wont to go a Hunting on; but it happened by great Providence that the King did not go abroad that Day.

They had contrived further, to make the Thing sure, that there should be two Persons, whom

they called orderly Men, who should be placed at *Kensington*, to give Notice when the King went abroad; and *Chambers* was one, and *Durance* that was a *Fleming* was another; and *Durance* was likewise employ'd to view the Inns about *Turnham-Green* and *Brentford*, for the Lodging of their Men, who were to be placed Two or Three in an Inn, that they might not be observed.

Gentlemen, the first Day appointed for the accomplishing this Design, which was the 15th of *February*, being over, and they disappointed, yet they did afterwards resolve to go on and execute it. And the next *Saturday*, which was the 22d of *February*, was pitched upon for the Time of Execution; and accordingly on *Friday* the 21st of *February*, the Day before, there was a Meeting at the *Nagg's Head* in *Covent-Garden*; and there was present Sir *George Barclay*, Capt. *Porter*, and several others, and amongst the rest the Prisoner at the Bar was there: They had at first some Discourse among them that they were in doubt, because of the first Disappointment, whether there had not been some Discovery, but that Doubt was soon over; for it was said, it could not be so, for then they should not have been there together. That seemed probable, and the Disappointment was imputed to some Accident, and that gave them new Assurance to go on, and they were resolved to do it in the same Manner, as they had formerly resolv'd, on the next Day, which was *Saturday*.

Gentlemen, at that Meeting Mr. *Porter* acquainted them, that he had the Misfortune to have some of his Horses fallen sick or lame, and he acquainted the Prisoner with it; and Sir *William Parkyns* was careful to supply him with other Horses, and told him, he could get a Note from one *Lewis*, who I think is Major of the Horse to my Lord *Feversham*, to get three Horses, and accordingly he did send a Note for three Horses to Mr. *Lewis*.

Upon the 22d of *February* in the Morning, which was the Time for the Execution of this bloody Conspiracy, they had met together, and resolved to go on with it, and put it in Execution; and that they had Notice from *Chambers*, that the King did go a hunting that Day, and there was great Joy among them all, thinking themselves sure; and so they order'd all Things to be got ready. But afterwards, about One a Clock, there came other News, that the King did not go abroad, but the Guards were all come back in great Haste, their Horses being all of a Foam, and the King's Coaches were sent back to the *Mews*; then they began to be in a great Consternation, and they thought the Thing had taken Air, and was discovered. This, Gentlemen, is a short Account, how it will appear upon the Evidence, as to the Conspiracy of Assassinating the King, and the several Meetings and Consultations about it; at which the Prisoner at the Bar, Sir *William Parkyns*, was present.

But, Gentlemen, there will be a little more Evidence, if it be necessary to confirm this former Evidence, and to shew the Part that the Prisoner at the Bar had in this treasonable, this barbarous Conspiracy: For it will appear, that, as the Prisoner had a Commission from the late King *James* to raise a Regiment of Horse, and

and had sent a Messenger into *France*, to invite the late King over, with 10000 *French*; so he had made great Preparation of Arms to be ready for that Purpose. About *Michaelmas* last the Prisoner at the Bar sent a Parcel of Goods, as he called them, which were put into Cafes, I think they were about eight small Boxes, put into very large Cafes, and sent down by his Order into the Country, unto one *Haywood*. It seems this *Haywood* had married Mr. *Charnock's* Sister, and *Charnock* writ a Letter to him, and desired that he would give Sir *William Parkyns* Leave to lodge some Goods there, which were of great Value, and he durst not trust them at his own House in *Warwickshire*, because his Servants were not there to look after them, and accordingly upon that Letter Mr. *Haywood* did give Leave that the Goods should be carried thither, and they were so, and there they were lock'd up privately, and kept till this barbarous Conspiracy was discovered; then you will find the Prisoner at the Bar sent his own Servant down, the *Tuesday* after the Discovery, and gave him Orders immediately (his Name is *Eubank*, and he is the Groom, and looks after his Horses) to go down to *Warwickshire* to one *Evans*, who carried the Goods, to desire him with all Speed to remove those Goods, and to take Care to remove them privately, and to secure them, and to hide them. And accordingly on *Wednesday* he came there, which was *Asb-Wednesday*; and acquainted *Evans* with what Sir *William* had ordered him, and they went that very Night with a Cart to Mr. *Haywood's*; and though it was late, and they were desired to stay till the next Morning, they would not; they said they could stay no longer, but would remove the Goods immediately; and accordingly they were carried from thence that Night, to Sir *William Parkyns's* own House in *Warwickshire*; and there they were buried in the Garden. These Goods that were of this great Value were put into the Ground to preserve them. But after this Discovery, Sir *William Parkyns* being accused, and his Name put in the Proclamation, and a Search being ordered to be made at his House, these Goods that lay hid at *Haywood's*, and upon the Removal thence were thus buried in the Ground, came to be discovered, and the Cafes were broken open, and then they did appear to be Goods of an extraordinary Nature indeed, for you will find they were Horse Arms for Troopers; there were two and thirty Carbines, five and twenty Cafes of Pistols, and about forty odd Swords without Hilts upon them, but the Hilts lay loose by them; so that this will make it apparent, without Dispute, how far the Prisoner at the Bar has engag'd in this Conspiracy, and what Preparations he had made for the Execution of it.

Gentlemen, it will appear farther against the Prisoner at the Bar, that he hath had a considerable Number of Horses, that have frequently been brought up from his House in *Hartfordshire*, to the *George-Im* in *Holbourn*.

But before we come to that, I would acquaint you with another particular Part of our Evidence, that is precedent in Point of Time. About *Christmas* last, the Prisoner did acquaint one *Sweet*, who is an Officer in the Excise, (and I am very sorry that we should have any such Officers, that should be thought fit to be intrusted with Secrets of this Nature) Sir *William Parkyns* acquainted this *Sweet*, and gave him an Account that he

had long had an Assurance that King *James* would land, but now he had it under his own Hand, that he would land very speedily, and that he had made Preparations for that Purpose to meet him. That great Things were expected from him; that his own Troop was ready, and it consisted chiefly of old Soldiers; and that several Persons who had been Officers would be Volunteers under him. He said he intended to go into *Leicestershire*, and there he was to meet several Gentlemen from the North, and from the West, to consider, and settle a Correspondence how to meet the late King upon his Landing; and accordingly Sir *William Parkyns* did go, and you will have an Account that he came to *Leicester* on *Friday* Night, one *Scudamore* went along with him, there he staid all *Saturday*, and a good Part of *Sunday*. There came several Persons to him while he was at *Leicester*, particularly one Captain *Tarborough*, the Son of Sir *Thomas Tarborough*, and a Parson, who said they came as far as from *Tork* to meet Sir *William Parkyns* at *Leicester*; and there was great Resort thither at that Time, as you will hear from the Witnesses. Sir *William Parkyns* came back again from *Leicester* to *Brick-bill* that Night, and returned to his own House on *Monday* Night; and after his Return, he acquainted this *Sweet*, that he had been his Journey to *Leicester*; that he met with several Gentlemen there from the North, and other Places, and had settled a Correspondency, and had found them all fully engaged, and well inclined, all went well, and there was no Danger of any Mis-carriage at all; and this was about *January* last, that this Expedition was made by the Prisoner.

And now, Gentlemen, as to that Particular about the Horses, which were so frequently brought up this last Winter from his House in *Hartfordshire*, to the *George-Im* in *Holbourn*, there is one very unfortunate Circumstance that attends this Matter; that is, that these Horses were brought to Town just the several Nights before the King was to be assassinated; for upon *Thursday* the 13th of *February*, he being in Town, sent Directions to his Groom, to bring up three of his Horses on *Friday*, which was the 14th in the Afternoon, and all these Horses were furnish'd with Pistols and Furniture for Troopers; according to those Directions his Servant brought up the three Horses, and he came and acquainted his Master that they were brought up according to his Order; Sir *William Parkyns* was then at his Lodgings, which were in the same House where Mr. *Charnock* did lodge; when his Man had told him the Horses were come, he pretended at first that he had some Thoughts of going out of Town that Evening, but that he had changed his Mind, and would go in the Morning, and he would have the Horses ready against the next Morning, which was *Saturday* the 15th, the first Day upon which the Assassination was intended to be put in Execution.

The next Morning when his Man came to him again, he had changed his Mind, and he would not go out of Town in the Morning, but he would go in the Afternoon; and it will appear that he did not go out of Town that Day, nor the next Day, nor till *Monday*; and then the Design had miscarried by the King's notgoing abroad a *Saturday*, and the Horses were carried back; and when he went out of Town upon *Monday*, one *Holmes* went along with him, and he went

with

with him to his House in *Hartfordshire*; and there he staid until *Friday* after, which was the Day before the next Time that was appointed for the Execution of the Assassination. And upon the *Friday* they came up again, and then there were more Horses, four or five, that were brought up that Day; and all of them with Pistols, and Jack-Boots, and other Furniture and Accoutrements for Troopers; and these came to the *George-Inn*, where *Sir William Parkyns* gave his Man *Eubank* particular Orders, to be very early the next Morning at *Kensington*; that was the 22d, and he was to go, as he told him, to one *Brown*, that he said was concerned in the King's Kitchen, and liv'd two Doors off the Gate that turns up to the King's House, and he was to tell him he was *Sir William Parkyns's* Servant, but that he came from a Man that lodg'd at a Confectioner's House over-against *Gray's-Inn*; in which Place, by the Description of the Person, you will find *Sir George Barclay* lodged.

The Man went accordingly at Eight a-Clock in the Morning to *Kensington*, and inquired out this *Brown*, and met with him, and told him he was *Sir William Parkyns's* Servant, but came from the Gentleman that lodg'd at the Confectioner's in *Holbourn*. *Brown* said he had nothing to say to him, but bid him give him his Almanack, and he writ in it, that he would be in Town in two Hours himself, and wait upon him: And bid him carry that to the Man that lodg'd at the Confectioner's, and this *Brown* by the Circumstances of the whole, must probably be one of the orderly Men who lodg'd at *Kensington*, to give Notice when the King, and the Guards went out.

Sir William Parkyns's Servant came back to the Confectioner's House, and there he met with a Man that went by the Name of *Rogers*; he'll tell you he was a *Scotch* Man, for he spoke broad *Scotch*, and he'll give you a particular Description of the Man, by which I believe it will appear that it was *Sir George Barclay*. *Sir William Parkyns's* Servant, after he had deliver'd his Message to this *Rogers*, came back to his Master, and told him he had done his Errand according as he was order'd, and *Sir William Parkyns* ask'd him what *Rogers* said, and he told him that he bid him tell his Master, if he would come to him he would be ready at home for him. This was upon *Saturday* Morning the 22d of *February*.

About Eleven a-Clock that Day *Sir William Parkyns*, and this *Lewis* that we spoke of before, came to the *George-Inn*, and there *Sir William Parkyns* ask'd his Servant whether he had receiv'd any more than two Saddles, for there were two Saddles sent in thither, according to an Order that had been given, to furnish two other Horses that stood there at the *George-Inn*, and which *Sir William Parkyns* told his Groom belonged to two Friends of his, and bid him be sure to take care of them, and to see them well fed, and order'd two Saddles to be bought for them. *Lewis* said he did think they had more than two, but you will see by the Evidence that this same *Lewis* had provided thirty Saddles for *Sir William Parkyns*; but there seem'd to be a Controversy between them at that Time how many had really been sent in, and *Lewis* affirm'd there was twenty four, but *Sir William Parkyns* said, I have had but twenty two of the thirty yet, for I have but two brought in here, and I had twenty before. This you will hear fully proved, and I think it is impossible for

any Body to believe, but that all this Preparation of Saddles, Pistols, Boots, and other Things, must convince any Body of the Prisoner's being so far engaged in this Design, that he can never answer it without giving you a very good Account, what this Preparation was for.

Gentlemen, a great Part of this will be prov'd to you by one that acted in it, as a Servant to *Sir William Parkyns*, that is, as to the coming up of the Horses, Jack-boots, Pistols, and other Arms at that Time; and that when on the last *Saturday* it was disappointed, all the Horses, not only those *Sir William Parkyns* brought, but the other two went away in a great Hurry and Confusion, and nothing was ever heard of them more; and that will be prov'd by the Servants in the very *Inn*.

Gentlemen, I have now open'd to you the Nature and State of the Evidence, we will call our Witnesse, and make it out very undeniably, and substantially, and therefore I will not give you any farther Trouble.

Mr. Sol. Gen. Call Mr. Porter (who was sworn.) Mr. Porter, pray will you give the Court and the Jury an Account of the Meeting at the King's-Head in *Leadenhall-street*; and who was there, and what Resolutions, and Agreements they came to?

Capt. Porter. About the latter End of *May* last, or the Beginning of *June*, there were two Meetings had, the one was at the King's Head in *Leadenhall-street*, the other was at Mrs. *Mountjoy's* near *Sir John Fenwick's*. At the first Meeting there was my Lord of *Ailesbury*, my Lord *Montgomery*, *Sir John Freind*, *Sir William Parkyns* the Prisoner at the Bar, *Sir John Fenwick*, Capt. *Charnock*, Mr. *Cook*, and my self. Mr. *Goodman* came in after Dinner, and there we consulted which was the best Way for King *James's* coming in, and we all resolv'd to send a Messenger to him, to invite him over, and to desire him to interpose with the *French* King for the getting 10000 Men, to come over with him, 8000 Foot, 1000 Horse, and 1000 Dragoons. It was then consider'd who should be sent, and all the Company agreed Mr. *Charnock* was the properest Person. Says Mr. *Charnock*, if you send me, pray tell me what Errand I shall go upon: We did likewise then agree, that he should assure the King, if he would come over, at such a Time, we would meet him with a Body of 2000 Horse.

Mr. Att. Gen. Did *Charnock* undertake to go upon that Message?

Capt. Port. Yes, he did, and to propose this Matter to him, that he might propose it to the *French* King for the getting of the Men.

Mr. Sol. Gen. Before you go away, I desire to ask of you one Thing, did *Sir William Parkyns*, the Prisoner at the Bar, agree to the Message?

Capt. Porter. Yes, he did.

Mr. Sol. Gen. Had you any other Meeting about this Business, and when was it, and who was there?

Capt. Porter. My Lord, Capt. *Charnock* said at first he would not go of a foolish Message, and thereupon we all agreed to be at the Head of 2000 Men to meet King *James* at his Landing, and every one should bring his Quota.

Mr. Att. Gen. When was the second Meeting, and where was it, and who were there, and what was agreed upon?

Capt. Port. The second Meeting was at Mrs. *Mountjoy's*, where Captain *Charnock* desired us once more to meet, before he went away to know whether

whether we kept to our first Resolution, and we did agree to what was resolv'd upon at first, and he said he would go in two or three Days time.

Mr. *Att. Gen.* Did the Company agree to it then?

Capt. *Port.* Yes, they did, Sir, all that met at that Time.

Mr. *Sol. Gen.* Pray name them over again, who they were.

Capt. *P.* Sir *William Parkyns* was actually there, and my Lord of *Ailesbury*, and Sir *John Freind*, and Capt *Charnock*, Mr. *Cook*, and myself; I cannot tell whether my Lord *Montgomery* was there, or Mr. *Goodman*.

Mr. *Att. Gen.* Pray when did you see Capt. *Charnock*, or speak with him, after that?

Capt. *P.* It was when I was in Prison about the Riot, and he told me he had been there; but there would be nothing done in that Matter at present, for King *James* said, the *French King* could not then spare so many Men, though he thanked us for our kind Offer; And he said he had been with my Lord of *Ailesbury*, Sir *William Parkyns*, and the several other People of Quality, which he did not name, and had carried them the particular Messages that he had in command from the King to carry to them.

Mr. *Att. Gen.* Now, pray tell us, what you know about the Design of Assassinating the King, and what Hand the Prisoner at the Bar was to have in it.

Capt. *P.* About some Weeks before I heard of the Assassination, I came to lodge in the House in *Norfolk-street*, where Captain *Charnock* lodged; and where Sir *William Parkyns* lodged when he came to Town. Most commonly we used to go in the Evening to the Tavern, or drink a Bottle of Wine at our own Lodgings; and one Morning I ask'd Mr. *Charnock*, if I should see him at Night? he said he was engaged in private Company for that Night, and he could not go with me to the Tavern. For, says he, there are some Gentlemen that are lately come from *France*, and there is something to be done for the King's Service. If there be so, says I, pray let me be concerned; Says he, they are but newly come, and they will see no Body else but me at present. A little after I fell sick of a Fit of the Gout, and Mr. *Charnock* came to visit me, and we fell into Discourse, and I asked him about those Gentlemen that were come from *France*, what they came about? he told me it was Sir *G. Barclay* that came from *France*, and several other Officers with him, and that he had a Commission from the late King *James* to levy War against the Person of King *William*, or the Prince of *Orange*, as I think it was named in the Commission.

L. C. *J.* Who told you this?

Capt. *P.* It was Capt. *Charnock*: he desired to know how many Men I could bring. I desir'd a little Time to consider, but I said there would be a great many would join if the King landed, whom I did not think fit to trust with a Thing of this Nature before-hand. Some few Days after, Captain *Charnock* came into my Chamber, and brought Sir *George Barclay* and Major *Holmes* that said he was come from *France*; and there we had little more but a general Discourse: But a little after that I got well of the Gout, and we had several Meetings at several Places; at the *Globe Tavern* in *Hatton-Garden*, at the *Nagg's-head* in *Covent-*

Garden, and at the *Sun* in the *Strand*, where Sir *William Parkyns* was always present. And there we did consult of the best Ways to assassinate the King, as he came from *Richmond* after Hunting. Sir *George Barclay* said, he had received 800 *l.* from King *James's* Secretary towards the buying of Horses, and furnishing both Horses and Men for the Expedition; and it was consider'd of how many Men it would be necessary to bring. The Number agreed upon was about forty, of which Sir *George Barclay* was to provide twenty, I promis'd to bring seven or eight, Sir *William Parkyns* engag'd to bring five, whereof three should be mounted, with his own Men, and the other two my Men were to mount upon.

Mr. *Att. Gen.* Do you know the Names of those People that he was to mount?

Capt. *P.* I never had the Names myself.

Mr. *Att. Gen.* Well, what was done after these Consultations?

Capt. *P.* I asked Captain *Charnock* one time, if I might not see the Commission that King *James* had given; he said he had never seen it himself, but Sir *William Parkyns* had. I asked Sir *William Parkyns*, one Evening as we were smoking a Pipe by the Fire side, whether he had seen the Commission: He said, he had; and that because King *James* would not trust any of his Ministers, it was written and signed with the King's own Hand.

Mr. *Att. Gen.* Pray did he tell you what it was for?

Capt. *P.* He said it was for raising, and levying War upon the Person of the King, but I do not know whether he called him King *William*, or the Prince of *Orange*; but I suppose it was the Prince of *Orange*.

Mr. *Att. Gen.* Pray then give us an Account of your going to view the Ground, where it was most convenient to do the Business.

Capt. *P.* There were several Propositions about the Place where it was to be done, one was to be on the other Side of the Water by Ambuscade in *Richmond Park*, the other was to be on this side of the Water after the King was landed. Sir *G. Barclay* was for that that was upon the other side of the Water; I thought that it would take up too much time to go over thither, that it was better to be done on this side; but because there was Difference of Opinions, it was resolv'd upon that some Body should be appointed to view the Ground; and I was appointed for one, Mr. *Knightsley* for another, and Mr. *King* would needs go with us for a Third; and we three did go. We lay all Night at *Knightsbridge*, and the next Day went, and viewed the Grounds on both Sides the River; and came back that Evening to the *Nagg's-head* according to Appointment, where was Sir *William Parkyns* the Prisoner, and Sir *George Barclay*, and Mr. *Charnock*, and we gave an Account that he had view'd both Places: And upon our Report it was resolv'd, that it should be done on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*.

Mr. *Att. Gen.* Are you sure Sir *William Parkyns*, the Prisoner at the Bar, was there, at that Meeting at the *Nagg's-head*?

Capt. *P.* Yes, he was.

Mr. *Att. Gen.* Did he agree to that Resolution?

Capt. P. It was in general agreed to by all that were there.

Mr. Att. Gen. Pray, Capt. Porter, then give us an Account of the Days that were fixed for the Execution of this Design.

Capt. P. There was *Saturday* the 15th, and *Saturday* the 22d, because *Saturday* was the Day the King us'd to go a Hunting and Shooting.

Mr. Att. Gen. Were there any Men at *Kenfington*, to give you Notice when the King went abroad?

Capt. P. There were two Men that had a Lodging at *Kenfington*, the one was one *Chambers*, who belonged to Captain *Charnock*, and the other was a *Fleming*, one *Durance*, who came over with Sir *G. Barclay*, and he went every Day, and thrust himself among the Guards to bring Intelligence.

Mr. Sol. Gen. What was the Reason the Design was not executed?

Capt. P. The first Day *Durance* brought Notice in the Morning, that the Guards were gone abroad; and afterwards there came Notice, that the King would not go abroad that Day, for which Reason we adjourn'd it to the next *Saturday*.

Mr. Att. Gen. What was the Method you was to take in the Execution?

Capt. P. The Method agreed upon was this: There was one *Rookwood* that came from *France* upon this Expedition, he was to command one Party, and Captain *Charnock* and myself were to command another Party, to attack the Guards, and Sir *George Barclay* was to have four Men out of each Party to attack the Coach, while we attacked the Guards.

Mr. Att. Gen. Well, you say the first Day you was disappointed by the King's not going, when was the next Meeting?

Capt. P. The next Meeting was upon *Friday* the Day before the 22d. I was sick all the Week, and I do not know whether I lay a Bed all the Week, or no; but upon *Friday* they met, and it was at the *Sun Tavern* in the *Strand*: There was none but Sir *George Barclay*, Capt. *Charnock*, Sir *William Parkyns*, and myself.

Mr. Att. Gen. What Discourse was there then?

Capt. P. Sir *George Barclay* came in, and said, he was afraid the Thing was discovered; I told him I fancied not, for if it had, we should not have been in that House at that time. Then, says he, let us go on, and try another Day. Sir *William Parkyns* was asked if his Horses were come to Town: He said they were come to Town that Night. Said I, I have had a Misfortune with my Horses, two of them are fallen lame, and won't be fit for Service. Says he, if I had known that, I could have brought more Horses out of the Country: But, says he, I will send to Mr. *Lewis*, who was Gentleman of the Horse to my Lord *Faversham*, and I believe he can help us to more Horses; he will be with me to morrow Morning, and I'll get a Note from him for two more. In the Morning I sent to him, and he sent me a Note for two Horses to mount my Men, and he sent me Word Mr. *Lewis* could help me to two or three others, that they were all three saddled, and one was accoutred with Holsters and Pistols, but the other two had only Saddles. I did not see Sir *William Parkyns* on *Saturday* the 22d, but I met some of my Friends, who were to go along with me upon this Enterprize, and we had first Notice that the Guards were gone abroad, and

that the King would go, at which all were very glad: But when we had Notice that the King did not go, we were afraid the Thing was discovered, and I went out of Town, and I did not see any of them afterwards, till they were taken.

Mr. Att. Gen. Pray Capt. Porter, have you heard any thing from Sir *William Parkyns* of his having a Commission from King *James*?

Capt. P. I had heard Captain *Charnock* ask Sir *William Parkyns*, why he did not go along with us in this Expedition? he said he did not go, because he could not go.

Mr. Att. Gen. Was he not to be one in the Number that was to act in the Assassination?

Capt. P. No, he said he had other Business to do, he had a Regiment to look after.

L. C. J. How many Horses had you from *Lewis*?

Capt. P. I had never a one, only Sir *William Parkyns* sent me Word, if I wanted I might have three, for I had told him I would not send for them, till I heard whether the King went abroad, and then I had Notice that the King did not go.

Mr. Att. Gen. Had you a Note for them?

Capt. P. Not for those three Horses, but *Cranbourn* said he had a Note for two Horses.

Parkyns. Did he say he had a Note from me?

Capt. P. No, I don't say so, Sir *William*; *Cranbourn* told me, he had a Note whither to go for them.

L. C. J. Will you ask him any Questions, Sir *William*?

Par. No, my Lord.

Juryman. My Lord, I desire he may be asked, Whether at any of those Meetings there was any Discourse of the Assassination before Sir *William Parkyns*?

L. C. J. What say you to that, Captain Porter?

Capt. P. Yes, he was at all the Meetings and Consultations.

Jurym. Pray my Lord, I desire to know, whether Sir *William Parkyns* discoursed of it himself, and what he did say about it?

Capt. P. I cannot say exactly, what he did say in particular, only he agreed to it, and was to furnish five Horses for it, and said it was necessary to be done; for it would bring the King in more easily, though he could not personally engage in it himself, because he had other Business, he was to look after his Regiment.

Mr. Sol. Gen. If Sir *William Parkyns* will ask Captain Porter no Questions, we will go on to our next Witnesses, which is one *Abraham Sweet*, whom Mr. Attorney mentioned.

(He was brought in and sworn.)

Mr. Sol. Gen. Mr. *Sweet*, will you give the Court and Jury an Account, what Sir *William Parkyns* said to you about King *James's* Landing?

Mr. Att. Gen. Pray, will you give an Account what Discourse you had with Sir *William Parkyns*, the Prisoner at the Bar, about King *James's* returning and landing with *French Forces*?

Sweet. Sir *William Parkyns* did tell me, that he did expect King *James's* Landing, and he said his own Troop was composed of old Soldiers.

Mr. Att. Gen. How long have you known Sir *William Parkyns*?

Sweet. This three Years.

Mr. *At. Gen.* Pray tell the Time when this Discourſe was, about what Time was it ?

Sweet. This was ſince *Chriſtmas*, about *Chriſtmas* laſt.

Mr. *At. Gen.* Where was it that you had this Discourſe ?

Sweet. It was about his own Houſe.

L. C. J. What Discourſe ?

Sweet. We were talking about King *James's* coming.

L. C. J. Who told you, that King *James* was coming ?

Sweet. Sir *William Parkyns*.

Mr. *At. Gen.* What did he ſay ?

Sweet. He ſaid he had bought a great many Saddles, thirty Saddles ; and that his own Troop was compoſed of all old Soldiers.

Mr. *At. Gen.* Did he tell you of any Assurance that he had of King *James's* Landing ?

Sweet. Yes, he ſaid he had the King's Word for it.

Mr. *At. Gen.* Was there any Discourſe between you about any Journey that Sir *William* was to take ?

Sweet. Yes, he did tell me he was to go into *Leiceſtershire*, and was to meet ſeveral Gentlemen in *Leiceſtershire* ; and he did go, and after he came back again, he ſaid he had met his Friends, and all was well, and that the Weſt was as much inclin'd to King *James's* Intereſt as the North, and that a Lord's Brother was concerned.

Mr. *At. Gen.* What other Discourſe had you about this Matter ?

Sweet. Nothing elſe, as to Particulars, that I can remember.

Mr. *At. Gen.* What Orders had you to come up to Town in *February*, and when, and from whom ?

Sweet. Sir *William Parkyns* ſent for me, and he ſent me a Letter about the 11th of *February*, that I ſhould come to him the next Day, and I did come the next Day.

Mr. *At. Gen.* Whether did you come ? Where did you find him ?

Sweet. At his Lodgings in *Norfolk-ſtreet*, at the Houſe where Mr. *Charnock* lodged ; and after I had ſpoken with Sir *William Parkyns* about the Letter which he had ſent me to come up, he told me, that the Buſineſs that he had deſigned for me, he did not think fit I ſhould do, becauſe of my Family.

Mr. *At. Gen.* Pray, what Directions had you from him, what you were to do when you went into the Country ?

Sweet. When I went into the Country, he order'd me to go to his Houſe, and ſend up three of the ſtrongeſt Horſes.

Mr. *At. Gen.* When was this, do you ſay ?

Sweet. It was in *February*.

Mr. *At. Gen.* What Time in *February* ?

Sweet. The Eleventh or Twelfth, which was *Wednesday* ; and at my going away, he told me if I had not a Letter from him, the *Friday* following I ſhould come to Town again. I did come to Town again, and then he asked me, if I had made Proviſion for my Family ? I told him, no ; then he asked me, why I came up to Town ? he told me I might go into the Country again on the morrow Morning.

L. C. J. What did he tell you ?

Sweet. He ſaid I might go back again into the Country. I came upon the *Saturday* Morning to him.

Mr. *At. Gen.* Pray, what Day was that *Saturday* ?

Sweet. I believe it was the 13th or 14th of *February*.

Mr. *At. Gen.* You ſay, *Wednesday* was the 12th.

Sweet. Yes, I believe *Wednesday* was the 12th, and I came to Town the *Friday* after that 12th, that was the 14th, and on the *Saturday* I went home again.

Mr. *At. Gen.* You ſay you came to him on the *Saturday* Morning, what paſſed between you then ?

Sweet. I went the next Morning to Sir *William Parkyns's* Lodgings, but he was gone out, and had left Word, that I muſt come again about Eleven of the Clock : I did go about that Time, and he was not come in, and there I met one Mr. *Chambers*, and one Mr. *Lee*, whom I had ſeen there the Night before.

Mr. *At. Gen.* And what Discourſe had you then with them ?

Sweet. We had little Discourſe, for I had only ſeen them the Night before ; but I think *Chambers* told me he had been at *Kensington*, and I deſired to know what News there ; and he told me *William* kept as cloſe as a Fox ; and he ſhew'd me his Wounds, and ſaid thoſe Wounds wanted Revenge.

Mr. *At. Gen.* Where did he ſay he received thoſe Wounds ?

Sweet. At the *Boyne*.

Mr. *Sol. Gen.* Pray, Mr. *Sweet*, did he tell you for what Uſe his Troop was ?

Sweet. He did not tell me poſitively ; but I underſtood it to be to join King *James* when he landed.

Mr. *Sol. Gen.* Pray, Sir, where did you dine that *Saturday* ?

Sweet. With Sir *William Parkyns*, and Mr. *Charnock*, and *Chambers*, and one or two more that I did not know.

Mr. *At. Gen.* Will you ask him any Questions, Sir *William* ?

Parkyns. Did I tell you, Mr. *Sweet*, that I had a Troop of Horſe ?

Sweet. I will tell you your own Words, and no other : You ſaid, Your own Troop was compoſ'd of old Soldiers.

L. C. J. Pray let me ask you one Queſtion : How many Horſes were you to bid the Man to bring up to Town ?

Sweet. Three, my Lord.

Mr. *At. Gen.* And were they not his ſtrongeſt Horſes ?

Sweet. Yes, my Lord, they were.

Mr. *At. Gen.* Did he ſay any thing to you about Voluntiers ?

Sweet. Yes, he ſaid there were ſome Gentlemen that were Captains and old Officers, that would be Voluntiers under him.

Parkyns. Pray, where were thoſe Words ſpoken ?

Sweet. Either in your Houſe or in the Garden, I can't tell directly which, but ſome where about your Houſe it was.

Par. Where is that Houſe ?

Sweet. In *Hertfordſhire*.

Par. Then I am in your Lordſhip's Judgment, whether Words ſpoken in *Hertfordſhire* can be an Evidence of a Treason acted here in *Middleſex* ?

L. C. J. Sir *William Parkyns*, if there be a Deſign to kill the King, and there are ſeveral O-

vert-Acts to prove that Design, and one is in one County, and another is in another County, the Party may be indicted in either of the Counties, and Evidence may be given of both those Overt-Acts, though in several Counties. It is true, you being indicted in *Middlesex*, makes it necessary that some Evidence should be given of some Things done in *Middlesex*, as there is; as your Meeting at Mrs. *Mountjoy's*, and at the *Nag's Head* in *Covent-Garden*, and the *Sun* in the *Strand*, where were several Consults, which are Overt-Acts of the same Treason; and if Treason be committed in several Counties, the Party may be indicted in any one, and the Evidence may be given of Facts done in all.

Par. Then, Mr. *Sweet*, you do not say that I had raised a Troop, or would raise a Troop.

Sweet. I told you your own Words, that your Troop was made up of old Soldiers.

L. C. J. But yet I must tell you further, Sir *William Parkyns*, if I remember right there is Evidence given of a Discourse you had in *Norfolk-street*, where you lodg'd, and that is in *Middlesex*.

Par. My Lord, I did not observe that he said any thing of me about *Norfolk-street*.

Mr. At. Gen. Yes, this is what he says: You told him you had thought of a Business for him, but you would not engage him in it, because of his Family.

Par. Pray, Mr. *Sweet*, did I tell you any thing what you were to do?

Sweet. No, Sir, you did not.

Parkyns. I hope the Jury will take Notice of that: I did not tell him any thing that he was to do.

L. C. J. Well, that was no great Matter. Will you ask him any more Questions, Sir?

Par. No, my Lord.

Mr. Sol. Gen. Then our next Witness is *James Eubank*.

(*Who was sworn.*)

Mr. Att. Gen. Do you know Sir *William Parkyns*?

Eubank. Yes, he is my Master.

Mr. At. Gen. What Servant was you to him?

Eubank. I was Groom to him.

Mr. At. Gen. How long have you been his Groom?

Eub. Not a Twelvemonth yet.

Mr. At. Gen. Pray, first give an Account what Journey you took with him.

Eub. I went into *Leicestershire* with him.

Mr. At. Gen. Pray, tell us what you know of that Matter.

Eub. Yes, my Lord, we went from our own House to *Stony-Stratford*, and there we lay all Night.

Mr. At. Gen. What Time was this?

Eub. I cannot tell the Day of the Month, it was in *January*.

Mr. At. Gen. What Day of the Week was it?

Eub. It was on a *Thursday*.

Mr. At. Gen. And where did you go from *Stony-Stratford*?

Eub. We came the next Day to *Leicester*.

Mr. At. Gen. Who went with him?

Eub. One Captain *Scudamore*.

Mr. At. Gen. How long did you tarry at *Leicester*?

Eub. When we came the next Day to *Leicester*, we staid there till *Sunday Morning*.

Mr. At. Gen. What Company came to your Master when he was at *Leicester*?

Eub. Sir, I am a Stranger, I know none of them, I was never there before.

Mr. At. Gen. Can you remember whether there was one *Tarborough* there?

Eub. There was one that said his Name was *Tarborough*.

Mr. At. Gen. Whence did he come?

Eub. He said he came out of *Yorkshire*.

Mr. At. Gen. Who came with him?

Eub. There was a Gentleman in black Cloaths, that said he was a Minister.

Mr. At. Gen. Did you observe any others that came thither to your Master?

Eub. It was Market Day, and I had my Horses to look after; there were a great many People went up and down Stairs, but whether they went to him, or no, I can't tell.

Mr. At. Gen. When did you come back again?

Eub. We staid there till *Sunday Morning*, and then we came away.

Mr. At. Gen. To what Place did you go that Night?

Eub. To a Town call'd *Brickbill*, and the Night following we came home.

Mr. At. Gen. Who came back with him?

Eub. None but Captain *Scudamore*, who went with him.

Mr. At. Gen. Whither did you go the next Day?

Eub. We came to *Busby* about 8 a-Clock a *Monday Night*.

Mr. At. Gen. Well, after this, did you bring up any Horses to the *George-Inn* to your Master, and when?

Eub. Yes, three Horses.

Mr. At. Gen. Ay, when?

Eub. I cannot tell the Day.

Mr. At. Gen. What Day of the Week was it?

Eub. Upon a *Friday*.

Mr. At. Gen. What Month was it in?

Eub. Indeed, I can't say that.

Mr. At. Gen. Do you remember *Valentine's Day*?

Eub. Yes, it was upon that Day.

Mr. At. Gen. That is the 14th of *February*, a remarkable Day, and was then of a *Friday*, the Day before the Assassination was to have been executed. Whither did you bring them?

Eub. To the *George-Inn*.

Mr. At. Gen. How were they furnish'd? Were there Pistols upon them?

Eub. No, the Pistols were in Town, and the Horses were sent after my Master.

Mr. At. Gen. Where were the Pistols left?

Eub. Indeed, I don't know.

Mr. At. Gen. Pray, when you came to Town, did you go to your Master, and acquaint him with it?

Eub. Yes, Sir, I did.

Mr. At. Gen. Pray, what did he then say to you?

Eub. He said he thought he should go home that Night.

Mr. At. Gen. Did he change his Mind?

Eub. Yes, for he did not go till *Monday*.

Mr. At. Gen. Did he tell you he should go a *Saturday*?

Eub. Yes, he said he thought he should.

Mr. At. Gen. Did you come to him to know his Mind, and what did he say?

Eub. He said in the Morning, he would go in the Afternoon, but he did not.

Mr. At. Gen. Afterwards when did he go?

Eub.

Eub. Upon Monday.

Mr. At. Gen. Who went with him that Monday?

Eub. One *Holmes*, a fat, thick Man.

Mr. At. Gen. Well, pray when did you come to Town again?

Eub. Upon the Friday following.

Mr. At. Gen. How many Horfes did you bring up then?

Eub. On the Friday following we brought up four; my Master himself came up with them.

Mr. At. Gen. Who came with him?

Eub. Mr. *Holmes*, and I, and another Servant.

Mr. At. Gen. How were the Horfes furnish'd?

Eub. Every Horfe had Pistols.

Mr. At. Gen. What did you bring beside? were there any Boots?

Eub. None but what we rid in.

Mr. At. Gen. Where did you leave those Horfes?

Eub. At the *George* Inn in *Holborn*.

Mr. At. Gen. What Directions did your Master give you that Night for going the next Morning upon an Errand, and whither?

Eub. I had no Message from him, but there was a Note that I was to carry to *Kensington* to one *Brown*, and I was ordered to go to the Gentleman that lives within a Door or two next the Going into the King's Gate, I forget his Name, but this Man where *Brown* lodged belonged to the Court, some Officer in the Kitchen to the King; either a Confectioner, or Cook, or something, and this Man lay there.

Mr. At. Gen. What was your Message to him?

Eub. I was to tell him, that I came to speak with one *Brown*, and that I came from a Gentleman that lay at the Confectioner's in *Holbourn* over-against *Gray's-Inn*. I know the Gentleman by Face again if I see him.

Mr. At. Gen. Well, what did he say to you?

Eub. He bid me set my Horfe at the *Red Lion*, and he would come to me presently; and so he did. Says he, I have no Business that I need to send; but I'll write in your Almanack, and you may carry it back and shew it him, that I will come to Town betwixt nine and ten o' Clock. I did go back and tell that Gentleman at the Confectioner's.

Mr. At. Gen. What kind of Gentleman was it?

Eub. A lusty Man, with a great Nose, and a black Wig, he speaks broad *Scotch*, and he was a swarthy colour'd Man, and he had a wide Mouth.

Mr. At. Gen. What Age was he of?

Eub. A middle-aged Man.

Mr. At. Gen. Pray, what did he say to you?

Eub. He ask'd me if I had seen the Gentleman. I told him, Yes. He ask'd me what the Gentleman return'd for Answer. I told him, he had writ in my Almanack, which I had shewn him, that he would be in Town between nine and ten o' Clock. He ask'd me then where I was going. I said, to my Master. Says he, tell your Master that I will be in my Chamber ready for him.

Mr. At. Gen. Did you go to your Master, and tell him so?

Eub. Yes, I did.

Mr. At. Gen. And what did he say to you?

Eub. He said he designed to go home in the Afternoon, and therefore bid me go to the Inn,

and make ready the Horfes, and know what was to pay for them, and he would come by and by thither.

Mr. At. Gen. Did he afterwards come to the Inn?

Eub. Yes, Sir, about three or four o'Clock in the Afternoon.

Mr. Sol. Gen. Pray, who came with Sir *William Parkyns*?

Eub. One *Lewis*.

Mr. At. Gen. Do you know him?

Eub. I have seen him before with my Master.

Mr. At. Gen. What is he?

Eub. They say he is my Lord *Fewersham's* Gentleman.

Mr. At. Gen. What did he say to you about any Saddles?

Eubank. They ask'd me what Saddles, and how many had been sent in there; and I said but two.

Mr. At. Gen. What said Mr. *Lewis*?

Eub. Mr. *Lewis* said there must be a Mistake, because my Master said he had but twenty-two, for he reckoned he had more, there should be twenty-four in all.

Mr. At. Gen. Did he say so, or Sir *William Parkyns*?

Eub. It was Mr. *Lewis* that said there were twenty-four, to the best of my Remembrance.

Mr. At. Gen. Where were they sent?

Eub. Indeed I know not, I never saw any of them but those two.

Mr. At. Gen. Who delivered those two to you?

Eub. My Master, Sir *William Parkyns*.

Mr. At. Gen. Who were those Saddles for?

Eub. They were for two Gentlemens Horfes that were there.

Mr. At. Gen. Whose Horfes were they?

Eub. They were not my Master's, but they stood at that Place.

Mr. At. Gen. Did your Master ever speak to you about them, to look after them?

Eub. He said, if at any time I was there, I should see that the Hostler gave them their Corn.

Mr. At. Gen. Were they your Master's Horfes, or not?

Eub. Not that I know of.

Mr. At. Gen. What Time did you go out of Town?

Eub. I went out of Town with them about four o'Clock in the Afternoon.

Mr. At. Gen. When did you hear from your Master after that?

Eubank. Upon Monday I had a Letter from him?

Mr. At. Gen. What was that Letter for?

Eub. It was to go to my Master's House in *Warwickshire*, to one *Richard Evans* that was his Servant, to whom he sent a Letter.

Mr. At. Gen. What were the Contents of that Letter?

Eubank. I did not see what they were, it was sealed.

Mr. At. Gen. Did you carry that Letter to *Evans*?

Eub. Yes, I did.

Mr. At. Gen. What Time did you come thither?

Eub. I came there a *Tuesday* at four o'Clock.

Mr. At. Gen. What did *Evans* and you do after you had read the Letter?

Eub. We went to fetch some Boxes that my Master had order'd *Evans* to fetch home. It was about two Miles, or more from Home, at a Tradesman's.

Mr. At. Gen. What was his Name, was it *Haywood*?

Eub. Yes, I think it was something like that Name.

Mr. At. Gen. Did you go with *Evans* to fetch the Boxes from thence?

Eub. They had a Man that drove the Team to fetch them?

Mr. At. Gen. Were they carried in a Team then?

Eub. Yes, they were.

Mr. At. Gen. Were you there when the Goods were brought back?

Eub. Yes, I was at my Master's House.

Mr. At. Gen. What did they do with them?

Eub. They buried them in the Garden, Sir.

Mr. At. Gen. What, in the Boxes?

Eub. Yes, Sir.

Mr. At. Gen. How many Boxes was there?

Eub. Five or six, I think, I know not what was in them.

Mr. At. Gen. You help'd to bury them, did you not?

Eub. No; but I was there, I saw them buried.

Mr. At. Gen. Did *Evans* tell you what they were?

Eub. *Evans* told me they were choice Goods.

Mr. At. Gen. *Evans* told you so, did he?

Eub. Yes.

L. C. J. What Time of the Day or Night were they fetch'd Home?

Eub. They went away about four o'Clock in the Afternoon.

L. C. J. How far is it from Sir *William Parkyns's* House to *Haywood's*.

Eub. I think about three or four Miles, I can't tell how far exactly.

L. C. J. What Time did they return?

Eub. About ten or eleven o'Clock at Night.

Juryman. My Lord, I understand he says they buried them immediately, was he there, and did he help to bury them?

Eub. No, I did not help to bury them; but I saw Earth put upon them.

Mr. At. Gen. Pray, *Eubank*, let me ask you one Question: The Person that lay at the *Confessioner's*, did you observe whether he had a lame Arm, or no?

Eub. No, I did not take Notice of any such thing.

Mr. Sol. Gen. Will Sir *William Parkyns* ask him any Questions?

L. C. J. What say you, Sir *William*, will you ask him any Questions?

Park. You say one *Holmes* went out of Town with me, pray give an Account what *Holmes* that is?

Eubank. It is Fat *Mr. Holmes*, if it please your Honour, he lives at the *Golden Key* in *Holbourn*.

Park. My Lord, I observe this to distinguish it that it was not, as *Mr. Attorney* opened it, Major *Holmes* that is in the Proclamation; it was one that us'd to be at my House frequently; he was at my House all the Summer.

Mr. At. Gen. You did well to ask him that Question to explain it.

L. C. J. Will you ask him any more Questions?

Par. No., my Lord.

Mr. Sol. Gen. Then our next Witness is one *Thomas Hipwell*; (who was sworn.)

Mr. At. Gen. Where do you live?

Hipwell. At _____ in *Warwickshire*.

Mr. At. Gen. With whom do you live?

Hip. I live of myself, Sir.

Mr. At. Gen. Do you know of any Goods that were carried from *Mr. Haywood's* House to Sir *William Parkyns's* House?

Hip. I came from *Litchfield* Fair upon *Asb-Wednesday*, where I had been to carry Goods for my Master _____

Mr. At. Gen. Did not you say you lived of your self? I ask'd you before, who you liv'd with; who is your Master?

Hip. *Mr. Haywood*.

Mr. At. Gen. You said before, you had no Master.

Hip. That is, when he pleases to employ me, I work for him.

Mr. At. Gen. Pray tell what you carry'd from *Haywood's* House, and who came for them.

Hip. There were, to the best of my Remembrance, either seven or eight Boxes.

Mr. At. Gen. Who came for them?

Hip. There was one of Sir *William Parkyns's* Men, one *Richard Evans*, that was his Servant, and one *Wetstone*, that was Tenant to Sir *William*.

Mr. At. Gen. Well, how did they come, and what did they do?

Hipwell. They brought a Waggon and Two Mares.

Mr. At. Gen. About what Time was it?

Hip. It was about nine or ten o'Clock at Night when they went away.

Mr. At. Gen. What Orders had you from your Master?

Hip. It was near upon seven o'Clock, when the Waggon came, and my Master wish'd me to go to borrow a Mare of _____ at _____ I did so, and I brought the Mare I had borrowed with me home.

Mr. At. Gen. What was that Mare borrowed for?

Hip. I know not.

Mr. At. Gen. What Use was she put to afterwards? What did you see more?

Hip. Why, before the Team came (about a Quarter of an Hour before) to fetch these Goods, my Master told me, that Sir *William Parkyns's* Men were to come to fetch some Bedding and other Goods, what they were he knew not, and he order'd me, when they knock'd at the Gate, to let them in; and I did so.

Mr. At. Gen. Well, Friend, did they carry away any Goods, and what were they?

Hip. They were in Boxes, at first in three Boxes; and then Sir *William Parkyns's* Servant did knock off the outside Lining, which was a Deal Board, and he drew the Nails, and took out of two Boxes three Boxes a-piece, and two out of another: to the best of my Remembrance I think there were eight, but I am not sure whether there were seven or eight.

Mr. At. Gen. Did they carry them away that Night?

Hip. Yes, Sir *William Parkyns's* Man *Richard* and the Tenant carry'd them to the Waggon, and

and I lighted them down with a Lanthorn, according to my Master's Order.

Mr. *At. Gen.* When, what Day was this?

Hip. It was *Ass-Wednesday* at Night.

Mr. *At. Gen.* Then set up Mr. *Haywood.* (*Who was sworn before.*) Pray give my Lord an Account, when Sir *William Parkyns's* Goods were brought to your House, who brought them, and what Directions were given about the careful Keeping of them.

Haywood. My Lord, about *Michaelmas* last, Sir *William Parkyns's* Man came to me with a Letter from one Mr. *Charnock*, and the Effect of the Letter, was to desire the Favour of me to lodge some Goods of Sir *William Parkyns* at my House; for he was taking his Servants from his House, and he was loth to leave his Goods in an empty House, and he desired me to let them lie at my House, which I did.

Mr. *At. Gen.* How were they put up?

Haywood. I think in three Chests, pretty big Chests, nailed up and tack'd; and there was a Bed, and Bedding, and a Piece of Tapestry or two.

Mr. *At. Gen.* Pray, did that Letter come from Mr. *Charnock*?

Haywood. Yes, *Evans*, Sir *William Parkyns's* Man brought it me.

Mr. *At. Gen.* Pray, Sir, how are you related to that Mr. *Charnock*? What Kin is he to you?

Haywood. I married his Sister.

L. C. J. You took the Goods into your Custody upon that Letter from *Charnock*?

Hayw. Yes, my Lord, I did.

Mr. *At. Gen.* Pray, will you give an Account, whether you were in Town before this Discovery, and had any Discourse with Mr. *Charnock* or Sir *William Parkyns* about these Goods? When did you see Mr. *Charnock* afterwards?

Hayw. I came up to London the 16th Day, and I was in London the 17th, 18th, and 19th; I think those three Days; and I went to see Mr. *Charnock* at his Lodgings, but I was hardly with him a Quarter of an Hour: I told him Sir *William Parkyns* had sent some Goods to my House, and I desired to know when he would fetch them away. Says he, I can't say when I shall see him again. Said I, I shall have some Business at the Temple, and I will meet you at the Temple Coffee-House. Says he, I will meet; And bring Sir *William Parkyns* with you if you can, said I: He came about eight or nine o'Clock on Tuesday Morning; says he, Sir *William Parkyns* is at my Lodgings, just a going out of Town, and would desire to see you. So I went up, and Sir *William Parkyns* was ready to go out of Town: I told him I had some Goods of his at my House, and I desired to know how he would dispose of them; what he would do with them: He would take them away, he said, the first Opportunity, or to that Effect.

L. C. J. When was this, what Month?

Hayw. It was in *February* last.

L. C. J. What Day?

Hayw. I think it might be about the eighteenth Day.

L. C. J. It was you that desired to have them taken away, it seems, was it not?

Hayw. I asked him when he would take them away, or what he would do with them.

L. C. J. And what Answer did he make?

Hayw. He said he would take them away the first Opportunity, as soon as he could dispose of them, or to that Effect.

Mr. *At. Gen.* Now, when you came home, tell us who came for those Goods, and when.

Hayw. I think it was upon a *Sbrove-Tuesday* that I came home, and my Wife said Sir *William Parkyns* had sent for his Goods, and desired to have them away, but that she had made Answer, I was not at home, but should be at home soon, and then he might have them away. The next Day I came home from *Litchfield* Fair, about five or six o'Clock at Night: It was *Ass-Wednesday* at Night when I came home, and the Man came to me between six and seven, and told me his Master desired to have the Goods away. I told him he might have them when he would; he said he would have them away that Night. I told him it was an unseasonable Time: But, says he, the Waggon is a coming, and I desire you would give me leave to take them away; which I did: Then he said he had but two Horses, and he desired me to lend him a Horse, which I did, and he took the Goods, and went away with them; but for what he did afterwards with 'em, I know nothing at all of it.

Mr. *Sol. Gen.* Then swear Mr. *Whetstone.*

(Which was done.)

Mr. *At. Gen.* Pray Sir, do you give an Account when you went with *Evans* to *Haywood's* House, and what happened.

Whetstone. His Man came to me——

Mr. *At. Gen.* Whose Man?

Whetstone. Sir *William Parkyns's* Man, to desire me to go to Mr. *Haywood's* to fetch some Goods of Sir *William Parkyns*, some Bedding, and some odd Things, which I did; and, said he, I will go the next Way to the House, and I will meet you before you can get thither; and he did meet me half a Mile off the House, and told me I must stay, and not come to the House 'till it was Night, 'till it was later.

L. C. J. Who told you so?

Whetstone. Sir *William Parkyns's* Man told me so; so he went forwards to the Gate, and then came back, and called me to come in; then we went to the House, and loaded the Waggon with Boxes and Bedding that was there.

Mr. *At. Gen.* How many Boxes were there?

Whetstone. I cannot tell whether there were seven or eight.

Mr. *At. Gen.* Whither did you carry them?

Whetstone. We carried them to Sir *William Parkyns's* House.

Mr. *At. Gen.* What was done with them?

Whetstone. There they were put into the Ground by the Wall Side, where they were found.

Mr. *At. Gen.* Why; was you present when they were found?

Whetstone. Yes, I saw them dug up.

Mr. *At. Gen.* Then you can give us an Account of them; What were they?

Whetstone. They were Arms.

Mr. *At. Gen.* How many were there? what Quantity?

Whetstone. Truly, I cannot tell.

Mr. *Baker.* Where is the Constable *Thomas Watts*?

Watts. Here am I. (*He was sworn.*)

Mr. *At. Gen.* Are you the Constable?

Watts. Yes, Sir, I am the Constable, and search'd Sir *William Parkyns's* House, and upon searching in the Garden I found some Arms there.

Mr. At. Gen. Pray what Quantity of Arms did you find there?

Watts. Four Dozen of Swords, thirty-two Carlines, twenty-five Brace of Pistols.

Mr. At. Gen. What kind of Swords were they?

Watts. They were broad Swords, two-edged Swords.

Mr. At. Gen. Were there any Hilts to the Swords?

Watts. No, but there was a Box of Hilts that I suppose was prepared for them.

Mr. At. Gen. Where did you find them?

Watts. In a Border under the Wall by the Wall Side.

Juryman. Did you see the Boxes broke open, Sir?

Watts. Yes, Sir, I took them and broke them open my own self.

Juryman. Was *Whetstone* by, pray Sir, when they were broke open?

Watts. He was not there by at the first, when we dug them up; but I brought them to my own House, and there I broke them open, and there we saw them.

Mr. At. Gen. Will you ask him any Questions, Sir *William*?

Parkyns. No, Sir.

Mr. Sol. Gen. Then call *Turton*, *Freeman*, *Fielding*. (*Who were all sworn.*)

Mr. At. Gen. Pray set up Mr. *Freeman*. (*Which was done*)

Mr. At. Gen. Where do you live?

Freeman. At the *George Inn* in *Holborn*.

Mr. At. Gen. What are you?

Freeman. I am Hostler there.

Mr. At. Gen. Pray do you give an Account what Horfes were kept there of Sir *William Parkyns*, and how many?

Freeman. He was a Guest to the House all this last Summer, sometimes more, sometimes less.

Mr. At. Gen. How was it last Winter about February last, how many Horfes had he then?

Freem. He had sometimes three came in, sometimes four, the most that ever he had was five.

Mr. At. Gen. What time was that that he had five, pray?

Freeman. To my best Memory it was just the Week before the Disturbance, before the Plot broke out.

Mr. At. Gen. Before the Proclamation you mean?

Freeman. Yes, before the Proclamation.

Mr. At. Gen. When was it, what Day of the Week was it?

Freeman. They came in on *Friday* Night.

L. C. J. *Holt*. What; did five come in then?

Freeman. Yes, I think so.

L. C. J. *H*. Who was with him?

Freeman. I only saw his Groom and another Servant.

Mr. At. Gen. How were they accoutred?

Freeman. Four with Holsters and small Pistols, one was a led Mare with a Portmanteau; and in a Horse-cloth wrapp'd up there was one or two Pair of Jack Boots, and, I think, a Collar in one, I cannot tell whether there was one Bridle or two.

Mr. At. Gen. When did they go away?

Freeman. On *Saturday* in the Afternoon.

Mr. At. Gen. Did you observe any Persons to come there on *Saturday* Morning?

Freeman. There were two Men that were there that rid out between two and three Hours; they rid out between nine and ten, and they came in again between twelve and one; where they had

been I cannot tell, but they had rid pretty hard for the Time they were out, for the Horfes came in in a Sweat.

Mr. At. Gen. Before this Time that you now speak of, what Horfes came up? can you remember how many Horfes came up the Week before?

Freeman. The Week before there were some, but how many I cannot remember; they very rarely stay'd above a Night.

Mr. At. Gen. What do you know of any other Horfes that were left there?

Freeman. There were three Horfes that were at our House a Week, that were very good Horfes, but I do not know whose Horfes they were, nor the Names of the Gentlemen that owned them. The Gentlemen that brought them in paid for the Horfes, only the Groom told me his Master, Sir *William Parkyns*, had ordered him to see the Horfes fed. I never received a Farthing of Sir *William Parkyns*, but always of the Groom.

Mr. At. Gen. Pray, did you observe any particular Horse that was brought in there, a *Roan* Horse?

Freeman. Yes, there was one Horse brought in.

Mr. At. Gen. From whence did that Horse come?

Freeman. As was told me, from *Montague* House.

Mr. At. Gen. I believe you mistake the Place, recollect your self a little.

Freeman. *Somerjet* House, I mean; a Porter brought it.

Mr. At. Gen. Are you sure it was *Somerjet* House?

Freeman. Yes, it was.

Mr. At. Gen. Do you know one *Lewis*?

Freeman. I do not know him, perhaps the Tapster does.

L. C. J. *Holt*. How many Horfes came from *Somerjet* House?

Freeman. Only the *Roan* Gelding, and a very fat Man mounted him, and rid out with Sir *William Parkyns*.

Par. Pray, Sir, what sort of Horse was that Bay Gelding that you say the fat Man rid upon?

Freeman. I say he rid upon a little *Roan* Gelding about fourteen Hands high.

Par. But the Bay Gelding, how high was that?

Freeman. About fourteen Hands high.

Par. There's your mighty Horse for Service!

Freeman. They were no great sized Horfes none of them.

Par. And have not you known these Horfes to have been mine a great while?

Freeman. Yes, I have known them to be yours a good while.

L. C. J. *H*. What; was the *Roan* Gelding Sir *William Parkyns*'s?

Freeman. No, not the *Roan*, but the others; they were no strange Horfes, they were frequently there all last Summer; there was no new strange Horse but the *Roan*.

L. C. J. *H*. Will you ask him any more Questions?

Par. No, my Lord.

Mr. Sol. Gen. Then set up Mr. *Turton*.

(*Which was done.*)

Mr. At. Gen. Pray will you give an Account what you know of Horfes that were standing at the *George Inn* in *Holborn*?

Turton. I have known Sir *William Parkyns* to have used the Inn this four or five Years, ever since the Inn was built; and in last *February* he came to Town with three Horfes the first Time.

Mr. *Att. Gen.* What Day of the Month was that?

Turton. I cannot say what Day of the Month, but it was about the Week before his last coming there, which was just before the Discovery of the Plot.

Mr. *Att. Gen.* Do you know what Day of the Week it was?

Turton. No, truly I do not, for I keep no Account of Horſes going in or out. The laſt time of his coming was with about four or five Horſes, to the beſt of my Knowledge, and that was upon the *Friday* before the Plot broke out; and then upon that *Friday*, Sir *William Parkyns* gave order to his Groom to get the Horſes ready againſt *Saturday Morning*?

Mr. *Att. Gen.* Did he go out with his Horſes on *Saturday Morning*?

Turton. He did not go out with all the Horſes according as he had given order; but two Gentlemen rid out with two of the Horſes, and ſtaid out about two or three Hours, and came in again, as if they had rid pretty hard, the Horſes being in a Sweat; and in the Afternoon they all went fairly out of Town, and gave out that they expected to be in Town on *Sunday* or *Monday* following, but they did not return; but then came down one Mr. *Lewis*, I know not that *that* is his Name, only when I formerly belonged to my Lord of *Oxford*, I knew him to be Gentleman of the Horſe to my Lord *Feverſham*, but I did not know his Name.

Mr. *Att. Gen.* Had you not ſeen him there before? What time did he come?

Turton. I do not know that I ever ſaw him there before; he was on *Saturday* in our Yard.

L. C. *J. H.* You are asked when *Lewis* came?

Turton. The firſt time I ſee him was on *Saturday*, in the Yard asking for Sir *William Parkyns*.

L. C. *J. H.* What time on *Saturday* was that?

Turton. It might be three of the Clock in the Afternoon, about an Hour or thereabouts before Sir *William Parkyns's* Horſes went away; and asking for Sir *William Parkyns*, and he not being there, he returned back again; and after they were gone, he came again, and I told him they were gone, but the Groom had acquainted me, and given me an Account, that he would be there again on *Sunday* or *Monday*. On *Sunday* in the Afternoon about five or ſix, Mr. *Lewis* came to inquire if Sir *William Parkyns's* Horſes were come to Town; I told him no; and ſo he came again upon *Monday Morning* betwixt eight and nine of the Clock, and asked me if I heard nothing of his coming to Town; I told him no, I did not hear of his coming again.

Mr. *Att. Gen.* The Horſes that came up on *Friday Night*, how were they accoutred?

Tur. Two or three of them had Holſters; I cannot ſay but for Piſtols they had four or five Caſe.

Mr. *Att. Gen.* Had they no Carbines?

Turton. No, but only Horſe-Piſtols.

Mr. *Att. Gen.* Did you not obſerve any other Arms, or other Furniture?

Turton. I did ſee a Pair or two of Jack-Boots that they rid in, but I did not ſee any more.

Mr. *Att. Gen.* Were there any that were wrapt up in a Horſe-Cloth?

Turton. No, I did not ſee any, they were not brought into the Houſe.

Mr. *Cowper.* Do you know what time the Horſes were ſaddled that Day?

Turton. No, I did not.

Parkyns. You obſerved, and ſaid there were two or three Caſes of Piſtols, did not I always ride with Piſtols?

Turton. Yes, you ſeldom came without two or three Pair when you came with Servants.

Parkyns. And as to the Jack-Boots, you ſaid we rid in them

Turton. I ſuppoſe ſo.

Parkyns. We alighted at Mr. *Jobn's* Houſe, and ſo our Boots were ſent thither: And theſe were ſmall Horſes all of them; pray will you tell the Court what ſiz'd Horſes they were, was there ever a great Horſe among them?

Turton. Never a one, I believe, that exceeded above fourteen Hands and a half, ſome under fourteen.

Mr. *Sol. Gen.* Did you ſee the Roan Gelding? what Size was that?

Turton. A ſmall Pad that might be about thirteen and a half.

Mr. *Att. Gen.* Did you ever ſee him come with ſo many Horſes before?

Turton. I have ſeen more at the Sword and Buckler, when I lived there; and he uſed to inn there.

Mr. *Att. Gen.* How many have you ſeen at the Sword and Buckler?

Turton. I have ſeen four or five at a Time, but this is many Years ago, ſeven or eight Years ago, when he uſed to keep his Coach and four Horſes, and come up with ſeveral ſaddle Horſes with him.

Mr. *Att. Gen.* How long have you lived at the *George Inn*?

Turton. About two Years.

Mr. *Att. Gen.* Did you obſerve any other Horſes that ſtood there?

Turton. There were two that were pretty ſizeable Horſes, larger than any of Sir *William's* own.

Mr. *Att. Gen.* Whoſe were they?

Turton. I cannot tell.

Mr. *Att. Gen.* Did any Body own them?

Turton. I don't know who owned them, there was one that paid for their Meat, and took them away.

Mr. *Att. Gen.* Who is that?

Turton. Truly, Sir, I cannot tell, I do not know who he was; I never ſaw him in my Life.

Mr. *Sol. Gen.* Has Sir *William Parkyns*, any more Questions to ask him?

Parkyns. No, Sir.

Mr. *Att. Gen.* Then, my Lord, we ſhall call no more Witneſſes, unleſs he gives further Occaſion, we leave it here till we hear what he ſays to it.

L. C. *J.* Sir *William Parkyns*, Mr. *Attorney General*, and the King's Council have done; now is your time to make your Defence.

Parkyns. My Lord, I rely upon your Lordſhip for my Defence; for I am ignorant of theſe Proceedings; I rely wholly upon your Lordſhip, to give a true Account of them to the Jury: I hope your Lordſhip is ſo juſt, that you will repeat the Evidence to the Jury as it is, and no otherwiſe. But I do not obſerve, that as to the Affaſſination there is more than one Witneſs, and that is Captain *Porter*: There is not a Tittle more! and as to that, I ſuppoſe your Lordſhip will declare to the Jury, that I was not concerned in it; and Captain *Porter* declares, I was to have no Hand in it, only I was to furniſh five Horſes, and accidentally I was at ſome Meetings, but he does not declare that I was to do any thing in particular.

L. C. J. Yes, yes, you agreed upon the Debates to the several Resolutions of Assassinating the King, and said, that it was necessary and fit to take him off.

Parkyns. Still, that is but one Witness, I deny it utterly, and the Law says positively there shall be two Witnesses.

L. C. J. Not to every Overt-Act, there is no Law says so.

Parkyns. As to the Assassination there is but one, no other but he; and so as to the Regiment he did not say that I was to raise a Regiment; but that he was told by a Gentleman that I had been desired to be in the Matter, but I would not, because I had engaged in another Business, about a Regiment; but this was all but hear-say.

L. C. J. Yes, he said you owned you had a Regiment. Besides, it is said, you owned you had your Saddles, and your Troop consisted of old Soldiers.

Parkyns. No, Captain Porter never said so.

Mr. Att. Gen. That was *Sweet*.

L. C. J. You told Porter, you had a Regiment to look after.

Parkyns. Capt. Porter is here, I desire he would explain himself.

L. C. J. Yes, and you told *Sweet*, that your Troop consisted of old Soldiers, and that you had bought thirty Saddles.

Parkyns. My Troop, aye! But still there was nothing of a Regiment; nor did they say I had raised a Regiment, or a Troop, or was to raise a Regiment.

Sweet. You told me your Troop consisted of old Soldiers. I did not say that you said you had raised or would raise, but it did consist of old Soldiers.

L. C. J. He says that which makes it plain, that you were to have a Troop, or had a Troop, consisting of old Soldiers, besides Volunteers that had been Officers: and that you had bought a great many Saddles, thirty Saddles; and you were to go into *Leicestershire*, and accordingly you did go, and upon your Return, you did give an Account that all was well, and the *West* was as well inclined to King *James's* Interest as the *North*.

Parkyns. That I went into *Leicestershire*, and met several Gentlemen, and that they were all well inclined; I hope that is no Evidence of Treason against me: every Body ought to be well inclined.

L. C. J. Aye! but they were all well disposed or inclined to King *James's* Interest.

Parkyns. He did not say so; if your Lordship pleases to call him again.

L. C. J. Call him again.

(*Sweet was set up again.*)

Mr. Sol. Gen. What did Sir *William Parkyns* tell you of his Journey into *Leicestershire*?

Sweet. He said he had been there, and had met his friends, and all was well.

L. C. J. What did he say? Did he name King *James*?

Sweet. He did not name King *James* to me at that time.

L. C. J. What was the Discourse about, that they were all well inclined to?

Sweet. He always named it the King's Interest, and did not name King *James*, but I understood it, and always took it to be King *James* he meant.

Mr. Mountague. What did he say of the *North* and *West*?

Sweet. He said that the *West* was as well inclin'd to the King's Interest as the *North*.

Mr. Att. Gen. What did he say before he went?

Sweet. He told me he was to go into *Leicestershire*, to meet some of the King's Friends.

Parkyns. Pray, recollect yourself, and consider what you say.

Sweet. He said some Gentlemen rid as far to him, as he did to meet them.

Mr. Att. Gen. Was that the Time he talked about the Troop?

Sweet. No, that was before this Time. I cannot remember the particular Time; it was at his own House, and Captain *Scudamore* was with him.

Mr. Att. Gen. When was the Discourse about King *James's* Landing?

Sweet. He told me that he believed now that King *James* would land, he said he had his own Word for it, it was about *Christmas*.

Mr. Att. Gen. What did he say about Preparation for it?

Sweet. He said his own Troop was to consist of all old Soldiers.

L. C. J. Did he tell you he had a Troop?

Sweet. I speak his own Words; he said, My Troop consists of all old Soldiers.

L. C. J. Was it consists, or will consist, though I think there may be no great Matter of Difference in this Case?

Parkyns. Yes, my Lord, but there is a great deal, sure, for *will consist* shews nothing yet done, and all is but Words.

L. C. J. *Sweet*, Answer to Sir *William Parkyns's* Question.

Sweet. I tell your Lordship, I repeat his own Words, my Troop consists or is composed of all old Soldiers.

Mr. Cowper. What did he say of Volunteers?

Sweet. He said, there were some Gentlemen that would go along with him as Volunteers, that had been old Officers.

Mr. Cowper. Pray, let me ask another Question; when he discoursed of the present King, by what Name did he use to speak of him?

Sweet. He called him by the Name of the Prince of *Orange*.

Parkyns. Pray, recollect yourself, *Mr. Sweet*, and think of what you say, since he was declared King, did I ever call him Prince of *Orange*? I am upon my Life, and pray speak nothing but the Truth.

L. C. J. Consider, and answer the Question, what did he use to call him?

Sweet. Truly, my Lord, I am not positive as to that, I understood it so. I never knew that he allowed him to be King of *England*.

Parkyns. Did you ever hear me call him Prince of *Orange*, since he was King?

L. C. J. Look ye, Sir, how long have you been acquainted with him?

Sweet. About three Years, my Lord.

L. C. J. Well, that is long since his Majesty was declared King; have you ever heard Sir *William Parkyns* call this King Prince of *Orange*?

Sweet. I am not positive in that, but I understood he did not allow him to be King.

Mr. Sol. Gen. You frequently discoursed with him about the Government it seems; pray what did he use to call him?

Sweet. I have heard him call him King *William* and the little Gentleman.

Parkyns.

Parkyns. When ever did you hear me call him the little Gentleman? Mr. *Sweet*, pray, when you are upon your Oath consider well, and recollect yourself, and don't answer rashly and suddenly, but think of what you say. I always exprest myself, when I had occasion to speak of him, and called him King *William*, as other People use to do, I never used the Words, little Gentleman, nor Prince of *Orange* neither.

L. C. J. Did you ever hear him call him otherwise than King *William*?

(*He paused a while.*)

L. C. J. Pray speak the Truth, and no more.

Sweet. I have heard him call him Prince of *Orange*.

L. C. J. But you have heard him call him King *William* too?

Mr. Sweet. Yes.

Mr. Cowper. But pray, when he spoke of the King, what King did you understand by it?

Sweet. I used to understand King *James*.

Parkyns. What is that to me what he understood?

L. C. J. But I would observe to you one thing, when you came from *Leicestershire*, you talked how well disposed they were to the King's Interest; he says, he understood that King to be King *James*, and you said the *West* was as well disposed as the *North*; pray now were you employed by King *William* to see how the Gentlemen stood affected to him?

Parkyns. No, nor by King *James* neither.

L. C. J. Why then should you concern yourself for the King's Friends, in the *West* and the *North*?

Parkyns. I never was in the *West* in my Life, and therefore I can't tell why I should tell him any thing about the *West*.

Mr. Att. Gen. Pray, Sir, when was it that Sir *William Parkyns* spoke about the King's landing?

Sweet. It was about *Christmas*, he said he believed he would land.

Parkyns. Did I tell you positively it would be so then?

Mr. Att. Gen. He tells you he said you did believe it, for you had it from his own Mouth.

Parkyns. That shews it is not probable I should tell him so, that I should have it from his own Mouth, carries such an Improbability with it, that the Evidence is *Felo de se*, it destroys itself.

Mr. Sol. Gen. He does not say you had it from his own Mouth, but that you had his Word for it, and this being about *Christmas*, long after our King was returned, it could mean no other King but King *James*.

L. C. J. Look you, Sir *William Parkyns*, there is another thing I would observe, why did you send your Man to *Kensington* to one *Brown*? Who is that *Brown*, and what was the Man that lodged at the Confectioner's in *Holborn*?

Parkyns. I cannot tell who it was, I know neither *Brown* nor the other Man, but I sent my Man at the Request of Mr. *Charnock*, who lodged in the same House with me; he desired he might go upon an Errand for him to *Kensington*, and I directed him to go upon such an Errand, for he was formerly Mr. *Charnock's* Servant, and I desired him to go of the Errand if he requested it. Who these Men were, I know not, neither of them, nor any of their Business.

L. C. J. But he was bid by the Man that lodged at the Confectioner's to tell his Master that he would stay within for him.

Parkyns. That might be Mr. *Charnock*, for he was his Servant once.

L. C. J. But he says he carried the Message to you, and you received it. Well, have you any more to say?

Parkyns. My Lord, I think there is but one positive Evidence of any one Overt Act.

L. C. J. Yes, what do you think of the Design of bringing in King *James*, and consulting about it, and assisting in the Invasion, and preparing a Troop, and providing Arms and Horses? Are not these Overt Acts? Do you think your having a Troop of old Soldiers is no Overt Act?

Parkyns. There is no positive Proof of any Troop or any Arms.

L. C. J. It is proved there were Arms sent by you at *Michaelmas* last to Mr. *Haywood's*, *Charnock's* Brother in Law, and these lay there till *Ash-wednesday* last, after your Name was in the Proclamation, and then they were removed in the Night, and buried at your House, and were taken up there, and here is an Account given what Arms they were, four Dozen of Swords, twenty-five Pair of Pistols, thirty two Carbines.

Parkyns. First it does not appear when these Arms were bought, nor for what Intent they were brought from *Haywood's*.

L. C. J. But what Use had you, a private Man, for so many Arms? and then your going into *Leicestershire* to meet some Gentlemen, and your given an Account how they stood affected to the King's Interest, whether that be understood for the Interest of King *James*, I must leave to the Jury, since you give no Account that you were employed by King *William*.

Parkyns. My Lord, I went upon my private Occasions, and then talked of News as other People do.

L. C. J. But when you returned back again, you declared all was well, and gave an Account how Persons were disposed in the *West* and *North*.

Parkyns. Is there any Persons named, or Particulars? Can it be an Overt-Act of Treason for me to discover my Acquaintance?

L. C. J. But your going with that Design to engage in an Interest against the King and for the late King.

Parkyns. He does not say discovered my Design. I went to meet with some Friends of my own;

L. C. J. Did he not tell you he was to go into *Leicestershire*?

Sweet. Yes, he did so.

L. C. J. Did he tell you to what purpose?

Sweet. He said he was to go to meet some of the King's Friends.

Parkyns. Did I tell you who?

Sweet. No.

L. C. J. But there was a Lord's Brother, what did he tell you of that?

Sweet. He said all Things were well, and the *West* was as well inclined as the *North*.

L. C. J. To what?

Sweet. To the King's Interest.

L. C. J. Treby. You spoke of a Lord's Brother that was concerned?

Sweet. He said several Persons of Quality in the *West* were concerned, and a Lord's Brother was among them.

Juryman. My Lord, I desire he may be asked, when he said the King would land, what King he meant, whether he named the late King, or King *James*.

L. C. J. Well, Answer that? when he discoursed to you of the King's landing, did he name the late King *James*? or did he say the late King *James*?

Jurym. Was he mentioned in the Discourse?

Sweet. He never used to mention King *James* to me, but only the King, which I understood always of King *James*.

Mr. Att. Gen. Pray what time was it that he spoke of the King's landing?

Sweet. It was about *Christmas*.

Mr. Att. Gen. Therefore no other King could be meant but King *James*, for there was no other King to land at that time; and he said he had the King's Word for it. I suppose he can't pretend he had King *William's* Word for it.

Parkyns. I hope, to talk of the King's landing is no Treason; it is but Words: If I tell an idle Story of what I think may come to pass, shall that be reckoned Treason? Then for him to say, I had it from the King's own Mouth, it is impossible to be true, and is no Overt-Act, being only Words, and cannot be reputed Treason. And then as to the other two Parts of the Charge, the Consultations with my Lord of *Ailesbury*, and those other Persons, there is but one Witness; no Body but *Porter*; neither is there any more but he for the Assassination; his Evidence is but a single Proof, and there ought to be two positive Witnesses, by the Law, to each Overt-Act.

L. C. J. Holt. No: There ought to be two Witnesses to each Species of Treason, that's all.

Parkyns. There ought to be two Witnesses to both these Parts of the Treason.

L. C. J. Holt. I must tell you, Sir *William Parkyns*, if any Person does design and contrive that the Realm should be invaded, or the King deposed, and another set upon the Throne, that conspiring to invade the Realm, or depose the King, are Overt-Acts of High-Treason, within the Statute of 25 *Ed.* 3. and the same Species of Treason as designing to assassinate him is. It is compassing, designing, imagining his Death and Destruction. Now the Question is, whether there is not another Witness, besides Captain *Porter*, to prove another Overt-Act of this Design?

Parkyns. I don't find there is, for all the rest is only Discourse.

L. C. J. Holt. Yes, for what, do you think providing Arms for that Purpose, is only Discourse?

Parkyns. The Witnesses don't say for what Purpose the Arms were bought.

L. C. J. H. Nor do you tell us of any other Purpose.

Parkyns. My Lord, it does not appear when they were bought.

L. C. J. Holt. Ay, but what Occasion had you for such a Quantity of Arms?

Parkyns. My Lord, I did not buy them after all. I found them. If I had had Liberty to have sent down for Witnesses, I could have proved that these Arms were in Boxes all rusty in my House when I first came to it.

L. C. J. Holt. Ay: But why were they buried, just at the Time when the Plot was broke out, and the whole Design discovered?

Parkyns. I can't tell, my Lord, how to help it, if they will make an ill Interpretation.

L. C. J. Holt. What Interpretation would you have us make?

Parkyns. My Lord, it is very easy to imagine,

People don't care to be found with Arms at such a Time; but, however, the Having of Arms is no Treason. They are as much a Commodity as any thing else.

Mr. Att. Gen. And then the Horse coming to Town just at such a Time, and the Saddles.

Parkyns. I have not bought a Horse this two Years, and I travelled in no other Manner than I used to do. So the Groom tells ye, I used to come to Town with three or four Horses always. I never kept less than six or seven Horses this twenty Years; sometimes a great many more; and they were very little Horses, Pads, no Way fit for the Service they are presumed to be for.

L. C. J. Holt. Have you any thing more to say, Sir?

Parkyns. I hope, my Lord, as to the Assassination I am clear: Perhaps the World would imagine, I have had some Inclinations to King *James's* Service, and perhaps they may not think amiss; but I never did any thing, nor had an Opportunity to do.

L. C. J. Holt. God be thanked you had no Opportunity.

Parkyns. And I hope my Life shall not be taken away without Proof; I hope it will be rather thought, that every one should be taken to be innocent; and it would better please the King, that I should be acquitted, than to let me be found guilty upon slight Grounds, and Imaginations, of which little or nothing can be made.

L. C. J. Holt. No question of it: It will please the King and every Body else, that you should be found innocent.

Parkyns. Then, I hope, my Lord, you will not strain the Law to take away my Life; according to the Rule, That it is better five guilty Men should escape, than one innocent Man suffer: For the Blood of a Man may lie upon every Body, if it be causelessly shed; and it is very severe to strain the Law to take away any Man's Life.

L. C. J. Holt. Look ye, Sir *William Parkyns*, I must tell you, you may be under a very great Mistake: You may think it necessary to have two Witnesses to every Overt-Act, but that is not so; for if there be one Witness to one Overt-Act, and another Witness to another Overt-Act of the same Species of Treason, that is all that the Law requires.

Parkyns. Here are two Species of Treason, levying War is one Species, and Assassination is another.

L. C. J. Holt. Your Design was, originally, the restoring of King *James*, and in order to that the dethroning of King *William*.

Parkyns. That appears but by one Witness, which is not according to Law, which requires two.

L. C. J. Holt. One Way of effecting your Design was by Assassination, the other by Invasion, or by Force.

Parkyns. Still, my Lord, here is the same Witness, and that is but one.

L. C. J. Holt. Yes, there are two.

Parkyns. None but Capt. *Porter*.

L. C. J. Holt. What, not as to the Restoring of King *James*, which tends to the Dethroning King *William*?

Parkyns. In what Particulars, my Lord?

L. C. J. Holt. Your providing Arms, and going to *Leicester-shire*, and sending *Charnock* on that Errand into *France*. As to the Assassination, indeed,

deed, there is but one positive Witness, besides other Circumstances, which have their Weight ; but as to the other, you said the King would come

Parkyns. It was my Opinion, that's all.

L. C. J. But you said you had his Word for it.

Parkyns. Does not that answer it self, my Lord ? Is it possible it should be true, that I who was in *England*, should have the Word of one that is at such a Distance beyond Sea ?

L. C. J. And then your buying of Saddles, for what Purpose were they ?

Parkyns. My Lord, does he say it was in order to it ? I am sure he does not, and I hope I shall not be presumed out of my Life.

L. C. J. When you talk'd of the King's Landing, and said, you had his Word for it ; you likewise said, your Troop was made up of old Soldiers, besides Volunteers that had been Officers.

Par. Still there is nothing done ; he does not say there was one Man raised.

L. C. J. And your going into *Leicestershire* upon such an Errand, as you told him you went upon.

Par. Well, my Lord, I must leave it to your Lordship. I hope you will consider well of it.

L. C. J. We must do that which is right between the King and his Subjects.

Par. And, I hope, my Lord, the Conversion of Subjects is more acceptable than the Destruction of them ; and the Government is more concern'd to save the Innocent, than to stretch the Law to punish the Guilty.

L. C. J. It will be more acceptable, and indeed, the King and Kingdom are very much concerned in this Matter, and at this Time, *Sir William* ; and the Government ought to take Care to preserve itself. Have you any more to say, Sir ? if you have pray speak it.

Par. I have no more. I submit it to your Lordship : I think there is but one Witness, and all the other is but Conjecture and Nonsense ; and one Witness is not sufficient, by the Law of *England*, for by the Statute there must be two.

L. C. J. I have told you my Opinion.

Par. Besides, your Lordship has known me this many Years, and you know that my Education was not to War, and Fighting, but the Gown ; and your Lordship knows how peaceably I have lived.

L. C. J. I have known you heretofore, *Sir William*, while you kept your Profession and your Gown.

Par. And now in my old Age, my Lord, I am grown lame, and have lost the Use of my Hands with the Gout, and scarce able almost to go on my Feet. Therefore it cannot in Reason be thought probable, that I should engage in such a Business as this ; and therefore I hope you will interpret all Things in a milder Sense, in Favour of Life, rather than for the Destruction of it, and the Ruin of a Man's Fortune and Family.

L. C. J. I tell you, You have had my Opinion concerning the Number of Witnesses. I suppose my Lord and Brother will declare theirs.

L. C. J. Treby. My Lord Chief Justice, it seems, does please to have us deliver our Opinions ; I think we ought to be very tender in a Case of Blood : I think the Life of *Sir William Parkyns* is at Stake, and we ought to be careful that he have no Wrong done him. But I think in the Cases of Treason, especially of this Nature, the Life of

the King, and the Lives of all the innocent People of the Kingdom are also at Stake ; and we must be indifferent in this Case, and by the Grace of God we will be so. The Question that *Sir William Parkyns* proposes, is, Whether there are two Witnesses upon this Evidence, to this Matter of which he is indicted, which is, the Compassing and Imagining the King's Death. One Witness, at least, does positively prove, That you *Sir William Parkyns* did agree to the Design of Assassinating the King's Person, and promise to provide and contribute Horses and Arms to that Purpose. Now suppose this is prov'd but by one Witness, and the Evidence had gone no farther, then your Objection would have had a very good Ground, that this could not be a legal Proof of Treason ; but I must tell you, That this Treason of Compassing and Imagining the King's Death may be made evident by other Overt Acts, besides that of Assassination : To conspire with a Foreign Prince, to invade the Realm, to provide Arms, to join with Invaders, and to make an Infurrection against the King, these are Overt Acts of Imagining the King's Death. For it cannot be supposed, but that he that would have an Invasion and an Infurrection against the King's Person, does intend the Destruction of the King ; he that would take away all his Defence, which he might have by the Assistance of his Subjects, and leave him exposed to his mortal Enemies, cannot but be presumed to design the King's Ruin and Murder. Therefore, *Sir William*, such Things being in their Nature a Compassing and Imagining the King's Death ; your providing Arms and a Troop are Evidences and Overt Acts of this Treason ; and so will your going up and down and meeting People in order to rise, if that were your Business in *Leicestershire*, &c. as it seems by the Evidence it was.

Par. But that is not said, my Lord, I humbly beg your Pardon for interrupting you ; it is not said, That I met them to rise, by no Evidence whatsoever ; and therefore, pray my Lord, do not enforce it beyond what the Evidence has proved ; he said, I went to meet my Friends : Was there any thing said it was in order to a Rising ?

L. C. J. Treby. I think you mistake your own Words, as you spoke them to the Witness, if I did take them, as I think I did, right, for they were several Times repeated. I will do you no Wrong, *Sir William*, I assure you. You went into *Leicestershire*, and you say, It was to meet your Friends ; the Witness says, It was to meet the King's Friends ; by the King, it is very plain, you meant not King *William*, but King *James* ; for you spoke before of the King's Landing, which was at *Christmas* last, when every body knows King *William* was in *England*. These coupled together—

Par. I beg your Pardon, my Lord ; those two Things are not both to be join'd together, the Discourse of the King's Landing was at *Christmas*, as he says, the other thing, my Journey into *Leicestershire*, was a Month afterwards, and therefore they cannot be coupled together.

L. C. J. Treby. The Coupling of them, that I meant, was only to shew who was understood to be spoken of by you, when you named the King ; so the Question is, Whether you did not mean the same Person in *January* that you meant in *December*, by the Word King, especially since as a Discovery you had made, you said farther, that

the

the *West* was as well inclined to the King's Interest as the *North*, and a Lord's Brother was concerned in it. If by the King you had meant King *William*; how impertinent and insensible had been all this Discourse, that the *West* was as well inclined as the *North*, and that a Lord's Brother was concerned in it; concerned in what? In being inclined to King *William*; to what Purpose could that be said?

Par. It may as well be interpreted that Way as the other.

L. C. J. Treby. I must leave that to the Jury. And I confess, if there was not somewhat more in the Case, you might the better argue upon this, as to the Interpretation. But laying aside the Consideration of your Riding into *Leicestershire*, &c. here is this Providing of Arms, proved by four or five Witnesses, and the Serving of them in that Manner; and there is no Account given by you, that they were provided for the Service of the Government, or that you were employ'd so to do. Certainly it is not lawful to provide Arms, especially for a whole Troop, as for ought I perceive here was, though indeed I am not skilful enough in those Businesses, to know how many make up a Troop; but it's plain here was an Insurrection intended, when the Invasion was made; and that is an Evidence, that these Arms were to be employ'd upon that Account, for no other Use was to be made of them, nor is pretended. If you had found those Arms in your House (as you say) it had been your Duty to have deliver'd them up, or disposed of them to the Use and Service of the Government, which Service too, could only be when you had a Commission from the Government, and not of your own Head. And then, besides all this, you acknowledg'd that you had a Troop of old Soldiers.

Par. It is but slidingly that, for he only tells you, that a Troop would be compos'd of old Soldiers.

L. C. J. Treby. How can that be? when he says, he repeats your own Words, My Troop consists of old Soldiers; can any Body say, that his Troop consists of old Soldiers, without having a Troop?

Par. Pray, Mr. *Sweet*, speak; my Life is at Stake, Did I say to you, it did consist, or it was to consist? recollect your self, and consider well before you speak.

L. C. J. What was it that he did say? it did consist, or it would consist?

Sweet. He said, his Troop was compos'd all of old Soldiers.

Par. But does it appear by any Evidence, that I had a Troop; if I had, who were they? none of these Men do appear. Does this Troop consist of Men in the Air? that I should list Men that are all in *Nubibus*, and not one of them to be known. Suppose I should tell him a Lye, or make some Brags, is this Treason? here is no Person proved to be list'd or named.

L. C. J. But Arms were found in your House for a Troop.

Par. But where they were bought, and when they were bought, and made ready, it does not appear; and I affirm to your Lordship, if you would give me but one Day's Time, I would prove, that they were at my House in *Warwickshire*, when I first came down thither, which is two Years ago. And I'll fully make it out to your Satisfaction, or I'll be crucify'd, or any thing

in the World. I can prove it by a great many Witnesses, by my Friends, and all the Servants that belonged to me, they were there long before this Discourse was had or thought of.

Mr. Just. Rokeby. If your Lordship expects that I should deliver my Opinion, I am ready to do it. As to this Matter of Law that Sir *William Parkyns* has propos'd, he says, There are not two Witnesses to the same Overt Act, and therefore no Evidence of Treason; truly, I take it, and always did, that the Law is, there need not be two Witnesses, to the same Overt Act; but if there be two Witnesses, one whereof speaks to one Overt Act, and another to another Overt Act of the same Species of Treason, these are two Witnesses within the Law. Now, I think, there are two Overt Acts in the Indictment of this Treason. The Treason is Compassing the Death of the King; the Overt Acts are first, the particular Design of the Assassination upon his Person, and the other is, the bringing in of a foreign Force, and preparing Horses and Arms to meet that foreign Force here: All to the same Intent and Purpose, the Compassing and Imagining the King's Death. Now besides that of the Assassination, there are a great many Witnesses that prove there were Arms prepared; for there were found a great Quantity, when they opened the Boxes, which Boxes, it is plain, he himself sent down to *Haywood's* House: For tho' *Charnock* writ a Letter, yet it was by his Direction, as he own'd to *Haywood*, when he was here in Town. And then his Servant fetched them away from this Place, and this I take to be another Overt Act, and proved by several Witnesses. Sir *William Parkyns* speaks of his being a Gown-Man, but I do not know what a Gown-Man has to do with such a Quantity of Arms.

Par. If you will give me Leave to send for some People, I will demonstrate it to you as clear as the Sun, that they were in the House two Years ago, when I came first thither.

Mr. Just. Rokeby. There were Preparations two Years ago, it appears, for the Destruction of the King and Kingdom; however, the Men that were accus'd of it, had the Luck to escape and be acquitted.

Par. My Lord, I hope I shall not be interpreted out of my Life, I desire the Statute may be read.

Mr. Just. Rokeby. What Statute do you mean?

Par. The 25th of *Edw. III.* and the new Statute too, let them both be read to the Jury, that they may consider of it.

The Statute of the 25th of Edw. III. was read.

Par. There is nothing of two Witnesses there.

L. C. J. No, but there is another Statute of the 5th of *Edw. VI. cap. 11.* that may be more for your Advantage; Will you have that read?

Par. Yes, if you please, I know there is another Statute that does direct it, and I expected to have found it in this Statute.

Cl. of Ar. This is an Act made in the 5th and 6th Years of King *Edw. VI.*

The Statute was read to these Words, Unless without Trial he shall confess the same.

Par. There's enough.

L. C. J. You have heard the Statute read, would you infer any thing from it?

Parkyns. I infer that there ought to be two Witnesses, and here is but one.

L. C. J. There are two Witnesses.

Park. Not direct to the same Thing.

L. C. J. I shall leave it to the Jury, whether this Evidence does not prove an Overt-Act, to demonstrate a Design against the King; if the Design be to depose him, and that's manifested by two Overt-Acts, undoubtedly that is Treason within the Statute of 25 of *Edw.* 3.

Par. That I agree, but yet there must be two Witnesses of it.

L. C. J. Suppose Dethroning the King be the main Design that strikes at his Life, and you resolve it shall be done one Way or other. One Way by Assassination, the other by Insurrection; or by Invasion and joining with a foreign Army.

Par. My Lord, I conceive there ought to be two Witnesses for each.

L. C. J. No, no; for that very last Act that is to take Effect in a few Days, declares it is sufficient, if there be one to one Overt-Act, and another to another; but still it must be of the same Head or Species of Treason; and deposing the King and assassinating of him, and preparing to raise an Army against him, or to excite an Invasion, are but one Sort of Treason.

Par. It may be so, if they were Overt-Acts of one Sort of Treason; but rising in Arms, and Assassination are as different Things as can be in the World, and therefore there ought to be two Witnesses to each of them.

Mr. J. Rokeby. That which I deliver'd as my Opinion was, that one Witness proving one Overt-Act, and another Witness proving another Overt-Act of the same Sort of Treason, are two good Witnesses, according as the Law requires. And I am the more fully confirm'd in it, by the Clause that is in this new Act of Parliament, made for Trials in Cases of Treason, that a Man shall not be convicted of Treason, but by and upon the Oaths and Testimony of two lawful Witnesses, either both of them to the same Overt-Act, or one of them to one, and the other of them to another Overt-Act of the same Treason.

Par. Of the same Treason, aye.

Mr. Just. Rokeby. And here it is the imagining the Death of the King, that is the Treason.

Par. Then you may say every Thing else is so; but if you please to let the whole Statute be read.

L. C. J. You shall have it read if you will; but this is all that is in it concerning this Matter. Now a Design to depose the King, which is manifested by some Overt-Act, is an Overt-Act to prove the Design of the Death of the King.

Par. Then it must be manifest, and not by Interpretation; and all these Things are by Interpretation, except it be what *Porter* swears.

L. C. J. If by Overt-Act it be proved, that you designed his Deposition, that is an Overt-Act to prove your Design of his Death.

Par. They are very different Things, Death and Depositions. We have seen a King deposed, and yet he is alive.

L. C. J. Treby. I am sure we have seen a King agreed to be assassinated, and yet, God be thanked, he is still alive.

L. C. J. It is not the Succeeding in the Design, but the Design it self that is the Treason. God forbid that it should have Success to make it Treason.

L. C. J. Treby. But whenever People will agree together to bring in foreign Forces, or to prepare Men and Arms against the King that is in Possession, this is reckoned an Overt-Act of a Design against his Life, and has always been reckoned so by my Lord Chief Justice *Hales*, my Lord Chief Justice *Coke*, and by all those Men that have been

reputed the most tender in Cases of this Nature: For any Act that expresses an Intent of dethroning the King, by Means of an Invasion by a foreign Force, and an Insurrection against the King, is a proper Proof of a Design of his Destruction; and if not, then agreeing to shoot him is not an Overt-Act. Men may say also, that there need be actual Shooting to make out the Overt-Act in that Case.

Par. If your Lordship pleases to have the Act read, I shall submit to your Lordship's Judgment.

L. C. J. Let it be read.

Par. If you please to read the Act, the Preamble of it.

Cl. of Ar. This is an Act made in the 7th Year of our Sovereign Lord the King: Is that the Act? It is an Act for Regulating of Trials in Cases of High-Treason, and Misprision of Treason. Is that the Act?

Par. Yes, yes. (*The Act was read.*)

Mr. J. Rokeby. I believe if you look into the great Case in Parliament, the Case of my Lord *Stafford*, you'll find it was declar'd for Law, that one Witness to one Overt-Act, and another Witness to another Overt-Act of the same Treason, they were two Witnesses within the Law, and this was a solemn Resolution in Parliament in the House of Lords.

Par. I believe it has been done; but here is a beneficial Law made, which if my Trial had been put off a few Days, I should have had the Benefit of it.

L. C. J. It would have been the same Thing as to this Matter, for this Act declares the very same Thing, as to the two Witnesses.

Par. And then, my Lord, I could have had Witnesses to have taken off a great Part of this Evidence, and the Law comes to take Effect within one Day, and it turns here upon this Matter of *Sweet*, who is not a good Evidence; for it is manifest he has contradicted himself, and it is manifest he has sworn what cannot be true.

L. C. J. Wherein?

Par. That I should say the King would land here, for I had his Word for it.

Mr. Just. Rokeby. You might have his Word, and not delivered by his own Mouth; there are other Ways to convey a Man's Word besides Speaking.

Par. But then we don't call it his Word, that's Hearsay.

Mr. Just. Rokeby. If a Man write his Note that he will do such a Thing, we may very well say, we have his Word for it.

L. C. J. It is not impossible but that you might speak with him.

Par. It is impossible I should speak from hence to *France*.

L. C. J. You might have been over with him, I believe a great many others have, and it's proved *Mr. Cbarnock* went over.

Mr. J. Rokeby. If any Man should have said at the latter End of the last Month, I believe that there was an Assassination intended against the King, because I have his Word for it, merely from reading his Speech to the Parliament, wherein he affirms that he had several Proofs of it, that had been a proper Expression, though he did not hear the King speak it.

Par. Yes, if he had the Speech to produce.

Mr. J. Rokeby. Then if it come by Letter, or Message, or common Fame, he might send you Word by a particular Messenger.

Par. Yes, if there was any such Authority as that it were true. But he has manifestly contradicted himself, and *Capt. Porter* swears for his own Life, and I must leave it to you, whether they are to be believed.

Mr. J. Rokeby. Capt. Porter's Testimony has been sufficiently confirm'd by the Acknowledgment of dying Persons.

L. C. J. Well, have you any more to say, Sir William Parkyns?

Parkyns. No, my Lord, I submit it to your Lordship's Direction.

L. C. J. Then what say you to it, Mr. Attorney, or Mr. Solicitor?

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Council for the King in this Matter, and it is my Turn to sum up the Evidence against the Prisoner at the Bar: He stands indicted for compassing the Death of the King, for designing to depose the King, for promoting a foreign Invasion, for intending an Insurrection here at home, and for aiding and abetting the King's Enemies, and for doing what he could to procure the Subjection of his own Country to Foreigners and Strangers.

Gentlemen, some of these Crimes run into one another; designing the Death of the King by Assassination, and designing to depose the King, amount to one and the same Thing with compassing and imagining the Death of the King.

My Lords the Judges have given you their Opinion in that Point of Law, and I think it is agreeable to all the Resolutions that have been since the Making of the Statute of 25 of Edw. 3d. I think that it has been explained so in the Time of Richard the Second; but this I am sure of, that it was so resolv'd in the Time of Harry the Fourth, when there was a Design to set up Richard the Second again, and it was adjudged to be High-Treason in compassing and imagining the Death of the King. For deposing the King, is destroying him in his politic Capacity, as much as Assassination and Murdering of him is destroying him in his natural Capacity, and the Conspirators in such Cases know what the great End is they aim at, to subvert the Government as it is established by Law, whereby every Man enjoys his own Property, and the Freedom of his Person, and those that will be quiet may have their Liberty and Property preserved entire to them; but some People are so very impatient of submitting to the Law, that they cannot be content to be in Servitude themselves, but they must needs do all they can, to bring it upon their Fellow-Subjects. And it were very well if that those who are in Love with Slavery, would but go to some other Places, where they may have enough of it, and not bring it upon those who are so little desirous of such a Thing, as we are, and I hope always shall be.

Gentlemen, to prove Sir William Parkyns Guilty of this Treason, whereof he stands indicted, we have produced several Witnesses; and first there is Mr. Porter, and he tells you Sir William Parkyns told him he had seen a Commission from K. James, written with his own Hand, for making War against the Person of K. William.

Parkyns. Sir, I beg your Pardon for interrupting you, but there was not one Word of that said; here is Mr. Porter, pray ask him, if ever I saw a Commission from King James.

L. C. J. Porter did say so, if I remember any Thing Porter said, you told him you had read the Commission, and it was written with his own Hand.

Par. All that I heard of it was, that when I was desired to make one in the Assassination, I refused it because I said I was busy about the Matter of my Regiment.

Mr. Att. Gen. Pray call Porter again. (Capt. Porter came in.)

Mr. Soll. Gen. Pray Capt. Porter, will you give the Court and the Jury an Account what you heard Sir William Parkyns say about the Commission that came from King James?

Capt. Porter. I ask'd Mr. Charnock why I might not see the Commission, and he told me he had never seen it himself, but Sir William Parkyns had. I did ask Sir William Parkyns, whether he had seen it, and he told me he did see it, and read it, and it was to raise War against the Person of the Prince of Orange.

Mr. At. Gen. Whose Hand was it in, did he say?

Capt. Porter. It was written with K. James's own Hand.

Par. This was my Mistake, I thought he had said I told him I had a Commission for a Regiment.

Mr. Mountague. Did he give any Reason, why it was written with King James's own Hand?

Capt. Porter. We used to say amongst our selves, it was, because he would not trust any of his Ministers with it.

Mr. Sol. Gen. I would not do Sir William Parkyns any Wrong, but only sum up what is material in the Evidence given against him. I remember very well Mr. Porter said, Mr. Charnock told him Sir William Parkyns had seen the Commission, but I would not offer that as Evidence against the Prisoner what another told him, but he says besides that Sir William Parkyns told him himself, that he had seen it, and that it was written with King James's own Hand. He says that they had several Meetings together, Sir William Parkyns, and a great many others; and he names the Places, the Nagg's-Head in Covent-Garden, the Sun Tavern in the Strand, and the Globe Tavern in Hatton-Garden; he tells you particularly, that it was agreed that King (who was executed) and Knightley, and himself should go and view a Place that should be proper for the Assassination, and to give a Report to the Prisoner, and the rest of the Conspirators, what they thought the most proper Place; and that accordingly they did view the Place, and came home at Night, and met the Company, whereof Sir William Parkyns was one; and they gave an Account how the Place was viewed, and which was thought most proper, and then all the Company agreed to it. He says indeed, that Sir William Parkyns was not one that was to execute it in his own Person, but one Scudamore was to be the Man employed by him, and he did say it was a Thing that was very necessary to be done, and would facilitate the Introduction of King James, and the bringing him back again: And there is likewise this concurring Evidence of Mr. Porter's with what I shall observe by and by, that Sir William Parkyns was to procure five Horses, three whereof he was to mount himself, and two he was to send Captain Porter to mount, and if there were further Occasion he could procure more from Mr. Lewis, Gentleman of the Horse to my Lord Feversham, and accordingly we have produced to you two Witnesses, Freeman and Turton, the one a Tapster, the other an Hostler that lived at the George-Inn in Holbourn, who give you an Account that upon Friday before the first Day that was designed for the Assassination, there did come three Horses to Town, for Sir William Parkyns, but it being put off upon the Disappointment, they were sent out of Town again. Upon the Friday afterwards, the Day before the Discovery, then there were four Horses brought to Town, and a 5th was of Mr. Lewis, which was a Roan Gelding.

Parkyns.

Perkins. Pray, Sir, will you please to observe what Sort of Horfes they were; and particularly the Height of them, that it may be known how fit they were for this Business.

Mr. *Sol. Gen.* I will do you no wrong Sir *William* if I can help it. The Jury have heard the Evidence; and by and by they will hear my Lord's Directions: But they do say there were 4 brought to Town, and a 5th was sent, a Roan Gelding; first the Witness said the Horse came from *Mountain* House, but then presently he recollected himself, and acknowledged the Mistake; and afterwards said it was from *Somerſet-Houſe*. So there were the 5 Horſes, 3 whereof Sir *William Perkins* was to mount, and 2 Captain *Porter*, as he himself says; and these Facts I instance in as making a concurring Evidence, and very near to two Witnesses to prove this Part of the Conspiracy.

Then, Gentlemen, Captain *Porter* goes further, and says, that he had heard (but Sir *William Perkins* did not tell him so himself) that Sir *William Perkins* had a Commission to raise a Regiment of Horſe, and was preparing to go to, against the Time of the Invasion, to join with the Forces that were to come from abroad. To confirm which we have called Mr. *Sweet* to give you an Account that he had been acquainted with Sir *William Perkins* for three Years, and that he had often talkt with him about the King, that is his present Majesty, whom he called the Prince of *Orange*, and the little Gentleman; and about King *James*, whom he used to call always King; and he said the King was to land very speedily, and that he had a Troop which consisted of old Soldiers, and that there were several Volunteers that were Officers; he said he was to take a Journey into *Leiceſterſhire*, and accordingly he went; and when he returned back again he said, the West and the North were very well inclined to the King's Interest, or to that Purpose. And to strengthen his Evidence we prove, that he did go accordingly into *Leiceſterſhire*, and we prove it by his Servant that went with him, where he met with several Persons, particularly one *Yarborough*, and a Parſon; what they did transact the Servant cannot prove, but he is a concurring Witness to prove, that he went into *Leiceſterſhire*; and we have all the Reason in the World to believe that he went on that Errand that he spoke of before, that is to meet the King's Friends, as he called King *James*. And then there is a further concurring Evidence of his having a Regiment, or a Troop, it is not material, whether it be one or the other; and that is the Matter of the Arms, 4 Dozen of Swords, 32 Carbines, 35 Cases of Pistols, that were hid in the Garden of his House: And these Arms we have traced further, he sent them from his House to *Haywood's* House, there he thought they would not lie safe, and therefore Sir *William Perkins* sends for them privately; they were to come away at Night, and be brought back to his House, and they were accordingly brought back in the Night to his House, and there they were buried; and the same Person saw them taken up afterwards, which brought them to Sir *William Perkins's* House, and proves they were the same Boxes that were buried, and which upon Opening proved to be these Arms, that were first sent to *Haywood's*, and afterwards brought back to his own House.

So that this, Gentlemen, is a concurring Evidence both to what *Sweet* says, and to what *Porter* says, and those are the Two Witnesses to this Part

of the Treason, that there was a Provision of Arms and Men for this Purpose, which he said he had a Commission for.

Now, Gentlemen, against all this he makes but a very small Objection. As to the Matter of two Witnesses to every Overt Act, that has been overruled by the Court; and as to the Arms, he says he found them at his House when he first came to it; and then they were old rusty Arms, but of this he gives you no Manner of Evidence. But if they were there when he came to the House, how came he at this Time of Day to hide them, and secrete them? Why might they not be as publick now as they were before he came, which he has had Time enough to prepare to prove since the Finding of them? And he does not give you so much as any colourable Reason why he so secreted them. And therefore 'tis a most just and violent Suspicion, that they were for the Purposes that the Witnesses have given you an Account of; and you have Reason to believe they were provided for to arm that Number of Men, which he was to raise to assist the *French* when they came to land here. So that if you believe what the Witnesses have sworn, you cannot say but that he is guilty of the Treason charged upon him; and we doubt not you'll find him so.

Mr. *Cowper*. May it please your Lordship, and you Gentlemen of the Jury; I am of the same Side of Council for the King. Sir *William Perkins* has given us a good Caution, which I shall take care to observe: and that is, not to strain either Fact, or Law, to his Prejudice. But, my Lord, When such a Matter as this, a Crime of this Nature, is so far proved against the Prisoner at the Bar, that no Body can in his private Judgment reasonably acquit him; then I think it a good Piece of Service to the Publick to make the Matter so plain, that it may be put beyond all Manner of Doubt, both for the Ease of the Jurors, and for the Satisfaction of all others that hear this Trial.

My Lord, Sir *William Perkins* has truly divided his Indictment into two Parts, the one that accuses him of being concerned in the Assassination, and the other that accuses him of being concerned in Inviting the *French* into the Kingdom, and engaging to meet them with an armed Force.

My Lord, As to the first Part, I must do Sir *William Perkins* that Right, that there is but one positive Evidence as to the Assassination; but that Evidence tells ye he agreed to it at several Meetings, nay, that he was one who said it was necessary to be done, in order to the other Design he was engaged in, the facilitating the Landing of the *French*, and King *James* his Defect and Restoration. There is, I say indeed, but one Witness of that Matter, but the Evidence of that one Witness is confirmed by many concurring Circumstances; by his sending for Horſes to Town the Day before the first *Saturday*, when this execrable Treason was to have been executed; by sending them out of Town again that Day upon the Disappointment; by sending for them again the *Friday* before the second *Saturday* that the King was to have been assassinated; by his having more Horſes than were usual with him that Day; by his taking care then of three Horſes that were none of his own, and one of them brought very suspiciously from *Somerſet-Houſe*; and that all these eight Horſes should be immediately hurried and carried away upon the Disappointment the second

Saturday, and nothing ever heard of them afterwards. I say one of them was brought very suspiciously; for, my Lord, you observe it came from *Somerset-House*, and was sent by *Lewis* according to the Prisoner's Promise to *Capt. Porter*, which *Lewis*, it is apparent by all the Witnesses of this Matter, was privy to this Design.

My Lord, There is another Circumstance besides this, which, I think, has not been observed; and that is, his sending for *Sweet* up to Town before the second time that the King was to have been Assassinated; he came up indeed before both the times: The first time he was told by the Prisoner, he had once designed to have used him in a Business; but upon second Thoughts he had Compassion for his Family. And when he came the second time, he was first ask'd what Condition he had left his Family in, whether he had provided them Money. He said, No; and thereupon he was chid: And the Prisoner said, he might then as well have staid at home. All these Circumstances, besides the one positive Evidence, favour strongly of his having a great Hand in the Design of Assassinating the King.

But then, my Lord, As to the other Part; his Inviting the *French*, and preparing to meet them, that is positively proved by two Witnesses. *Capt. Porter* tells you, That the Prisoner was at the two Meetings in *Leaden-ball-street*, and *St. James's-street*, where it was expressly resolved by all that were present, and the Prisoner among the rest, to send *Charnock* over to invite the *French* to invade this Kingdom, and to promise to meet King *James* at his Landing with two Thousand Horse. He swears, That *Sir William Perkins* did particularly agree to what was so resolved upon at both the Consults. And *Sweet* tells you that he had prepared for the same Design; for that *Sir William Perkins* told him, the King would land, he had his Word for it; and he himself had a Troop of old Soldiers. *My Troop does consist* (he spoke it in the present Tense; for it being a Doubt *Sir William Perkins* did himself that Right as to examine the Witness again, and he repeated it as his Words, *My Troop consists*) of old Soldiers, or is composed of old Soldiers. And he was to have several Volunteers that had been Officers.

My Lord, These two positive Witnesses are Evidence that goes to the same Species of Treason, nay to the same Design, the raising a Rebellion, and the Depositing the King, which is Killing him in his politick Capacity; I say, these Two go home to the same Design.

And, my Lord, This Evidence upon this Branch of the Indictment, is corroborated too by very strong Circumstances. There is a Journey to *Leicester*, which *Sweet* speaks of, that *Sir William Perkins* told him he would undertake: This Journey it is proved by his Servant that he did undertake; that he met there with several Persons, and came back and made his Report to *Sweet* of the Success of his Journey, and how well disposed the King's Friends were, by which Name he always meant King *James*; for when he spoke of our present King he called him the *Little Gentleman*, or sometimes King *William*, and sometimes, as the Witness at last said positively, the Prince of *Orange*: But when he spoke of the King, without any thing else, he always meant King *James*; and besides, he spoke of a King that was beyond Sea at *Christmas* last, which could not be King *William*, who was then, and had been in *England* so long before.

My Lord, the Prisoner in his Defence says, That this Servant of his that went with him into *Leicestershire*, had been formerly *Charnock's* Servant, and was sent by *Charnock* with the Message to *Kensington*, and not by him. Yet I must observe, that the Evidence swore positively he was sent by *Sir William Perkins*, his Master, and brought the Note in the Almanack back to the Person to whom he was directed to carry it, who lodged at the Confectioner's House; and when he had so done, that the Person that lodged at the Confectioner's did not remit him to *Charnock*, but to his Master *Sir William Perkins*, with a Message that he would be at Home, and stay there ready, whenever he should have Occasion for him; and this was upon the very *Saturday* the King was to have been assassinated.

My Lord, *Sir William Perkins* has complained, that if he could have had his Evidence here, he could have proved the Arms had been two Years in his House, and that he found them there when he came thither first. If we should admit that Matter, we might confess, and avoid it; for it is apparent, that these Arms were on this Occasion put up in a suspicious Manner in Boxes, and sent to *Haywood's*, (who is a suspicious Person, by Reason of his Relation to *Charnock*, upon whose Letter and Recommendation they were received) and concealed till the Plot was disappointed; and then they were carried away from that Place, and buried in *Sir William Perkins's* own Garden. This was just after the Breaking up of the Plot; and they were buried for the better securing them as choice Goods. And whereas the Prisoner says they were old and rusty when he found them, it now appears they were clean and new-furbished Arms, and the Hilts were off the Swords, and packed together.

My Lord, he has Recourse to another Argument in the last Place, the most moving, I must confess of all, and that is the Argument of Pity: He has spoke of his Education in the Profession of the Gown, of his Infirmities, his Age, and his Family. Arguments of Pity I am very unfit to give an Answer to, and should be very unwilling to extinguish any Motions of it; but this I must observe even by Way of Answer to that Argument, That the Time was when he should have pitied himself, and not engaged in such an abominable and merciless a Design; That he should have had Pity upon his Country, which he plotted to bring under the greatest Confusion and Defolation; That he should have had Pity upon the best of Kings, and the best of Men; but then there was no Pity, when they thought they had laid their Designs so that they had him in their Power, but they resolved barbarously to murder him, and persisted in the Resolution of Assassinating him after they were once disappointed; That, it seems, did not discourage them, but they undertook it a second Time, and it does not appear that they ever had any Remorse at last for it; but the Plot broke out and so their whole Design was frustrated.

My Lord, This is the Sum, I think, of his Defence; I have as well as I was able given an Answer to the Objections made to it, and I must now leave it with you, Gentlemen of the Jury: And tho' these Considerations that I have mentioned may not quite remove all Compassion, yet they may serve to confirm you in a Resolution of doing the King, and Kingdom, and your selves Justice; and that is all we ask of you. L. C. J.

L. C. J. Gentlemen of the Jury, Sir *William Perkins* is indicted of High-Treason, for Designing, Imagining, and Compassing the Death of the present King. There have been several Witnesses produced that have given Evidence upon this Indictment; the first of them is Mr. *Porter*, who has been a Witness heretofore against several upon the like Occasion; and he gives you this Account, That about the latter End of *May*, or the Beginning of *June* last, there was a Meeting of divers Persons at the *Old King's Head Tavern* in *Leaden-ball-street* in the City, where they dined together, and there was Sir *William Perkins*, Captain *Porter* himself, Sir *John Fenwick*, Sir *John Friend*, and divers others that he has mentioned to you. At that Meeting they did consult together, which Way the late King *James* might be restored, and it was thought very necessary that there should be a *French Force* sent over hither to join with others for his Restoration. And they did among themselves agree, and determine what Number of Forces might be convenient for that Purpose, they did propose 10000, 8000 Foot, 1000 Horse, and 1000 Dragoons: And that a Message should be sent over to King *James*, to persuade him to solicit the *French King*, to furnish him with such a Number of Men to be sent over into *England*. Mr. *Charnock*, that was then in the Company, was the Person agreed upon among them to be the Messenger to be sent upon this Errand, which Employment he did undertake, upon their Promise, that they would raise among themselves 2000 Horse for to meet the late King at his Landing.

This being at that Time determined, and Mr. *Charnock* having accepted this Employment, he did make Preparation to go upon this Errand. In some Time after, (a Week or a Fortnight, or thereabouts) there was another Meeting at which were several of the same Persons, that were present at the former, and among them Sir *William Perkins* was one: And this Meeting was at one Mrs. *Mountjoy's*, that keeps a Tavern in *St. James's-street*, where they did discourse of what they had formerly agreed upon, and did again consider whether they should proceed to send Mr. *Charnock* with that Message; to which they all agreed, that Mr. *Charnock* should go, and he accordingly went; and Captain *Porter* met him about five or six Weeks after the Meeting at Mrs. *Mountjoy's*, and *Charnock* told him he had been in *France*, and that since his Return he had been with the several Persons who had sent him, and had acquainted them with the Answer of *K. James*, which was, That at that Juncture of Time the *French King* had such Occasion for his Forces, that he could not spare them, or furnish him with so many to come over here. This is the first Matter that *Porter* gives you an Account of.

But then Captain *Porter* tells you farther, how the Design of Assassinating the King was set on Foot about the latter End of *January*, or the Beginning of *February* last. About which Time Sir *George Barclay* was sent over with a Commission from the late King *James*; which seems to have given great Encouragement to that Party of Men: For Sir *George Barclay*, Captain *Porter*, and Sir *William Perkins*, with divers others, had several Meetings at the *Globe Tavern* in *Hatton Garden*, the *Nag's-head Tavern* in *Covent Garden*, the *Sun Tavern* in the *Strand*, and other Places. And at these Meetings they entred into Consideration,

what was the best Way to restore the late King *James* to the Throne; and it was agreed among them, that the best Means for the Effecting that Restoration, would be to kill King *William*, which they resolved to undertake; and at these Debates and Resolutions, Sir *William Perkins*, the Prisoner at the Bar was present. Captain *Porter* being asked whether Sir *William Perkins*, at these Consults, did consent to the King's Murther, he said they did all agree to the Assassination of the King, and Sir *William Perkins* said, he thought it was very necessary to be done, to facilitate the Restoration of the late King.

Gentlemen, This Design of the Assassinating the King being thus resolved upon, the next Thing considered among them was, how it might be effected; there were several ways proposed: One was by an Ambuscade; for the King having a House in the Country by *Richmond*, his Majesty used to go once a Week a Hunting thereabout, and to return at Night; and therefore an Ambuscade on that side of the Water, near the House, was proposed. Then another Proposal was made to fall upon the Guards on this side the Water, and at the same Time that the King's Coach was to be set upon. And these two Places being proposed, there was some Difference of Opinion among them, whereupon it was agreed that some Persons should be sent to view the Ground on both sides the Water, which Persons were Captain *Porter*, King that was executed, and one *Knightley*; and so some Days before the 15th of *February* they did go on both sides the Water; and viewed the Ground, and returned in the Evening to the *Nag's-Head Tavern*, according to Agreement, where were met together Sir *George Barclay*, Mr. *Charnock*, and the Prisoner at the Bar, Sir *William Perkins*. And there they made their Report of their View of the Ground, upon which both the Proposals were debated, and at last they did all agree that the Attack should be made upon the King on this side of the Water, in a Lane that was between *Brentford* and *Turnbam Green*; and the Attack upon the Guards was likewise to be made thereabouts.

Sir *William Perkins* was to furnish five Horses, whereof three of them were to be mounted by Men of his own providing, the other two were to be mounted by Men of Captain *Porter's* providing; Mr. *Porter*, Mr. *Charnock*, and one *Rookwood*, were to be principally engaged in Attacking the Guards. The Number of Men agreed upon for the whole, were about forty or few more, and Sir *George Barclay* was to have a Party out of them all, of about eight, and as those others went to fall upon, and charge the Guards, Sir *George Barclay*, with his Party of Men, was to attack the King in his Coach, and by shooting into the Coach to kill the King and all that were with him.

The Time agreed upon for putting this Design in Execution was on *Saturday* the 15th of *February*. That Day it was expected the King would go a Hunting. And two Men were planted at *Kensington* to give Notice when the King went, and upon such Notice, these Men were to march out in small Parties, and to lodge in the Inns, and publick Houses about *Brentford*, and *Turnbam Green*, upon Notice of the King's Return from the other side of the Water, and Sir *George Barclay* was to be in Readiness to set upon the Coach in the Lane; and the other Party to attack the Guards.

But this horrid Design was very happily discovered, which prevented the King's going Abroad on that Day; and though they were disappointed for that Time, yet the Design was not at an End: But their Resolutions continue to make the like Attempt when they could have an other Opportunity. And for that Purpose there was another Meeting, as Captain *Porter* tells you, upon the *Friday* following at the *Sm Tavern* in the *Strand*, at which *Sir William Perkins*, *Sir George Barclay*, *Rookwood*, and *Charnock*, and Captain *Porter*, were present, and they did agree to attack the King and the Guards, the next Day, in the same Place and Manner that they had formerly agreed upon. But by good Providence the King had Notice of it, so that he did forbear to go Abroad that Day, whereby these Conspirators were totally disappointed of their barbarous and villainous Design which they had resolved upon, and had made such Preparations to compass.

It is true, Captain *Porter* does tell you, *Sir William Perkins* was not to be one that should be actually present at the Assassination; but he was to furnish five Horses, three of them to be mounted by Men of his own Providing, and two by Men that Captain *Porter* was to provide. And you are told positively that Captain *Porter*, at this last Meeting, did complain that two of his Horses were fallen lame, and acquainted *Sir William Perkins* with it, and he promised to help him to two more by the means of one *Lewis* that was Gentleman of the Horse to my Lord *Feversham*.

Then you are told, that *Sir William Perkins* sent to *Sweet* to come to Town the 1th of *February*, and *Sweet* comes to Town accordingly, on *Wednesday* the 12th of *February*, and then he had Discourse with *Sir William Perkins* at his Lodgings, where *Sir William* told him, that because of his Family, he would not employ him in the Business he intended for him, and therefore bid him go home again; and withal, directed him to return to Town the *Friday* following, and order his Groom to bring his Horses to Town; he mentioned three Horses which should be the strongest he had; the Groom brought up the three Horses, and *Sweet* came to Town with him, and staid till *Saturday*. *Sir William Perkins* said he thought to go out of Town in the Afternoon, but did not, but stayed till *Monday*, when he went out of Town.

But upon the *Friday* following, the Horses of *Sir William Perkins* were brought to Town again, which now were Four, and were set up at the *George Inn* in *Holbourn*; and it appears that Mr. *Lewis* furnished one Horse, for there were five Horses upon the Account of *Sir William Perkins*, of which a Roan Horse was one which came from *Somerfet-House*. This is proved by the Hostler; and that *Lewis* himself came in on *Saturday* in the Afternoon to inquire for *Sir William Perkins*, but he was gone and the Horses were taken away, and he once came with *Sir William Perkins* to the Inn. These are Circumstances that do concur with, and confirm Captain *Porter's* Evidence concerning the providing Horses for this Design.

Then there is another Particular of Captain *Porter's* Evidence concerning the Commission from King *James*, which is remarkable: It was told you, that he askt *Charnock* whether he had seen the Commission: He said, No, but *Sir William Perkins* had: And *Sir William Perkins* was askt by *Porter*, as they were sitting by the Fire-side, whether he had seen the Commission; and *Sir William*

Perkins answered, that he had seen it, and had read it, and it was written with King *James's* own Hand; and that the Substance of it was to make War upon the Person of the Present King, who was called in the Commission, as you may suppose, the Prince of *Orange*. So that, Gentlemen, as to the Design of the Assassinating the King, and of this Commission which was understood by them to be for that Purpose, this is the Sum and Substance of *Porter's* Evidence so attended with, and confirmed by these Circumstances, as you have heard.

Besides the other Witness, *Sweet*, who was a great Acquaintance of *Sir William Perkins*, tells you, That about *Christmas* last, he was informed by *Sir William Perkins*, that the King would come, which he understood to be meant of King *James*. He asked *Sir William Perkins* how he knew it? and he said, He had his Word for it; and that his Troop consisted of Old Soldiers, and he had thirty Saddles; and besides, there would be some Volunteers, which were Old Officers. Then he said, He was to go into *Leicestershire*, and he did go with one *Scudamore*; and this was in *January*, about the latter End, as I remember. They lay that Night at *Stony-Stratford*, and the next Night at *Leicester*, and *Scudamore* went with him; and afterwards one *Tarborough*, and a Parson, came to him out of *Torkshire*: And when he came back he said, He found all there to be very well; and the West was as well inclined to the King's Interest, as the North; and a Lord's Brother was concerned.

Then in the next Place you are told, That at *Michaelmas* last, Mr. *Charnock* did write a Letter to one *Haywood*, who had married his Sister, and lived near *Sir William Perkins* in *Warwickshire*, to desire him to receive some Goods into his House that were to come from *Sir William Perkins's*, and lay them up very carefully; for they were choice Goods, which *Sir William* durst not leave in his own House, because he had left it. And accordingly there were these Boxes and Chests sent to *Haywood's*, and received by him into his House, where they continued till the latter End of *February*. *Haywood* about this Time, when the Design of the Assassination was on foot, met with *Sir William Perkins* in Town, and asked him how he would dispose of those Goods? Thereupon *Sir William Perkins* sent his Servant into the Country; and Notice was given on *Asb-Wednesday*, the *Wednesday* after the first Proclamation that issued upon the Discovery of this Conspiracy, that these Goods should be removed: And a Man, in the Evening, went to *Haywood's* House with a Cart and Horses, and removed these Chests; they were three in Number; and those being opened, there were eight lesser ones taken out, and carried away about Nine or Ten a Clock at Night, to *Sir William Perkins's* House in *Warwickshire*, where they were buried in the Garden, and afterward were dug up, which was at the Searching *Sir William's* House upon the Breaking out of the Plot; and when they were opened, it did appear what sort of Goods they were: They were Arms, a considerable Quantity of them; Four Dozen of Swords without Hilts, Twenty-five pair of Pistols, and a great Number of Carbines, Thirty-two as I remember, and a Parcel of Hilts pack'd up in a Box by themselves. This, Gentlemen, is sworn to you by the Persons that were present at the Digging them up, and Opening the Boxes.

Then, Gentlemen, you are told, That though *Sir William Perkins* pretends they were Arms that he

he found in the Houſe when he came thither, yet they were not old ruſty Arms, as he pretends, but they were very bright, and fit for Uſe and Service.

There is one Circumſtance more that ſeems to affect Sir *William Perkins*, about the Buſineſs of the Affaſſination; and that is proved by *Eubank*, Sir *William's* own Servant. There was a Note ſent upon *Saturday*, the 22d of *February* in the Morning, to one *Brown* at *Kensington*, by Sir *William Perkins's* Man; and this *Brown* writ in the Servant's Almanack, that he would be in Town himſelf in a little Time, and bid him carry it to a Man that lodged at a Confectioner's over-againſt *Grays-Inn Gate* in *Holbourn*: Sir *William Perkins's* Man accordingly goes to this Confectioner's, and ſpeaks with the Perſon there that he was directed to go to; and he ſays he was a *Scotch* Man, and talked broad like a *Scotch* Man, and he bid him go and tell his Maſter, That he would ſtay within for him till he came; and he did accordingly.

Gentlemen, This is the Sum and Subſtance of the Evidence that is given againſt Sir *William Perkins*. Now you are to conſider what Sir *William* ſays for himſelf: He does admit, and agree, That what *Porter* ſays is very poſitive and full; but that is but the Evidence of one Witneſs: For, ſays he, by the Law no Perſon ought to be convicted of High-Treaſon, upon the Teſtimony of one Witneſs. As to the Matter of Law he is in the right; No Man ought to be convicted of Treaſon upon the Teſtimony of a ſingle Witneſs. Now firſt ſuppoſe the Deſign to affaſſinate the King had not been proved; conſider then whether there be not Two Witneſſes beſides. *Porter* proves, That *Charnock* was ſent into *France*, by Sir *William Perkins*, and others, upon that Errand; to which, if you add the Teſtimony of *Sweet*, that ſwears, That Sir *William Perkins* told him the King would come, and he had a Troop, and had bought Saddles; and what is ſaid concerning his going into *Leiceſterſhire*, and his having a Quantity of Arms: If all which be underſtood in Purſuance of the Deſign againſt his preſent Majeſty, then there are at leaſt Two Witneſſes of ſeveral Overt-Acts of the ſame Treaſon.

For, Gentlemen, I muſt tell you, tho' there had been no Evidence of a Deſign to Affaſſinate the King, but the Deſign and Purpoſe had been to Depoſe him, and ſet the late King upon the Throne, or join with a Force to invade the Realm, that is High-Treaſon within the Statute of 25 *Edw.* the Third, as being a Deſigning the Death and Deſtruction of the King. There hath been a full Proof by Two Witneſſes, if what *Sweet*, and the other Witneſſes beſides *Porter* ſay, do prove Sir *William Perkins* to be concerned in that Deſign, which ſhall be conſidered further of by and by.

But in the next Place, ſuppoſe that the Meetings at the *King's-Head* in *Leaden-Hall-Street*, and at *Mountjoy's*, had not been proved; but the Deſign to Affaſſinate the King is proved by one Witneſs, and the providing Men and Arms to fight againſt him is proved by one other Witneſs; this is a Proof of the ſame Treaſon: For though the Overt-acts be ſeveral, yet they both tend to the ſame End, the Deſtruction of the King, though in a different Manner; and though the Law requires two Witneſſes to the ſame Sort

of Treaſon, yet it does not require two Witneſſes to any one Overt-act. For if one Witneſs prove one Overt-act at one Time, and another Witneſs prove another Overt-act at another Time, theſe are two Witneſſes within the Meaning of the Law; and ſo it has been always practiſed, and never denied to be Law that I know of.

Beſides it is obſervable upon this Point, which my Brother has mentioned, That this new Act of Parliament, which does not yet take Effect, provides, that there ſhall be either two Witneſſes to one Overt-act, or one Witneſs to one, and another to another of the ſame Species of Treaſon; and you have had the Opinion of all of us now that are here, that theſe are Overt-acts of one and the ſame Species of Treaſon.

But then Sir *William Perkins* objects, That *Sweet* does not prove any Overt-act. Now for that, you are to conſider the Force of *Sweet's* Evidence, who tells you the Diſcourſe of Sir *William Perkins*, about *Chriſtmas* laſt, of the King's Coming, of his Saddles, and of his Troop conſiſting of old Soldiers, and Volunteers that were old Officers. But ſays Sir *W. Perkins*, this is only Words, and Words are not Treaſon. But then conſider, that they are Words that relate to Acts and Things. You hear he had a great Quantity of Arms, beyond what he, as a private Man, could have Occaſion for, or would uſe. He does not give you any Account what he was to do with thoſe Arms, or to what Purpoſe he ſhould keep them, nor why he cauſed them to be removed in the Night, after they had lain privately in *Haywood's* Houſe, and cauſed them to be carried back to his own Houſe, and buried them in the Ground, and at ſuch a Time when there was a Plot, and after the Plot was diſcovered, and a Proclamation out for his own Apprehenſion.

Sir *William Perkins's* Diſcourſe with *Sweet*, of King *James's* Coming, and his Troop conſiſting of ſuch Men, plainly ſhews what thoſe Arms were for. For, Gentlemen, Men's Diſcourſes and their Words explain their Actions; and an indifferent Action in it ſelf may be ſo explained by Words, that it will be unlawful. It is lawful for a Man to buy a Piſtol; but if it can be plainly proved from his Words or his Speeches, that the Deſign of Buying it was to uſe it againſt the Perſon or Life of the King, that will be an Overt-act. Now when Sir *William Perkins* ſaid, The late King would come, and that he had a Troop which conſiſted of ſuch Soldiers; then theſe Arms being found in that Manner, I muſt leave to your Conſideration whether it is not a Proof, for what Purpoſe he did provide them, and to what Uſe he intended to put them; eſpecially ſince he gives you no Account, what Uſe or Occaſion he had for them. He ſays, indeed, he found them in the Houſe two Years ago, how probable that is, you may conſider.

Then there is another Thing, his Going into *Leiceſterſhire* with *Scudamore*, and his Meeting there with *Tarborough*, and other People in that private and haſty Manner. He went out on the *Thursday*, and came Home again upon *Monday* Night; and then he meets with *Sweet*, and tells him that all was well; and the Weſt was as well inclined to the King's Intereſt as the North. What King muſt he mean? he had no Commiſſion from King *William* to go into *Leiceſterſhire* to diſcourſe with People, to ſee how they ſtood affected to his Intereſt. *Sweet* comes and tells you, that when Sir

William Perkins spoke of the King, he understood he meant King *James*. I must leave it to your Consideration, how you will interpret these Words.

It is true, Gentlemen, it is not fit there should be any strained or forced Construction put upon a Man's Words or Actions, when he is tried for his Life. You ought to have a full and satisfactory Evidence to convince you, that he is Guilty, before you pronounce him so; but however, you are to consider the Nature of Things, and the Circumstances that attend them. If you can suppose that he went into *Leicestershire* to King *William's* Friends, and that he was of Opinion, the West was as well Affected to King *William*, as the North; then you make a different Construction from *Sweet*, who tells you, that always when he spake of the King, he understood it of King *James*; and at *Christmas*, when he spake of the King's Coming, it must be meant King *James*; for King *William* was here before, and he pretends not he had any Authority to raise a Troop for King *William*.

So that, Gentlemen, I must leave it to you upon the whole Matter; if you are satisfied, that *Sir William Perkins* is guilty of the Matters of which he stands charged, you will find him guilty; you have heard the Evidence, and will consider of it; and if, upon the Whole, you are not satisfied, that he is guilty of the Matters charged in this Indictment, then you are to acquit him.

Then an Officer being sworn to keep the Jury according to Custom, they withdrew to consider of their Verdict, and in less than Half an Hour, returned into Court.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names. *William Northey*, —

Mr. Northey. Here

(And so of the Rest.)

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *Sir William Perkins*, hold up thy Hand, (which he did.) Look upon the Prisoner; how say ye, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the High-Treason committed, or at any Time since?

Foreman. None to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treason.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that *Sir William Perkins* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, or Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all?

Jury. Yes.

Cl. of Ar. Gentlemen, the Court discharges you, and thanks you for your Service.

While the Jury was withdrawn to consider of the Verdict, Sir John Friend was brought from Newgate to the Bar, in order to his being called to Judgment, and after the Verdict, he address'd himself to the Court thus,

Friend. My Lord, I humbly beseech your Lordship to give me leave to read this Paper.

(To which the Court gave no Answer.)

Friend. My Lord, will your Lordship give me Leave to read it.

L. C. J. Ay, if you will.

(Reads.)

Friend. My Lord, I humbly move in Arrest of Judgment, that I am not convicted of Treason by Two Witnesses, as I ought to have been within the Statute of the 25th of *Edward the Third*: For Mr. *Porter* swears, That I, with others, in May or June last, sent to the *French* King to invade *England*; he is the only Witness to that Matter. Mr. *Blair* swears, That I shewed him a Commission in *Survey-street*, about two Years since, sign'd by King *James*, and counter-sign'd *Melford*, to be a Colonel of Horse, and that I gave him some Moneys for the Cherishing of the Men. My Lord, here is no Levying of War, sworn by Mr. *Blair*; and Conspiring to levy War not being Treason, I am convicted by one Witness, and therefore I pray Council may be assigned me, to plead this Matter.

L. C. J. *Sir John Friend*, that which you move now, is not in Arrest of Judgment, it is Matter that does arise upon the Evidence, and what you now say, arraigns the Verdict, and the Proceedings upon your Trial. There were Two Witnesses against you, that is plain. You were not indicted for Levying of War, but for Compassing and Imagining the Death of the King; and we told you the Design of the Invasion, and Conspiring to depose the present King, and restore the late King, was an Overt-act of that High-Treason. The Commission was not so much stood upon, but the Advancing Moneys upon this Account, to *Blair* your Lieutenant Colonel, to give to the Men, that was a plain Overt-act, and so there were certainly Two Witnesses against you.

Friend. My Lord, I hope, I can clear my self: I thank God, I am as Innocent as the Child unborn, of the Assassination of the King. I would not have the People think, that I am such a Man.

L. C. J. But you remember, it was sworn you knew of it, and we have told you, that the Design of Restoring the late King by Force, and Deposing the King, are Overt-acts of imagining his Death, if such an Intention be proved, as it was in your Case, and the Jury have found it so.

Friend. My Lord, I humbly beseech you, because I do not understand Matter of Law, and am advis'd to move this in Arrest of Judgment; I desire my Council may be heard to it.

L. C. J. We cannot hear Council, but upon a Matter that arises upon the Record it self, that is, the Indictment. We cannot enter into any Examination of this Matter, that you now speak of, you had a long Trial yesterday.

Friend. My Lord, I am sorry to give your Lordship any Occasion of Trouble; but I humbly beseech you, if it may be, that I may be heard by my Council, for the Satisfaction of the World; pray, my Lord, hear what they can say.

L. C. J. They cannot say any Thing; no Council in the World that understand themselves, can argue any Thing against what has been so often settled and always practised.

Friend.

Friend. My Lord, if it be to be granted, I beseech your Lordship to grant it.

L. C. J. It cannot be granted; besides the Matter you now move upon, is improper; it was all considered upon your Trial. It was told you, we did all agree, that a Conspiracy to levy War to depose the King is Treason, or to invade the Realm is Treason. All this was consider'd at your Trial, and that is now over.

Perkins. My Lord, if your Lordship pleases, I desire I may have the Liberty of some Friends and Relations, and a Minister to come to me.

L. C. J. Yes, yes, by all Means.

Perkins. If your Lordship pleases, that they may come and be private with me, and pray let me have a Rule of Court for it, otherwise I shall not have any Benefit of it.

L. C. J. Yes, yes, it is very fit you should have it; there shall be an Order of Court for it; See that the Keeper take Care it be done with Safety.

Friend. My Lord, I desire the same Liberty of a Minister, and my Relations and Friends to come to me; that for what Time I have to live, I may make the best Use I can of it for my Soul, which I hope God will enable me to do.

Then the Court was adjourned until Five a Clock in the Afternoon, and about Six the Justices returned, and the Court was resumed.

Cl. of Arr. Set Sir John Friend to the Bar: (Which was done.) Sir John Friend, hold up thy Hand; (which he did.) Thou standest convicted of High Treason, for traiterously Compassing and Imagining the Death of our Sovereign Lord King William the Third. What canst thou say for thy self why the Court should not give thee Judgment according to the Law?

(Then being made to kneel, he afterwards stood up.)

Friend. I have said already, what I have to say in Arrest of Judgment.

Mr. Com. Serjeant. Sir, you have heard the Judgment of the Court, as to what you have said; if you have nothing else to offer, the Court must proceed to Judgment.

Cl. of Arr. for Middlesex. Sir William Perkins, hold up thy Hand; (which he did.) Thou standest convicted of High Treason in Compassing and Imagining the Death of the King, and adhering to the King's Enemies. What canst thou say for thy self, why the Court should not give thee Judgment to die, according to the Law?

(He was made to kneel, and rise up again.)

Perkins. I have nothing more to offer.

Cl. of Arr. Then Cryer, make Proclamation.

Cryer. O yes; all Manner of Persons are commanded to keep Silence, while Judgment is in giving, upon Pain of Imprisonment.

Which Proclamation was made on both Sides the Court; and then Mr. Common Serjeant sitting with the Rest of the Court upon the Bench, pronounced the Sentence.

Mr. Com. Serj. You the Prisoners at the Bar, Sir John Friend, and Sir William Perkins, you have been indicted for High Treason, in Compassing the Death and Destruction of the King: For

your Trial, you have put your selves upon the Country, which Country has found you Guilty. The Offence is the greatest in the Judgment of the Law, that a Man can commit; and it is justly and reasonably so. For Robbery and Murder are Injuries to private Persons, but Compassing the Death of the King, is Compassing the Destruction of the Father of your Country, and letting in Rapine, Death, and Desolation upon Thousands of People. And even this, the hainoufpest of Offences, is capable of Aggravation; for there have been always Excuses, and sometimes Justifications for Rebellion: And as to Murder and private Revenge, there may be somewhat said in Mitigation from the Violence of Men's Passions. But to sit, and conspire, and consult, and debate the Destruction of a Prince; no Man yet ever had the Confidence to make an Excuse for it. I would not add to your Affliction; I am sensible of the severe Judgment that is to follow, and which you have brought upon your selves, and cannot but pity you for the great Burden of Guilt, that you have laid your selves under. I only say this to offer it to your serious Consideration, in the few Moments you have to prepare for another World, and another Judgment. All that remains for me, is to pronounce the Judgment of the Law in these Cases, and the Court does Award it.

That you, and each of you, go back to the Place from whence you came, and from thence be drawn on a Hurdle, to the Place of Execution, where you shall be severally Hanged up by the Neck, and cut down alive; your Bodies shall be ript open, your Privy-Members cut off, your Bowels taken out, and Burnt before your Faces; your Heads shall be severed from your Bodies, your Bodies respectively to be divided into Four Quarters, and your Heads and Quarters are to be at the Disposal of the King: And the Lord have Mercy upon your Souls.

Then the Prisoners were carried back to Newgate.

On Friday April 3. 1696. Sir John Friend and Sir William Perkins were drawn on Sledges from Newgate to Tyburn, where they deliver'd the following Papers to the Sheriffs.

Sir JOHN FRIEND's Paper.

K Nowing that I must immediately give an Account to God of all my Actions, and that I ought to be especially careful of what I say in these last Hours, I do solemnly profess, that what I here deliver is from my very Soul, with all the Heartiness and Sincerity of a dying Christian.

The Cause I am brought hither to suffer for, I do firmly believe to be the Cause of God and true Religion, and, to the best and utmost of my Knowledge and Information, agreeable to the Laws of the Land, which I have evermore heard do require a firm Duty and Allegiance to our Sovereign; and that as no foreign, so neither any domestick Power can alienate our Allegiance. For it is altogether new and unintelligible to me, that the

the King's Subjects can depose and dethrone him on any Account, or constitute any that have not an immediate Right in his Place. We ought, I think, not to do this; and surely, when it is done, to assist him in the Recovery of his Right, is justifiable, and our Duty. And however Things may seem at present, I do believe, I am sure I heartily pray, that he shall be one Day restored to his rightful Throne and Dominions.

As for any sudden Descent of his Majesty upon these his Dominions, in order to the Recovery of them, I declare I had no certain Knowledge of it; nor can I tell what Grounds there was to believe it, so little Reason had I to be in a present Preparation for it. I suppose it is not expected I should here endeavour to clear myself of the *Assassination*, which was not the thing allged'd against me; however, it was mention'd, through what Means I know not: As it was insinuated to my Disadvantage, I forgive such as were therein instrumental; and I do also, from the very Bottom of my Soul, freely forgive, and beg of God to do so too, such as were any ways accessary towards the taking away my Life, which I really look upon to be their Misfortune more than mine.

I profess my-self, and I thank God I am so, a Member of the Church of *England*, though, God knows, a most unworthy and unprofitable Part of it; of that Church which suffers so much at present for a strict Adherence to Loyalty, the Laws and Christian Principles; *For this I suffer, and for this I die.*

Tho' I have a perfect Charity for People of all Professions, and do heartily wish well, and would endeavour to do so to all my Fellow-Subjects, of what Persuasion soever. And indeed I have met with a great deal of Uprightness and Sincerity among some People of very different Opinions in religious Matters.

And I hope and desire it may not be taken as an uncharitable Censure, or undue Reflection, that I objected to the Legality of Popish Evidence, being advis'd so to do for my better Security, upon the Foundation of a Statute-Law.

Having owned myself a Member of the Church of *England*, I must take this Opportunity, and I do it for God's Glory, to apply myself to you that are Royalists of that Church, and of the same Faith and Principles with myself: And I beg of you, for God's sake, and the Love of your Souls, to be very constant and serious in all religious Offices, and holy Duties, of divine Worship and Service, which I have too much neglected, as I own to my great Sorrow: Let no Excuse, no Dangers, prevent or hinder you in these most necessary and serious Matters; and be, I beseech you, very careful and circumspect in all your Actions, Behaviour, and Conversation, as I earnestly exhorted all that came to me.

I have, I thank God, a great deal of Satisfaction in my present Sufferings, and have found it so ever since I have been under them: And

blest be God it doth continually increase upon me. And I do now lay down my Life with all Cheerfulness and Resignation, in sure and certain Hope of a Resurrection to eternal Life, through our Lord Jesus Christ; through whose Merits alone I hope for the Pardon of my Sins, and the Salvation of my Soul.

And so, O Lord! into thy Hands I commend my Spirit; for thou hast redeemed me, O Lord! thou God of Truth.

JOHN FRIEND.

Sir WILLIAM PERKINS's Paper.

IT hath not been my Custom to use many Words, and I shall not be long upon this Occasion, having Business of much greater Occurrence to employ my Thoughts upon. I thank God I am now in a full Disposition to Charity, and therefore shall make no Complaints, either of the Hardships of my Trial, or any other Rigours put upon me. However, one Circumstance I think myself oblig'd to mention. It was sworn against me by Mr. *Porter*, That I had own'd to him that I had seen and read a Commission from the King to levy War upon the Person of the Prince of *Orange*. Now, I must declare, that the Tenour of the King's Commission, which I saw, was general, and directed to all his loving Subjects, to raise and levy War against the Prince of *Orange*, and his Adherents; and to seize all Forts, Castles, &c. which, I suppose, may be a customary Form of giving Authority to make War; but I must confess I am not much acquainted with Matters of that Nature: But as for any Commission particularly levell'd against the Person of the Prince of *Orange*, I neither saw nor heard of any such.

It's true, I was privy to the Design upon the Prince, but was not to act in it; and am fully satisfied that very few, or none, knew of it but those who undertook to do it.

I freely acknowledge, and think it for my Honour to say, that I was entirely in the Interest of the King, being always firmly persuaded of the Justice of his Cause; and I look'd upon it as my Duty, both as a Subject, and an *Englishman*, to assist him in the Recovery of his Throne, which I believe him to be depriv'd of contrary to all Right and Justice; taking the Laws and Constitutions of my Country for my Guide.

As for Religion, I die in the Communion of the Church of *England*, in which I was educated.

And as I freely forgive all the World, so whoever I may any ways have injur'd, I heartily ask them Pardon.

WILLIAM PERKINS.

Jeremy Collier, a Nonjuring Minister, publickly absolv'd them at the Gallows.

After which they were executed according to their Sentence.



CLIII. *The Trial of* AMBROSE ROOKWOOD, *for*
High-Treason, *the 2d of* April, 8. Will. III. 1696.



HE Court being sat, at which were present the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, Mr. Justice *Nevil*, Mr. Justice *Powell*, and Mr. Justice *Eyre*; the Court proceeded in this Manner.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez: All Manner of Persons that have any Thing more to do, at this Sessions of Oyer and Terminer, holden for the County of *Middlesex*, draw near and give your Attendance. *God save the King.*

Then the Grand Jury were called over, and the Appearances marked, and Witnesses being sworn in Court, to give Evidence to them upon a Bill of Indictment against Alexander Knightley, they in a little Time after withdrew to hear the Evidence.

Then the Keeper of Newgate was order'd to bring his Prisoners to the Bar; (which he did.) to wit, Robert Lowick, Ambrose Rookwood, and Charles Cranburne; who were thus arraigned.

Cl. of Arr. Robert Lowick, hold up thy Hand. *(which he did.)*

Ambrose Rookwood, hold up thy Hand. *(which he did.)*

Charles Cranburne, hold up thy Hand. *(which he did.)*

You stand indicted in the County of *Middlesex*, by the Names of *Robert Lowick* of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Gentleman; *Ambrose Rookwood* of the same Parish, Gentleman, and *Charles Cranburne* of the same Parish and County, Yeoman; for that you, together with one *Christopher Knightley*, of the same Parish and County, Gentleman, not yet taken; not having the Fear of GOD in your Hearts, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as false Traytors against the most serene, most illustrious, most clement, and most excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, King of *England, Scotland, France, and Ireland*, Defender of the Faith, &c. your supreme, true, rightful, lawful, and undoubted Lord, the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King should bear, and of right ought to bear, withdrawing, and utterly to extinguish intending and contriving, and with all your Strength resolving, designing, and conspiring the Government of this Kingdom of *England*, under him our said Sovereign Lord the King that now is,

of Right, duly, happily, and well establish'd, altogether to subvert, change, and alter, as also our said Lord the King to Death and final Destruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Servitude to *Lewis* the French King to subjugate and intral, the 10th Day of *February*, in the seventh Year of the Reign of our said sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Parish of *St. Paul Corvent-Garden*, aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, and contrive, resolve, design, and intend, our said Lord the King that now is, to kill, slay, and murder, and a miserable Slaughter among the faithful Subjects of our said Lord the King, throughout this whole Kingdom of *England*, to make and cause, and the same your most impious, wicked, and devilish Treasons, and traiterous Compassings, Contrivances, and Purposes aforesaid, to fulfil, perfect, and bring to effect, you the said *Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, together with the said *Christopher Knightley*, and very many other false Traytors, to the Jurors unknown, afterwards, to wit, the same 10th Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, Advisedly, Secretly, Traiterously, and with Force and Arms, did Meet, Propose, Treat, Consult, Consent, and Agree, him our said Lord the King that now is, by lying in wait, and Guile, to Assassinate, Kill and Murder; and that execrable, horrid, and detestable Assassination, and Killing the sooner to execute, and perpetrate, afterwards (to wit) the same Day and Year, and divers other Days and Times, at the Parish aforesaid, in the County aforesaid, Traiterously did Treat, Propose, and Consult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what Manner, our said Lord the King, so by lying in wait, the more easily you might kill; and did consent, agree, and assent, that forty Horsemen, or thereabouts, whereof the said *Christopher Knightley*, you the said *Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, should be four; and every one of you traiterously took upon himself to be one, with Guns, Muskets, and Pistols, charged with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Weapons, being Armed, should lie in wait, and lie in Ambush, our said Lord the King in his Coach being, when he should go abroad, to invade, and that a certain and competent Number of those Men, so armed, should set upon the Guards of our said

Lord the King then attending him, and being with him, and should fight with them, and overcome them, whilst others of the same Men so armed, our said Lord the King should assassinate, slay, kill, and murder; and you the said *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, together with the said *Christopher Knightley*, the Treason, and all the traitorous Intentions, Designs, and Contrivances aforesaid, to execute, perform, fulfil, and bring to Effect, afterwards (to wit) the aforesaid Tenth Day of *February*, in the seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords, Rapiers, and other Weapons, Ammunition, and warlike Things, and military Instruments, falsely, maliciously, secretly, and traitorously did obtain, buy, gather together, and procure, and cause to be bought, obtained, gathered together, and procured with that Intention, then in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King that now is, as aforesaid to be used, employed, and bestow'd; and the same Premises the more safely and certainly to execute, do, and perform, the aforesaid *Christopher Knightley*, with one *Edward King*, late of High-Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attainted, by the Consent and Agreement of divers of the Traytors and Conspirators aforesaid, the said 10th Day of *February*, in the seventh Year aforesaid, went and came to the Place proposed, where such intended Assassination, Killing, and Murder of our said Lord the King by lying in wait, should be done, performed, and committed, to see, view, and observe the Convenience and Fitness of the same Place for such lying in wait, Assassination, and Killing, there to be done, performed, and committed: And that Place being so viewed and observed, afterwards, (to wit) the same Day and Year, their Observations thereof to several of the said Traytors and Conspirators did relate and impart, (to wit) at the Parish aforesaid, in the County aforesaid: And you the aforesaid *Charles Cranburne*, the same Day and Year there, in order the said execrable, horrid, and detestable Assassination, and Killing of our said Lord the King, by the Traytors and Conspirators aforesaid, the more readily and boldly to execute, perform, and commit, advisedly, knowingly, and traitorously did bring and carry between divers of those Traytors and Conspirators, forward and backward, from some to others of them, a List of the Names of divers Men of those who were designed and appointed our said Lord the King so as aforesaid by lying in wait to kill and murder; against the Duty of the Allegiance of the said *Christopher Knightley*, you the said *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, and against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

How say'st thou, *Robert Lowick*, Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Lowick. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Lowick. By God and my Country.

Cl. of Arr. God send thee good Deliverance.

How say'st thou, *Ambrose Rookwood*, Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Rookwood. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Rookwood. By God and my Country.

Cl. of Arr. God send thee good Deliverance.

Charles Cranburne, How say'st thou? Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Cranburne. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Cranburne. By God and my Country.

Cl. of Arr. God send thee good Deliverance.

Cranburne. My Lord, I desire your Lordship would grant me the Favour for my Wife to come to me in private, and that I may have Pen, Ink, and Paper.

L. C. J. Pen, Ink, and Paper, you *Sir John* must have; but as to the other, we *Holt* must consider of it. Keeper of *Newgate*, What has been usual in those Cases?

Keeper. My Lord, we let no Body come to them in private, but their Council.

L. C. J. That's provided for by the Act that allows them Council: But has it been usual heretofore to permit any Body else to be with them in private; the Wife, or any other Relations?

Keeper. It has not.

L. C. J. It is very dangerous if it should; therefore let him have his Wife come to him in the presence of the Keeper.

Cranburne. And Pen, Ink, and Paper, I hope, my Lord?

L. C. J. Yes, yes, that you shall have.

Cranburne. You don't deny me, my Lord, that I may have my Wife come to me?

L. C. J. No, we don't, but the must not be in private with you, for fear of an Escape.

Rookwood. I beg the same Favour, my Lord, to have my Brother come to me, and Pen, Ink, and Paper.

L. C. J. You shall have the same Rule; but you, Keeper, must have especial Care whom you do permit to come to them, and be private with them; for it is still at your Peril if any ill Accident happens by your Indulgence to them: And yet it is fit they should have all that is reasonable for preparing for their Defence at their Trials.

Lowick. And I desire, my Lord, I may have my Sister come to me, and the Liberty of her being in private with me.

L. C. J. Your Friends may come to you at seasonable Times, in the presence of the Keeper; you shall have any thing that is reasonable, but the Safety of the Government must be look'd after. Therefore, Keeper of *Newgate*, take back your Prisoners, and bring them here this Day sevensnight at seven a Clock in the Morning, without any other Order.

They said at the Bar about half an Hour, the Judges consulting among themselves about the Precept for the Petty Jury upon a late Act of Parliament which has appointed six Days for the Jury to be summon'd before they appear to try any Cause, and upon the last Act in Regulating Trials in Cases of High-Treason, which requires that the Prisoner shall have a Copy of the Pannel of the Jury duly return'd, at least two Days before his Trial.

Then the Prisoners were carried away, and the Grand Jury withdrew to consider of the Evidence against Knightley, and in a Quarter of an Hour came back, and being called over, delivered in a Bill to the Court.

Cl. of Arr. Gentlemen, you are content the Court shall amend Matter of Form, or false Latin in this Indictment, without altering any Matter of Substance without your Privy.

Jury. Yes.

Cl. of Arr. Then, Gentlemen, you may go for this Time; and you are to take Notice if there be Occasion at any Time to call you together, you shall have sufficient Warning given you beforehand. This is *Billa Vera* against *Alexander Knightley* for High-Treason.

Then the Judges resumed the Debate among themselves, and at last resolved that there should go three several Venires for the Petty Jury, returnable this Day sevennight; one to try between the King and Robert Lowick, the second to try between the King and Ambrose Rookwood, and a third between the King and Charles Cranburne; because, though the Indictment be against them jointly, yet it was a several Offence in every one of them, and they might sever in their Challenges, and that would be troublesome, and therefore it was thought best to sever them in their Trials; and therefore the Court adjourned for an Hour or something more, while the Precepts for the Jury were preparing, and according to the Adjournment met, and signed and sealed the Precepts, and then adjourned the Sessions of Oyer and Terminer until this Day seven-night, at Seven in the Morning.

Die Martis Vicefimo primo Aprilis, Anno Regni Regis Willielmi Tertii Octavo, Annoq; Dom. 1696.

THE Court sat about Eight a Clock, at which were present a great Number of Noblemen, and Persons of Quality, who were in the Commission, and Seven of the Judges; to wit, the Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Nevil, Mr. Justice Powel, Mr. Justice Eyre, and Mr. Baron Porvis.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes. All Manner of Persons that have any Thing more to do at this Sessions of Oyer and Terminer, adjourned over to this Day, draw near and give your Attendance. And God save the King.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, Sheriffs for the County of Middlesex, return the Precepts to you directed, upon Pain and Peril will fall thereon.

The Under-Sheriff returned the Precepts.

Cl. of Arr. Mr. Baker, pray, Whom do you intend to begin with?

Mr. Baker. With Ambrose Rookwood.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, You good Men of the County of Middlesex, summoned to appear here this Day, to try between our Sovereign Lord the King,

and the Prisoners that are, and shall be at the Bar, answer to your Names, as you shall be called, every one at the first Call, and save your Issues.

The whole Pannel was called over, and the Appearances of those that answered recorded; and the Defaulters were again called over.

Cl. of Arr. Keeper of Newgate, set Ambrose Rookwood to the Bar. (Which was done.) You the Prisoner at the Bar, Ambrose Rookwood, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, before they be sworn.

Sir B. Shower. If Your Lordship pleases, We have a Doubt or two to propose to Your Lordship, in respect of the Trial this Day: But before I offer it, we beg Your Favour for a Word in behalf of our selves.

My Lord, We are assigned of Council, in Pursuance of an Act of Parliament, and we hope that nothing which we shall say in Defence of our Clients, shall be imputed to our selves. I thought it would have been a Reflection upon the Government and Your Lordship's Justice, if being assigned we should have refused to appear; 'twould have been a Publication to the World, That we distrusted Your Candour towards us in our future Practice upon other Occasions. But, my Lord, there can be no Reason for such a Fear; I am sure I have none; for we must acknowledge, we who have been Practisers, at this Bar especially, that there was never a Reign or Government within the Memory of Man, wherein such Indulgence, such Easiness of Temper, hath been shewn from the Court to the Council, as there always hath been in this. Never was there such Freedom and Liberty of Debate and Argument allowed to the Bar, and we thank Your Lordship for the same.

My Lord, We come not here to countenance the Practices for which the Prisoner stands accused, nor the Principles upon which such Practices may be presumed to be founded; for we know of none, either Religious or Civil, that can warrant or excuse them. But the Act of Parliament having warranted the appearing of Council for Persons accused to make Defence for them, we hope Your Lordship will give us Leave to make what Objections we can on their Behalf.

L. C. J. Holt. Look ye, Sir B. Shower, go on with your Objections; let us hear what you have to say.

Sir B. Shower. My Lord, It appears to be a Doubt to us, upon this Act of Parliament, whether this Cause can be tried this Day: And if it be a Doubt, we hope, though it should not have that Weight with the Court, that we apprehend it has; yet Your Lordship will excuse us, and settle it according to Your Judgment. The Act requires, That all that shall be Accused and Indicted for High-Treason, whereby any Corruption of Blood may, or shall be made to any such Offender or Offenders, or to any the Heir or Heirs of any such Offender or Offenders, or for Misprision of such Treason, shall have a true Copy of the whole Indictment; and afterwards shall have Copies of the Pannel of the Jurors who are to try them, duly returned

returned by the Sheriff and delivered unto them. And every of them so Accused and Indicted respectively two Days at the least before he or they shall be Tried for the same. Now if your Lordship will please to cast your Eye upon this *Venire facias*, and it will appear to be returned but this Day, and that is not according to the Intent of this Law. And it is impossible then, if it be as we apprehend it, and put it, that this Trial should go on at this Time; and that this Construction should be so as we say, not only the Words, but as we take it, the Intent and Meaning of the Act of Parliament too are for us, that there ought to have been a Copy of the Pannel after the Return two Days before the Trial. For in the first Place, My Lord, the Words are plain: It must be a Copy of the Pannel duly returned by the Sheriff. Now though it be a Copy of the Array of the Pannel which we have delivered to us, yet it is not a Copy of the Pannel of the Jurors returned; for it is no Return till it come into Court. And the King's Council must admit, that in the Case of all Writs returnable, it cannot be said that there is a Return, where there is a Writing upon the back, or a Label annexed, till it be actually returned into Court. As in the Case of a *Fieri Facias*, or a *Mandamus*, an Action for a false Return cannot lye till the Writ be actually returned. For such Action must be brought into the County of *Middlesex*, where the Court resides, before whom the Return is made, and not in the County where the Sheriff lived that made the Return; for it is not a Return till filed in Court. Now here the Words of the Act are; *He shall have a Copy of the Pannel of the Jurors who are to try him, duly Returned by the Sheriff two Days before the Trial.* Now we humbly insist that the Words duly Returned must be antecedent to the having the Copy, or else he cannot be said to have a Copy of the Pannel duly Returned. The Act of Parliament does not say which shall be duly Returned; and therefore there does arise a Doubt, whether your Lordship will not direct us to have a Copy after the Return made, which is but this Day.

Mr. *Phipps*. If your Lordship pleases to spare me a Word of the same side: We take it, that by this Act of Parliament the Jury must be duly returned before the Pannel is delivered to us. Now the Return is the Answer that is Indorsed upon the Writ with the Pannel annexed, and deliver'd into Court; for the Return is to the Court, and till it be delivered into Court, it cannot properly be said to be a Return. We acknowledge the Copy of this Pannel has been delivered unto us, two or three Days ago. But the *Venire* being not returned till to Day, we think we have not a Copy of the Pannel within the Intent of, and according to the Act of Parliament. And I desire to put your Lordship this Case: This Act of Parliament does likewise provide, that the Prisoner should have a Copy of his Indictment five Days before his Trial, to enable him to consult with his Council how to plead and defend himself; suppose then a Copy of a Bill that is intended to be presented to the Grand Jury, be deliver'd to the Person accused five Days before the Grand Jury are to meet, and they afterwards meet, and find it, and the Party is brought immediately, and arraign'd upon it: This is a true Copy of the Indictment, yet certainly the Intent of the Act of Parliament is not

answered, for it was not a true Copy of the Indictment at the Time it was deliver'd. And I take this Case to be under the same Reason. This is not a Pannel duly returned, till now; and therefore by Consequence we have not that Advantage that this Act of Parliament intended to give us; for which Reason we humbly apprehend we ought not to be tryed to Day; which we submit to your Lordship.

L. C. J. What say you to it, Mr. Attorney.

Mr. *Attor. General*. My Lord, with *Sr Thomas* Submission, this Objection will receive *Trevor*. a very plain Answer. If I understand it aright, they say that they ought to have a Copy of the Pannel after it is returned, and that it cannot be said to be duly delivered, according to the Provision in this Act of Parliament, till after the *Venire facias* be duly returned into the Court, and then they are to have it two Days before they are tried. They say the *Venire facias* is returned but to Day, and so the Copy delivered to them, is not pursuant to the Act of Parliament; and so they cannot be tried to Day: This I take to be the Objection. But with Submission, *My Lord*, it will be plain both by the Words of the Act, and the Reason and Intention of it, that there is no Occasion at all, nor no Necessity of having the Writ returned before the Copy of the Pannel be delivered. The Words of the Act of Parliament are these; *That every Person and Persons who shall be accused, indicted, and tried for Treason, or Misprision of Treason, after the 25th of March, 96, shall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them two Days before they be tried.* Now, first, *My Lord*, I think it is apparent what the Meaning and Design of the Act of Parliament was, that the Prisoner should know two Days before the Trial, who were the Jury that were to pass upon him, that he might have an Opportunity to consider how he should make his Challenges as he thought fit, and Time to enquire into the Qualifications of them, that if there were any particular Ground of Challenge, he might not lose that Benefit; so that if he has a Copy of the Pannel array'd by the Sheriff, which is afterward returned by the Sheriff into Court, and there is no Variation of that Pannel afterwards; then certainly the End and Intention of the Act is entirely pursued: For by that Means the Prisoner has the Names of all the Jury returned, and are afterwards called, and has a full Opportunity of making such Challenges as he thinks fit. And as the Reason and Intention of the Act is answered by this Construction, so the very Words of the Act are answered: For it is not said in the Act, that he shall have a Copy of the Pannel after it is return'd, but it is said a Copy of the Pannel duly returned by the Sheriff; that is, when the Sheriff has arrayed a Pannel, then he is to have a Copy of that Pannel; and if afterwards the Sheriff return the same Pannel into Court, is not this a Copy of the Pannel duly return'd? With Submission it is, and sufficient to answer both the Words and Intention of the Act of Parliament. It is true, *My Lord*, if the Act of Parliament had said he should have a Copy of the Pannel after it was return'd, then we could not have said but that the Objection would hold. But when the Words are general, and it is most reasonable to be interpreted that the Copy is to be delivered when the Array is made, because that answers the Intention and End of the Act of Parliament,

Parliament, which was to enable the Prisoner to make his Challenges, we take that to be sufficient; and if another Interpretation shou'd be made, it wou'd render the Trial in such Cases liable to all the Mischiefs in the World, and make it impracticable that any Person shou'd be tried; at least it wou'd introduce a new Method of Proceedings that never was practis'd, nor ought to be introduced, unless this Act of Parliament by express Words, had appointed and constituted such a new Method; and we suppose your Lordship will never make any such Construction, that the Act intended a new Method, unless expressly declared; for if it were, as they would have it, that the Copy of the Pannel was not to be delivered till after the Return of the Writ, then the Prisoner cannot be tried upon the Return of the Writ; for upon the Return of the Writ, the Jury must be brought to the Bar, the Prisoner must be brought to the Bar, and adjourn'd over to a further Time, that in the mean Time a Copy may be deliver'd to them. I believe that they can never show any Precedent that there was such an Adjournment of a Jury of Life and Death, over to another Day, for a Person to have a Copy of the Pannel, to enable him to his Challenges; and either that must be the Consequence, or else the Jury must not come upon the Return of the *Venire facias*, but there must go a *Habeas Corpora*, and the Prisoner tried upon that *Habeas Corpora*: For first there must be the Return of the Writ, then the Copy of the Pannel delivered, then the *Habeas Corpora* returnable another Day; and upon that the Trial must be had: But I believe there can be no Instance given of a Trial for Treason upon a *Habeas Corpora*. Now if the Parliament had intended that they would not have the Copy of the Pannel deliver'd till after the Return of the *Venire facias*, they would certainly have express'd and provided how the Method of Trial should have been; that is, that either the Jury should have been adjourn'd over till another Day, or else brought to the Bar upon a *Habeas Corpora*, which is the only way that can be thought of. Indeed, *My Lord*, I do agree, that if the Sheriff should give a Copy of the Pannel, and afterwards should vary that Pannel, tho' but in one Name, that would not answer the End of the Act of Parliament, because the Prisoner is deprived of the Opportunity of knowing the Name of the Person that he is alter'd, in Order to his making his Challenges against him: But if the Sheriff do return the same Persons that are in that Copy delivered to the Prisoner, then we do, to all Intents and Purposes, answer the End of the Act of Parliament, and avoid the absurd Construction that they would make of this Act for the Changing the Method of Trials, and no Body can well tell what Method shou'd be pursued: But certainly if the Act of Parliament intended a new Method shou'd be pursued, they wou'd have described and settled what it shou'd be.

Sir John Hawles. *Mr. Solicitor General*, If your Lordship pleases to spare me a Word of the same side; *My Lord*, this is an Objection that has been foreseen, and I think has been prevented; for, with Submission, I take it, the Act has been sufficiently answered both as to the Words, and as to the Intent of it in the Prisoners having the Copy of the Pannel before the Jury be returned; there must be such a Thing as a Pannel array'd before the Jury be summon'd, and therefore it is suffici-

ent that the Prisoner have a Copy of that Pannel so many Days before his Trial; which was only intended for that particular Reason, that he might be provided sufficiently to make his legal Challenges. Certainly within the Intent of the Act of Parliament it is well enough if he had but a Copy of the Pannel two Days before the Return of the Writ, provided the Jury was not alter'd that was array'd, nor any other Names put in but those that he had a Copy of before: Now, *my Lord*, I think this Act of Parliament must be taken according to the Intent and Meaning of it, or else it will bear hard upon the Prisoner, and harder sure than it was designed it should: This Act says, he shall have a Copy of his Indictment so many Days before his Trial; now I would fain know whether they would have it construed, that the Copy does not need to be delivered till after Issue joyn'd, which must be if their Doctrine hold true, that the Act is to be construed according to the strict Letter of it, for Trial is the Trial of the Issue; what if the Indictment be delivered five Days before the Trial, tho' after Issue joyn'd, it is well enough according to such an Exposition, for the arrainging of the Prisoner is no Part of the Trial, and yet it was the Intent of the Parliament that he should have a Copy of the Indictment five Days before he was arraigned, and that for this Reason, because he might have several Pleas to plead and Objections to make before he pleaded the General Issue; he might have Pleas in Abatement, which after Plea pleaded of Not guilty he could not have the Advantage of, nor could he afterwards move to quash the Indictment, which he might otherwise have good Reason for, if he had the Copy before he was put to plead; so that I take it the Act is to be interpreted every where according to the Intention of it, and the Prisoner at the Bar, according to the Intention of the Act, has had a Copy of this Indictment five or six Days before his Arraignment, and therefore we have acted according to the Purpose and Meaning of the Parliament, and likewise he has had a Copy of the Pannel of the Jurors that are to try him, which is duly returned by the Sheriff, which is likewise according to the Act of Parliament. As for what they say that even a Copy of the Indictment before it be found would not be good according to this Act; that's true, but the Case is not the same, nor the Reason of the Case alike between that and the Pannel of a Jury, because it is sufficient in Law to make it a good Pannel if it be array'd by the Sheriff before the Jury be summoned, for the Sheriff must array and compleat his Pannel to let his Bailiff know who must be summoned; but in the Case of an Indictment, tho' a Bill be first form'd by the Clerk, yet it is not look'd upon as a formal Indictment in point of Law till it be found by the Jury as their Verdict, and preferred to the Court; and it is not necessary that this Indictment should be formed for the Jury before they find it, for they are properly to make their own Presentments themselves; and the ancient Practice was, that they only presented the Fact, and the Matter was put into Form afterwards by the Court, and in many Cases it is so at this Day, as we have had some Instances lately; but as to the arraying of a Pannel it always was so, and always must be so array'd by the Sheriff before the Jury summoned, and there's the Difference between the giving a Copy of an Indictment

Indictment and the Copy of a Pannel, the one is taken Notice of in Point of Law to be necessary, the other is not. This giving a Copy of the Pannel, my Lord, we say is within the Intent of the Act, which was only to enable Persons accused to make their just Challenges, and that they may as well do when a Copy is delivered after it is array'd by the Sheriff, as, when it is return'd by the Sheriff, and being so done, with Submission, it is well done within the Words, and within the Intent of this Act of Parliament.

Mr. Conyers. My Lord, the Words of this Act of Parliament, are, that they shall have a Copy of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them, and this, two Days before the Trial: My Lord, that this is the Pannel of the Sheriff of the Jurors that are to try them, as soon as it is array'd, has been observ'd already; now it would be a forc'd Construction to construe these Words that follow, duly returned by the Sheriff, to be meant, that a Copy should be delivered after the Jury is returned, because that would be a Delay of Justice, and keeping off the Trial longer than was intended by this Act of Parliament, and more than will answer the End of this Law; for the End of it was to give the Prisoner all Benefit and Advantage of Exceptions against any of those that were to try him, and if he has this Pannel two Days before his Trial, he has that Benefit the Law intended him. Now, my Lord, as to what has been said of an Indictment, which by this Law he is to have a Copy of too, that is plainly quite another Case; for it is not an Indictment till it be found, and so answers not the Words nor Intention of the Act till found by the Grand Jury; till then it is not a Copy of his Charge, and therefore by no Construction can it be called a Copy of the Indictment. I think I need not trouble Your Lordship any further in this Matter, because this Objection was foreseen, and has been already considered of by the Court upon the Prisoner's Arraignment.

Sir B. Shower. My Lord, in Answer to what Mr. Solicitor has said, that there is as much Reason to expect that the Copy of the Indictment should not be delivered till after Plea pleaded, as that the Pannel should not be delivered till after the Jury return'd, because in the Case of the Indictment it is said so many Days before the Trial, and the Trial cannot be till Issue joyn'd, there can be no Weight in that Objection at all; for the Words of the Act are quite differently penned in the Case of the Indictment, from what they are in the Case of the Pannel; for tho' it be said it should be done five Days before the Trial, yet it is added, in Order to the advising with Council how to plead, which must be before Plea pleaded, and therefore it must be absolutely necessary to be done before the Arraignment. My Lord, I have propos'd my Doubt, it may have Consequences on the one Side and the other, we submit intirely unto your Lordship's Judgment; it is a new Law, and never has received any Opinion; the Words of it are, *duly return'd by the Sheriff*, and the Question is, Whether a Copy of the Pannel upon the Array before it be return'd be a Copy of the Pannel duly return'd, tho' the same Pannel be afterwards duly returned.

Mr. Phipps. My Lord, Mr. Attorney General owns, that the Pannel after it is arrayed may be

amended and altered by the Sheriff, and it was never intended by this Act of Parliament, that any Copy of the Pannel should be delivered to the Prisoner but of those Men that were really returned; so that we take it we ought to have it two Days after the Return and before the Trial; for certainly it must be a Copy of the Men returned, which if the Sheriff may alter at any Time before the Return, the Intent of the Act of Parliament can never be answered by any Copy but what is a true Copy of the Return. Mr. *Conyers* would answer the Objection that I made about a Copy of the Indictment by this, that it is not an Indictment till it be found by the Jury; but I think it is no Answer to our Objection at all, tho' it be but a Copy of the Bill intended to be presented to the Grand Jury, yet if the Grand Jury afterwards find it, it is as true a Copy of the Indictment, as this is a Copy of the Jury intended to be returned, and afterwards returned. As to what they say, that this will introduce a new Method of Trial, contrary to all Form or Proceedings, that can be no Objection neither; for if it be so, we can't tell how to help it, the Parliament have thought fit to have it so, and we must submit to take it as the Law has made it: If there be a Necessity for a *Habeas Corpora* upon the Provision made in this Act, so it must be, for we must take the Law as it is. We submit our Objection to your Lordship; we think we have not had the Benefit of this Law.

Mr. Cowper. Surely, my Lord, what Mr. *Phipps* has now said has no Weight in it; that because the Sheriff had it in his Power to alter the Pannel before it was returned, that therefore this is not now a true Copy of the Pannel of the Jurors who are to try the Prisoner, duly returned by the Sheriff; which are the Words in the Act. It is true, if the Sheriff had in fact altered the Pannel from what it was, and return'd it so altered into Court, no doubt of it the Prisoner would be very well intitled to make this Objection, that he had not a Copy of the Pannel, or the Names of the Jurors that were summoned to try him; but now we can aver, that we have pursued this Act of Parliament literally; for in Answer to their Objection, we may ask this Question of them upon the Words of the Act, Have you not had a true Copy of the Names of those that are to try you, and are duly returned by the Sheriff for that Purpose; and was not that Copy delivered unto you above two Days ago? They cannot say they have not had it so, and if they cannot say so, then both the Words and Meaning of the Act of Parliament are in every respect answered; if when the Jury come to be called the Prisoner finds the Pannel to be altered, he has Reason to object, and will have the Benefit of the Objection, that he has not that Advantage which the Law intended him, but till that prove to be the Fact, we think here is a full Compliance with this Law.

Mr. Soll. Gen. Sir *Barth. Shower* mistakes my Objections about the Copy of the Indictment; for we say, if the Intent of the Act of Parliament be complied with, it is sufficient, especially where the Words are any way doubtful; according to the Words of this Act of Parliament, a Copy of the Indictment need to be delivered but five Days before the Trial; but it appearing that the Intention of these Law-makers was, that he should have a Copy of the Indictment to enable him

him to plead to it if he had Cause, therefore tho' the Words be before the Trial, we have taken it that he should have a Copy five Days before his Arraignment, and so we have complied with the Meaning of the Law in that point, as we have also in this, which was, we take it, only to enable the Prisoner to make his Challenges, and if that be done two Days before his Trial, with Submission, it fully answers this Law.

L. C. J. Have you done Gentlemen?

Counc. Yes, my Lord.

L. C. J. Then look you, Sir *B. Shower*, as to this Point that you now insist upon, we have had it under Consideration heretofore; we were here this Day seven-night, and then we did consider in what Method we should proceed, so that the Prisoner might have the Benefit intended him by this Act of Parliament: The Act of Parliament does design in the first place, that every Prisoner that is to be tryed for High-Treason should have a Copy of his Indictment, at least five Days before the Trial, that I think was all that the Makers of this Act of Parliament intended at the first; but then there being subsequent Words, which shew the Reason why they gave him the Copy so long before the Trial; which is, that he might advise with his Council what to plead; these Words we conceive have given the Prisoner a further Time than what was originally intended, therefore we have thought it necessary that the Prisoner should have a Copy of his Indictment five Days before he be arraigned, which is five Days before he was put to plead; and your Client, the Prisoner at the Bar, has had the Benefit of this Act in that respect before we arraigned him; then after he has pleaded, the Question was, when he was to have a Copy of the Pannel: Now the Design of this Act of Parliament was, That the Prisoner should have a Copy of the Pannel two Days before his Trial, in Order that he might consider of the Persons that were to try him; that he might inform himself of their Qualities, Tempers, and Dispositions; that so he might make use of the Benefit the Law gives him of Challenging Five and Thirty, without shewing any Cause, if he did not like the Men, and as many more as he should think he had good cause to challenge: Now in this Case, the whole Design of this Act of Parliament is answered, for he has had a Copy of the Pannel, as you your selves acknowledge, two Days before the Day of his Trial, so that he has the full Benefit that the Act of Parliament intended; he is by this Copy as well enabled to make his Challenges as the Law design'd he should be, and has had the same Time allowed him that the Act of Parliament meant he should have; then supposing the Design of this Act of Parliament be fully answered and complied with in the Case, The next Question is, whether the Words of the Act are satisfied, for we would be very loth, in a Case of this Nature, where an Act of Parliament intends a Favour to a Prisoner that stands at the Bar for his Life, to abridge him of any Part of that Favour which the very Words of the Act would allow him, tho' the Intent of the Act of Parliament were answered otherwise: Now in the first place it is observable, that the Act of Parliament does not say, that the Prisoner shall have a Copy of the Return, nor does it say, he shall have a Copy from the Court, but

he shall have a Copy of the Pannel of the Jurors duly returned that are to try him; now if the Sheriff array his Pannel several Days before the Trial upon the *Venire facias*, and does give him a Copy of that very Pannel, which Pannel is afterwards returned in Court, has not he then a Copy of the Pannel duly returned? Does not this answer all the Words of the Act? For you your selves say that it is not said in the Words of the Act, that the Copy shall be delivered after the Pannel returned, nor does there need a Copy of the very Return. Surely we must not carry it farther than the Words, if the Meaning be complied with, and we think this answers both Words and Meaning: It is a Copy of the Pannel, and a Copy of that Pannel that's duly returned. Now to make another Construction would indeed not only alter the usual Course of Trials, but be contradictory to the very Process it self. We are by the Course of Law to award Process to summon a Jury to appear at a certain Time, to try the Issue joined between the King and the Prisoner; and yet when we have done this, and the Jury thereupon are summoned and do appear, they may go as they came; for the Issue cannot be try'd, because after the Return, the Prisoner must have a Copy of the Pannel two Days before he can be tried. I do think the Design of the Act of Parliament, and the very Words of the Act are fully satisfied in giving a Copy of the Pannel two Days before the Return. We had this Matter under our Consideration before, and upon Debate among our selves, we did think fit to award the Precept returnable this Day, and resolved to try the Prisoner this Day, unless better Reasons were offered us to alter our Opinion, and we are not satisfied, that any such better Reason has been given, but that this Trial ought to go on, the Prisoner having the full Benefit that was designed him by this Act of Parliament. And the Giving a Copy of the Pannel that is return'd, tho' before the Return, sufficiently satisfies the Words of the Act: No other Construction can be made without great Absurdities: This is my Opinion.

Sir B. Shower. My Lord, I hope we shall be excused for our Client, we have another Doubt to propose to the Court.

L. C. J. You have had my Opinion upon this Point, if my Lords and Brothers are of another Opinion, they will tell you.

Judges. No my Lord, we are all of the same Opinion.

L. C. J. My Lord Chief Justice of the Common Pleas, and my Brothers are all of the same Opinion.

Sir B. Shower. My Lord, we say we have another Doubt to propose upon this Act of Parliament: It is a new one, and never put in Practice till now, and therefore we hope your Lordship will please to excuse us, if we offer our Objections, because there has yet never been a Determination about it, and we are assigned of Council by your Lordship.

L. C. J. Never make Apologies, Sir *Bartolomew*, for it is as lawful for you to be of Council in this Case, as it is in any other Case where the Law allows Council. It is expected you should do your best for those you are assigned for, as it is expected in any other Case that you do your Duty for your Client.

Sir B. Shower. My Lord, our Exception is this, we say that this Trial cannot go on at this Time, upon

upon this Act of Parliament, because we have no true Copy of the whole Indictment; it does not appear, in the Copy we have delivered to us, before whom it was taken, or whether it was taken at all, or in what Place it was taken; it says only *Middlesex* in the Margent, and then *Juratores pro Domino Rege presentant*: 'That might be before the Justices of the Peace at the Quarter-Sessions, or it might be at the Monthly-Sessions at *Hicks's-Hall*, or it might be at the Sessions at the *Old-Baily*, or it might be before Commissioners of *Oyer and Terminer*, as perhaps it really was; but *non constat* where it was taken, nor how it comes hither: It might be before Your Lordship here, as we believe it was, but this Copy not letting us know where and how it was taken, we think we have not the Benefit of this Law; for the Party accused is by this Act of Parliament to have a Copy to advise with Council, that he may be enabled to plead. And that is the Reason why the Words of this Act are so penned, that he shall have a Copy of the whole Indictment, which we cannot plead to, unless we know where it was taken, if we should have Occasion to plead any special Matter. And besides, My Lord, there is another Reason why we should have the whole Indictment to enable us to plead, because if we had the *Caption*, it might perhaps appear, that the Indictment was taken before the Time of the Fact alledged in the Indictment, and then that would make it vicious; it might be before the 9th of *February*, when this Treason is said to be committed, and then we ought not to be brought to Trial. Now the Design of this Act of Parliament, in giving the Prisoner a Copy of the Indictment so long before the Trial, was not only to enable him to make his Defence upon the Trial, but also to advise with Council to plead; for so the Words are, the better to enable him to plead. Now we say to answer this End, it is necessary we should have a Copy of the whole Indictment, as it stands before Your Lordship in Court. And another Reason is this, it is no Indictment, unless it be presented by the Jury, as their Inquisition upon Oath, unto some Court that has Jurisdiction of the Matter: What we have delivered to us is only a Copy of a Bill, as to be delivered to a Grand Jury, to be found; *non constat*, that it is found. Now the Intent of the Act of Parliament being to give the Prisoner this Advantage to enable him to plead, he may have several Pleas, of which he might take a legal Advantage if he had a Copy of the whole, which he knows not how to come at now; and in truth it is very necessary, because if he be tried upon an Indictment found in another Country, then these Commissioners have not a legal Authority to try him; and if the Tryal should go on, and he be acquitted, he is subject to be indicted and tried again, and never can relieve himself by the Acquittal upon such an Indictment before Persons that had no Authority to try him. I doubt he can never plead the Acquittal, because he cannot make out that he was duely tried and acquitted: And for these Reasons we humbly submit it to your Lordship, whether we have had the Benefit of this Law, in having a Copy of the whole Indictment to enable us to plead; and if we have not, till we have that Benefit, we humbly conceive this Trial ought not to go on.

Mr. Phipps. My Lord, the Question is whether the Style of the Court, the Persons before whom it was taken, and to whom the Presentment is

made, the Time when it was taken, and the Place where, ought not to appear in the Indictment. This Law requiring that the Prisoner should have a Copy of the whole Indictment to enable him to plead; for if it should happen, that the Indictment was taken before Persons that had no Jurisdiction, then I believe it will not be denied but that the Prisoner might plead to the Jurisdiction, and there might be several other Pleas that he might take Advantage of. I would desire to know of the King's Council, whether ever they saw a Copy of an Indictment given in Evidence, or pleaded without the *Caption*. It is not a true Copy without it; there ought to be the Time, the Place, and the Style of the Court before whom it is taken.

Mr. At. Gen. Truly, my Lord, I think I need say no more to this Objection, than that it does not come at a proper Time; for with Submission, if the Prisoner will upon this Act say he has not had a Copy of his Indictment to enable him to plead, he ought to have taken the Advantage of it before he did plead, that is the proper Time for him to object this Matter to the Court; for if, after he has had such a Copy as this Prisoner has had, he does submit to plead, with Submission it is too late to come at his Trial and make this Objection, he cannot be received to make it after.

L. C. J. That is a full Answer, *Mr. Attorney*.

Mr. At. Gen. I think it is, my Lord, with Submission, not that we would wave giving other Answers to it, if it were in a proper Time; but the Method of proceeding must be, and we think we have no Occasion at this Time to say any Thing more to this Objection.

L. C. J. No, no, that is a full Answer in this Point; for look ye, you that are of Council for the Prisoner, when once you have pleaded, you admit you have had a Copy; for the Copy was given you to enable you to plead, and when you have pleaded, you have pass'd by all Advantage that you could have from the Copy, as to any Plea that you can make: For it's taken for granted ye had a Copy to enable you to plead, and to advise with your Council about it; since you did plead, and did not insist upon it at the Time of your Arraignment that you had not such Copy.

Sir B. Shower. My Lord, we have proposed one Doubt, and we humbly submit it to the Court.

Mr. Sol. Gen. It was their own Fault that this Objection was not made in Time.

L. C. J. That Doubt of yours may serve at another Time, but now certainly it is quite out of Time.

Mr. Sol. Gen. Nay, my Lord, even upon the Arraignment that would not serve their Turn neither.

L. C. J. We will not enter upon that now, pray go on to swear the Jury.

Cl. of Ar. You the Prisoner, look to your Challenges, as I told you before. *Cryer*, call *Sir Jeremy Sambrook*.

Cryer. *Vouz avez*.

Sir B. Shower. *Mr. Rookwood*, you are to make your own Challenges.

Rookwood. I do not challenge him.

Cl. of Ar. Then hold *Sir Jeremy* the Book.

Sir Jer. Sambrook. My Lord, I am incapable of serving upon this Jury, for I have been deaf this

these several Years, these Dozen Years; I cannot hear what is said in Court, though I am now so near the Court, I could not hear what your Lordship said; nor what was said at the Bar. I have a Certificate here, if your Lordship please to have it read; and most of the Persons of Quality here about the Court know it to be true.

Mr. *At. Gen.* My Lord, I am afraid it is so.

L. C. J. Nay, if it be so, it is not fitting that he should be upon the Jury, when he can't hear what's said: You must excuse Sir *Jeremy Sambrook*. Go on to the next.

Cl. of Ar. George Ford.

Cryer. Vous avez.

Cl. of Ar. Look upon the Prisoner.

Rookw. I challenge him.

L. C. J. Mr. *Ford*, you must not go away, for you are upon another Pannel, wherein you may be employed, tho' you are now challenged.

Cl. of Ar. William Underbill.

Rookw. I challenge him.

Cl. of Ar. William Withers.

Rookw. I challenge him.

Cl. of Ar. Samuel Powell.

Rookw. I do not except against him.

Cl. of Ar. Then swear Mr. *Powell*.

Cryer. Look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cl. of Ar. Thomas Trench.

Rookw. I challenge him.

Cl. of Ar. John Wolfe.

Rookw. I challenge him.

Cl. of Ar. James Bodington.

Rookw. I challenge him.

Cl. of Ar. John Raymond.

Rookw. I challenge him.

Cl. of Ar. Richard Marsh. (He did not appear.)

Cl. of Ar. George Haws.

Rookw. I challenge him.

Cl. of Ar. Francis Barry.

Rookw. I challenge him.

Cl. of Ar. Arthur Baily.

Rookwood. I except not against him. (He was sworn.)

Cl. of Ar. John Webber.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Thomas Glover.

Rookw. I challenge him.

Cl. of Ar. Dormer Sheppard.

Rookw. I challenge him.

Cl. of Ar. George Tredway.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Matthew Bateman.

Rookw. I challenge him.

Cl. of Ar. Timothy Thorbury.

Rookw. I challenge him.

Cl. of Ar. James Partberich.

Rookw. I challenge him.

Cl. of Ar. Thomas Freeman.

Rookw. I challenge him.

Cl. of Ar. Joseph Blitbit.

Rookw. I challenge him.

Cl. of Ar. Timothy Lemoy.

Rookw. I have nothing to say against him. (He was sworn.)

Cl. of Ar. John Harris.

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Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. John Billers.

Rookw. I challenge him.

Cl. of Ar. Richard Bourne.

Rookw. I challenge him.

Cl. of Ar. George Carter.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Francis Chapman.

Rookw. I challenge him.

Cl. of Ar. Alexander Fortb.

Rookw. I challenge him.

Cl. of Ar. Thomas Playsted.

Rookw. I challenge him.

Cl. of Ar. William Etley.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. John Marsh.

Rookw. I have nothing to say against him. (He was sworn.)

Cl. of Ar. Samuel Hooper. (He did not answer.)

L. C. J. Did Mr. *Hooper* appear?

Cl. of Ar. Yes, my Lord, he is mark'd as appearing.

L. C. J. Then you ought to call him again, and set a Fine upon his Head.

Cl. of Ar. Cryer, call *Samuel Hooper*.

Cryer. *Samuel Hooper*, come into Court and give your Attendance upon Pain of ten Pound, for the Court has recorded your Appearance.

Cl. of Ar. John Hall.

Rookw. I challenge him.

Cl. of Ar. Nicholas Roberts.

Rookw. I challenge him.

Cl. of Ar. William Partridge.

Rookw. I challenge him.

Sir B. Shower. How many has he challenged Mr. *Hardesty*?

Cl. of Ar. I will tell you *Sir Bartholomew*,—he has challenged 24.

Sir B. Shower. Well then, go on, Sir.

Cl. of Ar. Peter Laveane.

Rookw. I challenge him.

Cl. of Ar. Thomas Moody.

Rookw. I challenge him.

Cl. of Ar. Richard Bealing.

Rookw. I challenge him.

Cl. of Ar. Thomas Evans.

Rookw. I challenge him.

Cl. of Ar. Thomas Rammage.

Rookw. I challenge him.

Cl. of Ar. Edward Townsbend.

Rookw. I challenge him.

Cl. of Ar. William Gunston.

Rookw. I challenge him.

Cl. of Ar. Samuel Freebody.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Philip Wightman.

Rookw. I challenge him.

Cl. of Ar. There are now Thirty-two challenged.

John Wyberd.

Rookw. I challenge him.

Cl. of Ar. William Strowd.

Rookw. I challenge him.

Cl. of Ar. Daniel Byfield.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Benjamin Noble,

Rookw. I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. Cryer, count them. *Samuel Powell*,—

Cryer. One, &c.

Cl. of Ar. *Benjamin Noble*.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Twelve sworn were these.

<p><i>Samuel Powell,</i> <i>Arthur Bailey,</i> <i>John Webber,</i> <i>George Tredway,</i> <i>Timothy Lemoy,</i> <i>John Harris,</i></p>	}	<p><i>George Carter,</i> <i>William Atley,</i> <i>John Marlb,</i> <i>Samuel Freebody,</i> <i>Daniel Byfield,</i> <i>and Benjamin Noble.</i></p>
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L. C. J. Look ye, Mr. *Phipps*, your Objection upon the Indictment slipt me, and therefore I would speak to it now: You said it might be as well a Copy of the Indictment before it be found, as well as this a Copy of the Pannel before it be returned. Now that can't be, for an Indictment is not an Indictment till it be found, it is only a Writing prepared for the Ease of the Jury, and for Expedition; it is nothing till it is found, for the Jury make it an Indictment by finding it, they may alter what they please, or refuse it absolutely. And if the Jury, upon examining the Witnesses, would only present a Matter of Fact, with Time and Place, the Court might cause it to be drawn up into Form, without carrying it to the Jury: Again, There needs no *Billa vera*; for that is only the Jury's Owning that which the Court has prepared and drawn up for them: But a Pannel is a Pannel when it is arrayed, before it be returned, and a Copy of the Pannel given before it be returned, is a Copy of the Pannel returned, if it be afterwards returned, as it must.

Sir Barth. Shower. But, my Lord, that Notion strengthens our Objection that we last made, that makes it necessary that we should have a Copy of the *Caption*, as well as the other Part, to make it a true Copy of the whole Indictment.

L. C. J. That's another Thing, we will talk of that another Time; but I speak of this only as to his Objection which slipt my Memory, because I would have nothing remain unanswered.

Mr. Phipps. My Lord, when the Bill is found, the Copy that we delivered before is as much a true Copy of the Indictment as our Copy of the Pannel is a Copy of the Jury returned.

L. C. J. A Pannel is a Pannel when it is arrayed, but a Bill is not an Indictment till it be found; one cannot say a Man *indictatus existit*, till it be found; all that we say of it before it be found, is that there was *quædam Billa* preferred to the Grand Jury, and if the Jury bring it in *Ignoramus*, whereby they disown the Presentment, it is cancelled, and there is no Record of it, nor nothing, only a *Memorandum* in the Clerk's Book perhaps, that such a Thing was. Well, go on.

Cl. of Ar. Cryer make Proclamation.

Cryer. O yes, If any one can inform my Lords the King's Justices of *Oyer* and *Terminer*, the King's Serjeant, the King's Attorney General, before this Inquest be taken, of the High-Treason whereof *Ambrose Rookwood*, the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner

stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance.

Cl. of Arr. *Ambrose Rookwood*, hold up thy Hand. (*Which he did.*) You that are sworn look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Ambrose Rookwood*, of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Gent. for that he, together with *Christopher Knightley*, not yet taken, *Robert Lowick*, and *Charles Cranburne*, and divers others, false Traytors, &c.—prot in the Indictment, *mutatis mutandis*—and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraign'd, and upon his Arraignment hath pleaded not guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to enquire, whether he be guilty of the High-Treason whereof he stands indicted, or not Guilty; if you find him Guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him not Guilty, ye are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him Guilty; if you find him not Guilty, nor that he did fly for it, you are to say so and no more: And hear your Evidence.

Mr. Mountagne. May it please your Lordship, and you Gentlemen of this Jury, this Indictment that has been read to you, does charge the Prisoner with High-Treason for Compassing and Imagining the Death of the King, for endeavouring to subvert the Government, and to subvert the People of *England* to the Slavery of *Lewis* the *French King*; and for this End the Indictment sets forth, that the Prisoner at the Bar did privately meet with several false Traytors, to consult how they might compass the Death of the King, and commit those other Treasons; and that the 10th of *February*, at *Covent-Garden*, in this County, it was agreed among them, that they should get together Forty Horsemen whereof the Prisoner at the Bar was to be one, and they were to lie in Ambush, and set upon the King in his Coach upon his Return from going abroad; some were to attack the Coach, others to attack the Guards, and there were some to kill the King in the Coach: And the Indictment does likewise charge the Prisoner with gathering together Horses, and providing Arms for this Purpose. To this Indictment, Gentlemen, he hath pleaded not Guilty; we shall call our Witnesses, and prove the Fact, and when we have so done, we do not at all doubt but you'll do your Duty.

Sir B. Shower. My Lord, before the Witnesses are called we have a Doubt to propose to your Lordship upon this Act of Parliament, and that is, whether we are to take our Exceptions to this Indictment before the Evidence be opened or given?

L. C. J. It should properly be before the Jury is sworn.

Sir B. Shower. The Words of the Act, my Lord, is before the Evidence given.

L. C. J. That Act provides, That if you do not take the Advantage of it, before the Evidence given,

given, you shall not move that in Arrest of Judgment.

Sir B. Shower. It only says before Evidence given, and no Evidence has yet been given.

L. C. J. But you are certainly very irregular in point of Practice, no Body ever took Exceptions to an Indictment after the Jury was sworn.

Sir B. Shower. If your Lordships please to let the Words be read of the Act of Parliament, they are these: 'That no Indictment shall be quash'd, unless Exception be taken in the Court where the Trial shall be, before any Evidence given in Court upon that Indictment. Which, we say, strongly implies that the Law-makers thought it might be done at any Time before the Evidence was given in open Court, besides that the Law takes Notice that after Conviction it should be of no Avail; it would have been a very improper Expression before Evidence given in open Court, if it had meant before the Jury were sworn and charged; for the Word Evidence supposes the Trial commenced: If they had intended it otherwise, that is, that it should be before the Jury is sworn, they would have express'd it to be done at the Arraignment; but mentioning it to be done in the Court where the Trial is to be, before Evidence given, that supposes the Indictment to be at Issue before the Party needs to make his Exceptions. Therefore, my Lord, we hope we are regular in offering our Exceptions now.

L. C. J. Pray, what say you to it, Mr. Attorney?

Mr. Att. Gen. Truly, my Lord, I think they are no Way regular; for, with Submission, I take it, that though this Act of Parliament has indulged them in several Things which were not allowable by Law before, yet as to this Part they are not allowed to take Exceptions to the Indictment, otherwise than they could before this Act was pass'd: Nay, so far from that, that if your Lordship looks into the Act, you find they are restrain'd in this Point from an Advantage that they had before, that is, they shall not move any such Things as are there mention'd, after Verdict, in Arrest of Judgment: So that this Part is restrictive to the Prisoner, and takes away some Advantage that he had before; which was, moving in Arrest of Judgment after Verdict; but it leaves the making Exceptions as to any Time before the Verdict, as it was before, which was before Plea pleaded, but not after the Jury sworn: For it cannot be denied that in point of Practice, such a Thing as this that is now offered could not have been done before the Act. I would be glad to know whether they can shew any Precedent of any such Thing as they now contend for. They say, the Words of the Act are, Exception must be taken before Evidence given; but that must be taken at such a Time as they might by the Course of Law do it before: For when the Jury is sworn, they must give a Verdict, and I do not know how they can be discharged without giving a Verdict; therefore unless the Act had given Directions for a particular Manner of Proceeding in this Matter, which it has not done, your Lordship will not, I presume, do it in any other Manner than as it was before the Act made; and if there be no Precedent to be shown of any such Thing as this, of taking Exception to an Indictment after the Jury sworn and charged with the Prisoner; then there is no

Power in this Act of Parliament, given to them to take Exceptions to this Indictment at this Time; we take it the Motion is very irregular upon all Accounts.

Mr. Sol. Gen. My Lord, we first say, that it is not proper for them to make any such Motion as this upon this Act of Parliament, till they tell us what their Exception is, that we may see whether it be within the Words and Meaning of this Act of Parliament. The only Thing now that is proper for us to consider, is the Issue joined, and the Inquiry whether the Prisoner at the Bar is Guilty of the High-Treason of which he is Indicted, to which Indictment he has pleaded not Guilty: That's the Thing that is now before your Lordship to be tried, they have Room for Exceptions to the Indictment afterwards, for some Exceptions I mean, (I do not know what their Exceptions are) but if they be such as may be taken after the Verdict, then I am sure they are irregular now in their Motion, and they can shew no Precedent, when it was done after Plea pleaded and Issue joined, as it is in this Case.

Mr. Conyers. The Advantage that the Act gives the Prisoner, of having a Copy of his Indictment so long before Trial, is to enable him to plead, or to take Exceptions to quash it; but I never heard a Motion to quash an Indictment after a Jury is charged to hear the Evidence. Certainly they ought to do it before Plea pleaded, and not now to come to make a Motion to quash the Indictment, after they have pleaded, and the Jury sworn: Therefore we submit it, upon the constant Practice in like Cases, to the Judgment of the Court.

Sir B. Shower. In Answer to that which Mr. Attorney has said, That it is an improper Time; I thought truly I had moved it for the Advantage and Ease of the King's Council, that they might not proceed upon this Trial, when perhaps after all their Trouble, the Foundation, which is the Indictment, may fail. I have a great many Exceptions to the Indictment; they say we should name what our Exceptions are: I will acquaint them with them, as fast as I can, if your Lordship please, the Indictment is very loose and uncertain.

L. C. J. Certainly the Motion is irregular in point of Practice.

Sir B. Shower. My Lord, we were afraid we should be excluded from taking these Exceptions after the Evidence given.

L. C. J. So you are by the express Words of the Act.

Sir B. Shower. Then certainly we may do it before the Evidence given.

L. C. J. But the Act does not say, Ye shall do it any Time before the Evidence given, especially in such an irregular Manner, after Issue joined, and the Jury sworn. Suppose Mr. Attorney had given some Evidence.

Sir B. Shower. Then, my Lord, I agree we had been without the Words; therefore I now move it before the Evidence, because the Act of Parliament has given me a Liberty to do it before the Evidence given: For the Law having given this Liberty to the Prisoner, to make such Exceptions within such a Time, your Lordship will not restrain us from making Use of that Liberty further than the Law has restrained, but we may make Use of our Exceptions before the Evidence given,

either to induce your Lordship to quash the Indictment, or the Jury to find us not Guilty, as we hope your Lordship will direct them to do: For what is more common upon Indictments after the Jury are sworn, than if Facts appear upon the Record not to be sufficiently alledged, the Court will direct the Jury to find the Party not Guilty. We think this Act does give us this Liberty, otherwise I know not to what Purpose it was made, the very Meaning seems to be, that the Exceptions of the Council for the Prisoner might be of Prejudice to the King; and therefore it says, After the King's Evidence given, and the Fact discovered, no such Exception shall be made: Therefore we must make it before the Evidence given, otherwise this Act of Parliament that was designed in Favour of the Prisoner, will prove a very great Hardship upon him, especially in Case of an imperfect Indictment, as we apprehend this is, and he will be in a worse Condition than ever he was: he must take his Exceptions now or not at all. The Act says, He is not to take it after Evidence given; and by Construction the King's Council would have it, That he should not give it before: And consequently he has no Time at all to give it.

L. C. J. Have not you had Time to do it before now, Sir *Bartholomew Shower*, certainly you had? You had Time this Day Seven-night, when you were arraign'd; you have had your Opportunity if you would have taken it; the Jury are now charg'd, the Indictment is opened, they have been told what they are to enquire of, and now you would break in and take Exceptions to the Indictment.

Sir B. Shower. My Lord, This is a new Act of Parliament, it says we shall take our Exceptions before the Evidence given; which we take it, is any Time before the Evidence given; and if your Lordship will not allow us to do it now, it may be we may lose the Benefit of it absolutely.

L. C. J. It is one Question whether we shall allow it or no, and another Question whether you can claim it or no: Certainly it is an irregular Motion, and the like of it was never offered in any Case before, be it Criminal or Civil: For if it be a Criminal Case that is not Felony or Treason, when the Issue comes to Trial upon an Indictment, Did you ever know any Exception taken to the Indictment after the Jury were charg'd? Certainly it is contrary to all Practice; and it is not fair, the Court is not well dealt with, you have had an Opportunity before, and will you now put the Court and the Jury to so great deal of Trouble, to stay till the Jury be called over, the Prisoner called to his Challenges, he has challenged Thirty-four, the Jury is sworn, the Indictment is read to them, the Charge given them, the Council have opened the Indictment, and now when the Business is only to try the Issue with which the Jury are charg'd, you come to turn us quite round, by taking Exceptions to the Indictment.

Mr. Phipps. My Lord, We take it the Act gives us this Time to do it in.

L. C. J. You know you had another Time more proper to do it in.

Mr. Phipps. My Lord, If we have not Time now, then this Clause, with humble Submission, signifies nothing at all.

L. C. J. The Clause was made in this Respect, to your Disadvantage, because you should have a

Copy of the Indictment, whereby you might have an Opportunity to advise with Council, that they might instruct you how to plead, and to take any manner of Exception before Plea pleaded, it ought to be before the Trial, and now because of this Advantage, it provides that you shall take your Exceptions before the Trial, and not move them in Arrest of Judgment; that is the Meaning of the Act.

Mr. Phipps. Then, my Lord, there needed no Time at all to be mentioned in the Act, but have left it as it was at Common-Law.

L. C. J. Yes, Yes, there did need a Time to be limited, for this Clause was made I say in your Disadvantage, in depriving the Prisoner of the Benefit of such kind of Exceptions in Arrest of Judgment, because of the Advantage that was given in the former Part of the Act, where you had Time given you to make your Exceptions, for which End you are to have a Copy of the Indictment five Days before you are called to plead.

Sir B. Shower. We could not come before, my Lord, as we apprehend, because the Words of the Act are before Evidence given.

L. C. J. But I tell you, this Clause was not for your Benefit, but for your Disadvantage.

Sir B. Shower. My Lord, What we press, arises from the very Words of the Act of Parliament, if the Meaning of the Law-makers was as the King's Council now contend to have it; they would never have used those Words before Evidence given in open Court, but have said they should have had no Advantage of the Exception, unless it were before Plea pleaded; it does not say it shall be after the Verdict, or before the Verdict, but before the Evidence given: Now if they had meant what these Gentlemen say, they would have appointed it to be before the Verdict, which would have included the Trial; because then it had been like the Penning of other Acts of Parliament, the Statutes of *Jecfailes* and the like, which say, That after a Verdict, such and such Exceptions shall not Arrest a Judgment: But if they can shew me any Statute that is penn'd like this, they give me an Answer: All those Statutes are, That no Judgment shall be arrested or delay'd upon such or such Exceptions after a Verdict: But here it says, They shall not arrest Judgment, unless the Exception be taken before Evidence given in open Court. My Lord, We submit it to you, we think the Law-makers did intend somewhat by that particular Way of Expression, different from all other Acts of Parliament; and truly if it be not as we offer to your Lordship, we think it can have no Meaning at all.

Mr. Att. Gen. Truly, my Lord, we think it is very plain what the Parliament meant, by this Clause in this Act; the Design was, to restrain the Prisoner from moving in Arrest of Judgment, for Mis-spelling, or false Latin, or little Matters of Form, if he did not move it in a proper Time, having such a Liberty allow'd him, as to have a Copy of the Indictment so many Days before he was compelled to plead: They insist upon it, that the Words are, Before Evidence given; It is so: But what can be the Meaning of that? It must be at such Time as the Law allows; it is not making a new Method of Trial; you shall take Exception before the Evidence, that is, before the Trial, for it can never be intended, that they

they meant to alter the Course, and let the Council break in between the Time of the Jury's being sworn, and the Evidence given, that by no Law could ever have been done before.

Sir B. Shower. Pray, Mr. Attorney, when would you have us do it?

Mr. Att. Gen. Regularly before Plea pleaded, at least-wisè before the Jury be sworn.

L. C. J. Undoubtedly this is not regular, it is contrary to all the Course of Practice, it is not fair Dealing with the Court. But then there is another Consideration in the Case, that I would have you think upon: If so be this had been at a Trial by *Nisi Prius*, then the Judge of *Nisi Prius* is only to try the Issue; but now here the very Record is before us, and we are Judges of the Record, as well as we are to assist the Jury in Trying the Issue. Now take it in any other Case of the like Nature, Suppose a Trial at the Bar in any Civil Cause, though this be contrary to Practice, and the Court not fairly dealt with, yet when we have the Record before us, and find an Error in the Record, cannot we quash the Indictment and discharge the Jury. That is the Question, Mr. Attorney, though I must confess, I do not know that it has been practicable.

Mr. Att. Gen. No, my Lord, in a Case of Treason, where the Jury are once charg'd, they are to give a Verdict, they must either Acquit or Convict.

Sir B. Shower. It was done in *Whitebread's Case*.

Mr. Att. Gen. But I know what has been usually thought in that Case, and I believe they cannot shew me another.

L. C. J. Nay, that this is a very irregular Motion, is very plain.

Mr. Sol. Gen. Certainly, my Lord, you must take it as the Law was before this Act, for this Clause does nothing for the Prisoner, but is against him.

L. C. J. I know it is not for the Advantage of the Prisoner, therefore I put it as a Case in an Action, or an Indictment, as the Law was before, whether this being a Trial in the same Court where the Indictment was found, and we find an Insufficiency in the Record before us, whether we cannot quash the Indictment.

Mr. Sol. Gen. Your Lordship mentions Civil Actions, with Submission, nothing of that kind could be done after once the Cause came to Trial, but in Criminal Causes according to the Course of Practice, which will always be the Law till particularly altered: I believe no Body can pretend, that after Issue joyn'd, and a Jury charg'd, any one can move to quash the Indictment. I think I have heard it often said in this Court, that in Capital Cases, as High-Treason, you may put in a Plea in Abatement of, but not a Motion to quash an Indictment; I am sure it was disallowed where I moved to quash an Indictment of Murder, let them but show any President of this Nature.

Sir B. Shower. We will show you, tho' this is the first Case upon this Act of Parliament, therefore to show any practice upon it would be very hard to require of us.

L. C. J. But can you show it before this Clause in this Act of Parliament, which, as I told you, is not for your Advantage, it does not give that Liberty that you desire.

Sir B. Shower. All the Clauses in this Act of Parliament show'd their Intention was this, that

the Sense of the Law-makers was, that we should have this Liberty at any Time before Evidence given, for if there be such Words as show'd they thought it might be quash'd at any Time, tho' they were mistaken in the Practice, yet we shall have the Liberty that they intended us, and the Wording of this Act shows, that the Parliament thought it might be done after the Trial begun before Evidence given, because they restrain us from taking those Exceptions after the Evidence given; and it is no Prejudice to the King at all really, it is rather for the Advantage of the Prosecution, because there is none of the Evidence disclosed, and therefore if the Indictment should be found faulty, still the Evidence remains undiscovered upon another Indictment; and I have often heard it said at this Bar in Cases of Indictments for Felony or Treason, as Murder, or the like; if any one did come as *amicus curiæ*, and acquainted the Court, that they were going to proceed upon an erroneous Record, or give an erroneous Judgment, or do any other erroneous Act, he ought to be received with Kindness, because he would prevent a Wrong doing.

L. C. J. That is in the proper Time, not to interrupt the Trial when the Jury is once sworn.

Sir B. Shower. We are ready to offer our Exceptions, and we hope it is no prejudice at all to the King before the Evidence of the Fact is given.

Mr. Phipps. My Lord, I perceive that this Clause, as they would have it, is intended to prevent us from moving that in Arrest of Judgment, which we could have moved before, and ties us up to do it before Evidence given; now I would fain know, if we could not before this Act move in Arrest of Judgment, for mis-spelling, or false Latin, or improper Latin.

Mr. Att. Gen. You might, no Doubt of it.

Mr. Phipps. They say we might; why then, if we could have a Time to move it after the Verdict, and that Time is abridg'd by the Act of Parliament, which directs that it shall be before Evidence given in open Court, sure we may take any Time before the Evidence given, and shall not be restrain'd further than the Letter of the Law has restrain'd us; for this Act was intended for the Benefit of the Subject, and ought to be construed as much in their Favour as the Letter of it will permit.

Mr. Att. Gen. No doubt of it, it is to be done before Evidence given; but the Question is, at what Time it must be before the Evidence given, whether it must not be at such Time as by the Course of Practice and Usage of the Law it should have been done before; if you will satisfie my Lord and the Court that ever such an Exception was taken, or an Indictment quash'd between the Swearing of the Jury and the giving the Evidence, ye say something; but I believe not one Instance of that Nature can be given, and therefore it is very irregular for them to do it.

L. C. J. They don't pretend to it, for ought I hear, for I would put them upon it, to show me whether they could do it before.

Sir B. Shower. I don't question, my Lord, but it might be, with Submission.

Mr. Conyers. Did you ever know it before that any one undertook to inform the Court as *amicus curiæ*, but it was to prevent a wrong Judgment, and for that you have your proper Time either before

before Plea pleaded by Motion to quash the Indictment, or after Verdict to arrest a Judgment; this Act of Parliament has restrain'd you in particular Instances that are mention'd from doing it after Verdict in Arrest of Judgment; but having given you a Copy of the Indictment before you pleaded, you have had a proper Time to make these Exceptions, and if you have laps'd your Time you come too late to do it now, for sure no Body ever made a Motion to quash an Indictment after Issue joyn'd and the Jury sworn.

Mr. *Sol. Gen.* My Lord, I would only mention one Case, and that was of Sir *Richard Mansell*, upon an Indictment of Murder, for Killing the Apothecary in *Holbourn*; I did my self move to quash the Indictment, because it was not express'd in what Year of the King the Fact was done; but the Court was of Opinion we could not move to quash an Indictment for that, or any such notorious Crime, till after the Fact determin'd.

L. C. J. No, we were always of that Opinion, never to allow Motions to quash Indictments for Perjury, Murder, or any great Offence, but it must be mov'd in Arrest of Judgment afterwards.

Mr. *Cowper.* My Lord, these Gentlemen seem to beg the Question upon this Act of Parliament, as if it had appointed this to be the Time of making Exceptions to the Indictment; the Act of Parliament does not say you shall make your Exception immediately before the Evidence given in open Court, as if it had pointed out and directed to them that particular Time, that then they should take their Exception and no other Time: The Act has only set a Bound, that they shall not do it afterwards, but as to the particular Time, it is left as it was before, to the regular Course and Method of Proceedings, which is before Plea pleaded.

Mr. *Phipps.* My Lord, they do not answer my Objection; it is, it seems, a Restriction of a Liberty that we had before of moving in Arrest of Judgment; if so, we ought not to be restrained further than we are by the Words of the Act of Parliament, which say, before Evidence given, that is at any Time before Evidence given, as well after as before Plea pleaded.

Sir *B. Shower.* I would ask these Gentlemen, whether the Law-makers intended that we should have no Advantage of excepting against false Spelling and improper Latin.

Mr. *Conyers.* Yes, they did, but that you should do in your proper Time.

Sir *B. Shower.* Then the Time for doing it must be that which the Words of the Law say, before the Evidence given in open Court, and that's now.

Mr. *Conyers.* No, you might have come at the Day of Arraignment, and have taken the Advantage of it then before you had pleaded.

L. C. J. Ye have had my Opinion what I think of it, my Lords and Brothers, I suppose will tell you theirs.

L. C. J. *Treby.* My Lord Chief Justice has delivered his Opinion in this Matter, and he thinks fit that we should deliver ours. I think this Motion of the Prisoner's Council to quash this Indictment after the Jury sworn, is irregular and quite out of Season; the Intent of this Clause in this Act of Parliament, certainly was not in

Favour of the Prisoner; it abridgeth him of a Liberty he had before, but gives him nothing: For the Law-makers did think they had given the Prisoner an extraordinary Favour in the foregoing Part of the Act, in giving him a Copy of the Indictment five Days before he should plead, and a Copy of the Pannel two Days before he should be tryed, and allowing him Council; and all these Advantages were to enable him to quash the Indictment, or the Process returned, for the Clause extends to both; the Words are, *That no Indictment nor Process or Return thereupon, shall be quash'd on the Motion of the Prisoner or his Council for Mis-writing, Mis-spelling, false or improper Latin, unless Exception concerning the same be taken and made in the respective Court where such Trial shall be by the Prisoner or his Council assign'd before any Evidence given in open Court upon such Indictment, nor shall any such Mis-writing, &c. after Conviction be any Cause to stay Judgment:* Therefore they made this extraordinary Provision to restrain the Prisoner, in Part, by this Clause; as much as to say you have an Advantage of the Copy of the Indictment, and you may make use of that to quash it by Motion, if you think fit, as you may also the Process, but it shall be before Evidence given. 'Tis true, those are the Words, but the using that Term, *viz. quashing* such Indictment or Process, shows it must be done in such a Way and Time as is proper for quashing; and the very Words are, that it shall be upon Motion. Now we are to expound those Words. And I say, a Motion to quash an Indictment, must be understood a Motion in the proper Season, which I think is before Plea pleaded; but at least before the Jury is sworn. There were three Times when the Prisoner might have had the Advantage of a Fault in the Indictment before this Act: 1. By Motion to quash it before Plea pleaded. 2. Then afterwards in Arrest of Judgment: And 3. After that by Writ of Error. Now this Clause of this Act takes away the Privilege of moving in Arrest of Judgment for Mis-writing, &c. but saves the Advantage upon a Writ of Error, and upon a Motion to quash the Indictment. We are to consider what is a proper Time for a Motion to quash an Indictment, the Motion is to be made to the Court, and to them alone. It is not to be made to the Court and the Jury. When the Jury is sworn, all Application is to be made to the Court, as having a Jury present which they are to assist in the Trial and Determination of the Fact only. What Use then is there of the Jury, when you make this Motion, which consists only in Points of Law? They must stand by and be out of Office all the while this Motion is making: And it is not reasonable, nor certainly ever was intended that after a Jury is sworn to try a Matter of Fact, they should stand idle, while you move a Thing which you should have moved before they came to the Bar: Suppose you should now move some Exception to the Verdict, and the Return thereupon, should we, when we and you also have admitted the Jury to be sworn, quash the Process whereby they are return'd? And yet we may as well do that as this. For, the Act provides in the very same Words concerning Quashing Process and Indictments. But, when the Jury is sworn, and ready to receive their Evidence, sure, then it is out of all Season to make such a Motion; therefore I do not think the Parli-

liament intended by this Clause (which was a kind of Exception to the Favour the Prisoner receiv'd by having the Copy of the Indictment) to institute a new Method of Proceedings for Motions to quash Indictments, even when a Jury is at the Bar and sworn to try the Issue, and there is nothing proper to be proceeded upon, but only to hear the Evidence produc'd for the Proof of that Issue, till the Jury is discharged. But still this I would say; this is a new Case, and upon a new Statute. I am truly of Opinion, that the Motion is altogether unseasonable and irregular, and it should have been made before, and you had a full Opportunity to make it this Day Seven-night before Plea pleaded, and you might likewise to Day before the Jury was sworn; therefore when the Jury are now at the Bar actually enter'd into, and employ'd upon the Service, the Court ought not to be interrupted by such a Motion. Yet nevertheless I would propound this, that, seeing it is a new Case and upon a new Statute, the Court would forgive the Irregularity, (for I think it does need Forgiveness) and if the King's Council will consent to it (to prevent any Error or any Pretence of Hardship upon a new Law) that we should hear their Exceptions.

Sir Edward Ward. L. C. Baron. This Act of Parliament, as it has given a Benefit to the Prisoner that he had not before, in allowing him a Copy of his Indictment, in Order to his making Exceptions; so it has restrained him as to the Time of making those Exceptions: That he should have Time, there is no Doubt; the Time limited for it, as this Act says, must be before Evidence given, because they thought it unreasonable that there should be any Quashing of the Indictment after such Time as the King had given any Evidence whatsoever in the Case; for that would be a Discovery of the King's Evidence, and great Inconveniencies would ensue thereupon; but the Question is at what Time this is to be done; Whether it may be at any Time before Evidence given or no; it did intend surely that the Motion to quash the Indictment and the Exceptions to it might have their proper Effect, and that must be before the Trial; for it was not the Intent of the Act to alter the Method of Proceedings, and it is to no Purpose after the Jury is sworn, for then their proper Office is to determine the Fact; now if before this Act of Parliament it never was allow'd to take any such Exception as this after the Jury sworn, it will be consistent with the Words of the Act of Parliament, which are, *That it shall be done before Evidence given*: If then it be in the regular Time for Motions, which is before Plea pleaded or Jury sworn, that is, before Evidence given; for it is not said, as *Mr. Cowper* observed, that it should be immediately before the Evidence given, I think sure such an Exposition as was formerly made ought to be made in this Case, the Time not being precisely fix'd by this Act; if there were a certain Time determin'd when Men should take their Exceptions, as we know it has been in Practice before Issue joyn'd, then after the Jury is sworn it is an improper Time then, I think, to make such Exceptions: I do not suppose this Act, as to the Method of Proceedings, than it was before, but this Exception ought to be taken before Plea pleaded: Truly it is a new Act of Parliament, and this is so far within the Words of the Act that it is before Evidence gi-

ven, as the Council for the Prisoner say. If this can be govern'd and ruled by Proceedings and Practice in former Times in Cases not of Felony or Treason but only in Criminal Cases: If no Body should suffer by any Interpretation, I should think it ought to bear a conformable Construction to what the Practice was before, I take it you have lost the regular Time for making your Exception, and you invert the whole Method of Proceedings upon Trials: For to what Purpose is it to take Exceptions to quash the Indictment when the Jury are once charged with it: If it be an Indictment that ought to be quash'd, the Jury ought not to be charged, you have had two Times, and they are both of them elaps'd, for this Matter, that is, at the Arraignment, and before the Jury sworn; yet I would propose it to the King's Council as my Lord Chief Justice of the Common Pleas has done, it being a new Case, that it should be better consider'd of and agreed upon, that in these Cases we may go on upon a certain Rule that it may be establish'd for all Time to come.

Mr. J. Nevile. I would begin with the Proposal, because, I believe, I may not be so clear in my Opinion, otherwise I must deliver my Thoughts according to my Judgment, but I would have the King's Council consider of the Proposal.

Mr. Att. Gen. My Lord, for us to consent to that in such a Case as this, where the Court thinks it not regular, would be pretty hard to desire of us; if any Thing of Advantage should happen on the other Side, I verily think the Council for the Prisoner will not be so ready to consent to wave any such Advantage, nor am I for asking them to do it; this Clause goes only to some Faults in the Indictment; Mis-spelling, Mis-writing, false and improper Latin, that is all that they are restrain'd from moving in Arrest of Judgment; any Thing else, any Uncertainty or other Matter, that is not comprehended under these Particulars, they may take Advantage of to move in Stay of Judgment after a Verdict; this Clause does only abridge them from moving in Arrest of Judgment for Mis-writing, Mis-spelling, false or improper Latin: therefore if your Lordship should think it reasonable we should consent to let them in to make any Exception now, it must be confin'd to those particular Objections of false and improper Latin, there can be no Colour to make the Liberty larger, because for any Thing else they are not restrain'd from moving it in Arrest of Judgment, for there can be no Hardship in that Case, as I think, they have no Reason to complain that there has been in any other Part of the Case; but for those Particulars that there may be no Complaint of Hardship, if your Lordship thinks it reasonable we should consent, it may be we may be prevail'd upon to do it, though whatever Hardship does happen it is their own Fault, and the Prisoner may thank his own Council for that Hardship: If we assist them now to let them in, it ought to be taken as a great Kindness; and truly, my Lord, I am unwilling to do any Thing that your Lordship and the Court should think hard upon the Prisoner. Certainly it is the Fault of their own Council, now the Law has allow'd the Prisoner Council, not to take the proper Time, and pursue the usual Methods; and it is a Strain beyond what is usual, that we must help their Faults by our Consent; how-

however, if the Court think it reasonable, I shall not be against it, but then I am sure the Court will take Care they shall be confin'd to those Particulars that are mentioned in the Act.

L. C. J. No Doubt of it: Therefore Sir *Bartolomew Shower*, are your Exceptions for Mis-spelling, Mis-writing, or false or improper Latin? for if they be such Things as you may move in Arrest of Judgment, and have that Advantage, then there is no Colour that we should break through all the Rules of Proceedings to admit such an irregular Motion as this.

Sir B. Shower. My Lord, in the Case of the Life of a Man I will not take upon me to say what is Mis-spelling, Mis-writing, or false or improper Latin, or what is substantial; but all that I say is, I have Five Exceptions, every one of them imports a Doubt, as I take it, worthy the Consideration of the Court, and some of them effectual enough to quash the Indictment; but for me, when a Man's Life is at stake, and it partly depends upon me as his Council, to say what is proper or improper Latin, or to admit it to be Matter of Substance, and then to Morrow to have it come and told me, you should have mov'd this to Day, then I am sure they would have Reason to say, it was the Fault of the Prisoner's Council; for he would have chosen very ill Council, in me, I confess, if I should consent to put any such Disadvantage upon him. I beg the Favour that I may have the Liberty to propose my Objections, which I think are worth Considering of; it is for the Advantage of the King for us to take our Exceptions all together, because, else if any of them prove material, the Trouble of the Trial will be but Mis-pence of Time.

L. C. J. No, we cannot hear all your Objections, but those that are mention'd particularly in the Act of Parliament; for such as are not mentioned in the Clause, you have a proper Time to move them in Arrest of Judgment.

Sir B. Shower. Then we will put those that are within the Act.

Mr. Att. Gen. If we do any Thing by Way of Consent in this Matter, we must insist upon it, that they be confin'd to the Particulars in the Act; we desire they may open their Objections to the Court, and if the Court shall think they are properly under those Heads, then they will consider of them, if the Court be of another Mind, then they must be reserv'd till the proper Time.

L. C. J. Do you consent then, *Mr. Attorney*, that they shall now take those Exceptions that are mentioned in the Act of Parliament?

Mr. Att. Gen. If the Court think it reasonable upon those Terms, I do.

Mr. J. Powys. Let them open them if your Lordship please, and let us keep the Power in our own Hands to do as our Discretions shall direct.

L. C. J. Truly I do not know whether we can do any Thing in this Matter, I question much whether it be Discretionary in us to break through all the common Method of Proceeding, and admit of such Irregularities.

L. C. J. Treby. I have a great Inclination to hear them, that we may get rid of these pretended Exceptions, which I am apt to think will, when opened, disappoint the Expectations that may be rais'd by this mentioning them in general; for, I have that Opinion of the Ability and Circumspection of the Council, that I believe if

they had had Exceptions sufficient to quash the Indictment, we should have heard of them at a Time more proper than this now between the Swearing the Jury and giving Evidence to them. But, possibly, the Council may think fit to make an Essay, and try what can be got out of this unusual Expression in this new Act.

L. C. J. No, no, I know this is a Piece of Art, and the Court is not well dealt with in it.

L. C. J. Treby. Indeed I am very willing to hear them for that Reason.

L. C. J. I look upon it only as meer Trick, and a Piece of Art to taste the Opinion of the Court.

Sir B. Shower. My Lord, it was my Mistake then; for I take it, if the Act of Parliament had intended otherwise they would have express'd it otherwise.

L. C. J. Does the Act of Parliament give you another Liberty, and a greater than you had before? Does it not design to abridge you of a Liberty that you had before? Certainly it never intended that the Court should admit of any irregular Proceedings.

Mr. J. Powell. You should have tim'd your Motion better, for certainly now the Jury is charg'd they must give a Verdict either of Acquittal or Conviction; and if you move to quash the Indictment, and your Exceptions are material, the Jury cannot proceed; you see what a Pass your Motion has brought it to, 'tis certainly a mighty irregular Motion.

L. C. J. Treby. What Judgment would you have us give? I would ask you that: If any Exception were moved before the Jury were sworn, and it proved material, the proper Judgment were, that the Indictment be quash'd; but now they are sworn, what Judgment must we give? Must we not expect the Verdict of the Jury first upon the Fact? And must we then give Judgment upon your Exception?

Sir B. Shower. I know not whether your Lordship may not give Judgment first to quash the Indictment, and then discharge the Jury.

L. C. J. Treby. And what if we do not find Cause to quash it, then you'll say, we must go on with the Evidence, as we were going before this Interfering? Are we to be doing two Things at once. I am pretty certain you can show me no President for any like Proceedings in any Case: It is confounding the Offices of the Judge and Jury.

Mr. Phipps. If your Lordships try'd the Validity of our Exceptions, and find Occasion to quash the Indictment, there will be no need of a Jury.

L. C. J. Upon the Statute of *Jeofailes* in a civil Cause, suppose at a Trial at Bar, it appears upon the Face of the Declaration, that there is such a Mistake as will be cured by the Verdict; but if the Party had demurred, and shown it for Cause, it would have been fatal. Do you think when he has wav'd the Benefit of Demurrer and pleaded to Issue, that you shall move this and help your self by such a Motion, because it will be help'd after a Verdict?

Sir B. Shower. If this Act had been worded as that Statute of *Jeofailes* is, it may be we might not.

L. C. J. Why, it is not said, in the Statute of *Jeofailes*, that it shall be good after Issue joined, before the Jury is charg'd or sworn, but that it shan't be good after the Verdict.

Sir B. Shower. It is before the Evidence given.

L. C. J. Could he do so in any Case before this Act, and does the Act enlarge your Liberty or abridge it?

L. C. J. Treby. Sir Bartholomew Shower, you insist upon Part of the Words of the Act of Parliament; it says, no Indictment or Process shall be quash'd upon the Motion of the Prisoner or his Council, unless it be made before any Evidence, &c. Now, I suppose, the Parliament use that Expression, upon the Motion, in the same Sense as it is used in Law, viz. for such a one as should be in the Time when Motions for quashing the Indictments are properly to be made; now, when is that? It is plain, it was always before the Jury come to the Bar, nay before the Plea of the Party. If that be the proper Time to make such a Motion, then that Expression in this Act of a Motion to quash the Indictment will very well help to construe the other Part of the Clause that you insist upon: For if the Motion be made before Plea pleaded, it is certainly before the Evidence given in your Sense. And I conceive, that under that Expression [Evidence given] which signifies the main Part, the Parliament intended to comprehend the whole Proceeding to Trial, beginning, if not from the Pleading Not Guilty, at least, from the Swearing the Jury. Before Evidence given in Court, may reasonably be expounded, Before the Prisoner hath fully entered into that Contestation of the Fact, which is to be determined only by Evidence in Court. I attended the Court of King's-Bench a long Time, and I believe that I have heard it said a hundred Times, upon Motions to quash Indictments of great or odious Offences; No, try it, says the Court, we will not quash it, plead to it, let the Fact be tried, you may then move it in Arrest of Judgment. Those Expressions shew'd that the proper Time for a Motion to quash an Indictment was before Plea, tho' they, in their Discretion, would not grant a Motion to quash, in Cases of such great Offences. But sure they did not think that when a Jury came to the Bar, it was a tolerable Time to move to quash an Indictment, there was no Expectation of hearing of such a Motion then. And certainly this Clause which is made wholly against the Prisoner, should not be construed to help him to such a new extraordinary and absurd Liberty.

Sir B. Shower. My Lord, with Submission, that Practice goes upon another Reason, the Court would not quash it at all upon a Motion; this Act of Parliament supposes that you will quash upon a Motion at any Time before Evidence given; We never heard of a Motion to quash an Indictment for Felony or Treason, but still the Court would always say, Demur, or Plead, or move in Arrest of Judgment, but by this Law it seems the Sense of the Parliament was, that it might be quash'd upon a Motion.

Mr. Sol. Gen. Sir B. Shower is come to what I said, that in Truth there is no such Thing as quashing an Indictment for Treason or Felony, as I mentioned in Sir Rich. Mansel's Case, and I think the Rule that was given in that Case will serve now in this Case; I am for consenting if they be kept within the Limits of the Act of Parliament, but I must desire the Opinion of the Court before we do consent.

L. C. J. Holt. Aye, aye, Go on Brother

Neville.

Mr. J. Nevile. I must confess I cannot but doubt, as this Act is, there were two Times that they had Liberty of taking these Exceptions to Indictments; but indeed, in Murder and Treason they were seldom admitted, till they came to move in Arrest of Judgment; but still there was always a Privilege, and a Time given to the Prisoner, be the Crime what it would, to take that Advantage which the Law gave him, to prevent Judgment against him. Now I agree, it is irregular and unseasonable to offer it now, and quite different from all former Practice; you might have done it before now, the Act says expressly it must be done before Evidence; but you might have taken Advantage before the Jury was sworn, nay before you had pleaded, but you have lapsed your Time. Yet truly, notwithstanding you have lapsed your Time, I cannot satisfy my self to take away the Liberty that the Law has given the Prisoner sometime or other, to except against the Indictment. It is plain that before this Act after Verdict he might have moved in Arrest of Judgment, now he cannot do so, whether the Fault be in the Council I cannot tell, but the great Prejudice is to the Person that is to be try'd, who will not be wholly precluded from making any Advantage of the Exceptions he has to the Indictment, because by the Act he cannot move in Arrest of Judgment. This seems a strong Implication that the Parliament intended he must have some Time or other, but before Evidence given, to offer his Exceptions. I say this only to those particular Things that are mentioned in the Act, Mis-writing, Mis-spelling, False or Improper Latin; as to these four particular Things which the Party is barr'd from moving in Arrest of Judgment, I cannot satisfy my self but that he should have one Time or another to take this Advantage before the Evidence given, and therefore I think he should have it now: It is true, it is altogether irregular, the Jury being sworn, and it ought to have been done before; but I hope if it be admitted now, it will be with such Observation, that no Body will ever offer at it for Time to come. As this Case is before us, and the Act of Parliament, which perhaps may have led the Council into that Mistake, that it might be any Time before Evidence given, tho' they know the proper Time, and the regular Method in other Cases; yet I doubt it is hard to put such a Construction upon this Act on the sudden, quite to debar the Prisoner of the Benefit of his Exceptions to the Indictment.

Mr. J. Powell. I have already declar'd my Opinion, that the Prisoner has had his proper Time for making his Exceptions, but he has lapsed that Time; but I am not against that Motion in a Case of Life, upon an Indictment for so great a Crime as Treason is, and where the Consequence is so great, if it may consist with the Rules of Law, and it be the Sense of the Court, and the King's Council consent to let them be heard, I submit to it, nay I would Second or Third that Motion that they may be heard.

Mr. J. Eyres. Truly I am of the same Opinion, I think we ought not to alter the ancient Course of Law by Words of Implication, nor go any further than the Act of Parliament does express. The Act appoints that a Copy of the Indictment should be delivered to the Prisoner so many Days before, to enable him to make his Exceptions, and therefore deprives him of the Benefit of those Ex-
ceptions

ceptions after Conviction in Arrest of Judgment. I see no Words in the Act of Parliament that do alter the Course of Proceedings, as to this Matter, from what it was in all Civil and Criminal Causes before; Persons must take their Advantage of Excepting in their proper Time, but when it comes to Issue, the next Thing to be done is the Trial; and truly I must needs say the Council are to blame, that knew this so very well, that if they have any Advantage of Excepting, they did not take that Advantage sooner, it is their Fault; but seeing it is so, I am of Opinion not to foreclose the Prisoner, as the Case stands. I would be tender of Life, but at the same Time I declare my Opinion upon this Act of Parliament as the rest of my Brothers have done, to prevent the Objection for the Time to come; yet seeing there is this Misfortune, and there would be a Hardship upon the Prisoner by the Default and Neglect of his Council in the Case of a Man's Life, I would be so tender as to indulge them to make their Objections now.

Mr. B. *Porters*. I am of the same Opinion the Prisoner has laps't his Time, for I take it this Clause of this Act of Parliament has not altered the common Course of Proceedings; nay, I take it, it signifies very little in this Case; for certainly it was intended to disable the Prisoner, and not enable him at all; and therefore, as the Case is, I think it very Irregular and Impracticable to introduce so great a Novelty, as to admit the Motion for quashing the Indictment, when the Jury is sworn, and when the Fact is the only single Point to be determin'd and every Thing else ought in legal Course to come before or after; but for us to confound Time, one Time for Pleading, another Time for Trial, and another for Arrest of Judgment, all at once, and to have a Jury attending merely to hear Council at the Bar moot Points of Law, which might be determin'd either before or after the Trial, is so very irregular, that it really introduces nothing but Confusion, which Courts of Justice ought to avoid above all Things, and ought to keep to the proper Seasons that the Law allows. Therefore, truly I think in Strictness of Law we ought not to allow it; but it being in a Case of Life, and it being a new Case upon a new Act of Parliament, if the King's Council think's fit to Consent, I shall be for it, if not, I think in Strictness of Law we cannot allow it.

Mr. *At. Gen.* My Lord I am very unwilling to deny the Prisoner any Advantage, that he might have had by this Act of Parliament, though his Council have slipt the proper Time; if Sir *Bartholomew Shower* will say his Exceptions are to any of the four particular Heads mentioned in this Clause of the Act of Parliament, for we must confine them to that, then we do consent that he should make them now.

L. C. J. Truly Mr. Attorney, if you do consent that they take their Exceptions now, we may consider of it whether it can be; but I know not how we could admit them to that Liberty otherwise, for if there be any Thing material, they may move it in Arrest of Judgment.

Mr. *At. Gen.* And I believe they won't say their Objections are so slight, as to be only Matter of Form, they say they are Substantial, and then your Lordship will hear them in a proper Time.

Sir B. *Shower*. I don't know whether I am mistaken in the Law, I am sure you are mistaken in the Indictment.

L. C. J. Well, do you consent to let them make their Objections, as to those four Heads in the Act of Parliament.

Mr. *At. Gen.* Yes, my Lord; if it be any Matter of Substance, that is out of the Case at present, for the Provision of the Act of Parliament is only for meer Matter of Form, and I should be very unwilling in any Point that is material, to make a President in such a Case as this.

L. C. J. I confess if you had consented farther, I do not know how we should have admitted of it.

L. C. J. *Treby*. I tell you how I thought it might be done, you might have committed an Irregularity, for which in a Case of Life, and upon a new Law, I believe and hope we should have been forgiven.

L. C. J. Well, for my Part I will not commit any Irregularity upon any Account whatsoever; I cannot see how by Law they can take any Exceptions to the Indictment; Mr. Attorney cannot consent, and if he did, I think it could not be, unless he did also consent to discharge the Jury; but I see they will not offer any Objections according to your Consent, Mr. Attorney, and therefore pray go on to open the Evidence.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, *Ambrose Rookwood*, stands Indicted for High-Treason, in Compassing and Imagining the Death of his Majesty. Gentlemen, the Overt Acts that are laid in the Indictment to prove this Treason, are; that He, together with divers Others, had frequent Meetings and Consultations, in order to Assassinating His Majesty's Royal Person, and did provide Horses and Arms for that purpose.

Gentlemen, the Evidence that you will hear, to prove these Facts that are thus laid, will be of this Nature; you will hear by the Witness, That there has been for some Years a Design carried on to Murder the King's Person; that this was discoursed of, and several Debates and Consultations were had about it the last Year, some Time before the King went to Flanders; there was several Meetings, where were Sir *William Perkins*, Captain *Porter*, and *Charnock* that was Executed, and several others, and there they did consider in what way to take off the King at that Time; and you will hear they did expect a Commission to authorize it from the late King *James*; but then the Commission did not come, they had not any such at that Time; but they did think fit to put it in Execution without any such Order and Authority, and therefore they endeavour'd to have got a Vessel to have carry'd them off after they had Executed this bloody Conspiracy; but it happen'd His Majesty went to *Flanders* sooner then they Thought, and they could not provide Themselves of a Security for a Retreat, and so at that Time the Design was laid aside.

But Gentlemen, you will hear this Conspiracy was renewed, and set on Foot this Winter; and in Order to the Accomplishment of it you will hear, that about *Christmas* last there were several Persons sent from *France* by the late King *James*, on purpose to put this horrible Design in Execution. Sir *George Barclay* was to be at the Head of it, he was a Lieutenant in one of the late King *James's* Troops of Guards in *France*, he was sent over with a Commission, and Mr. *Rookwood*, the Prisoner at the Bar, was a Brigadier

gadier in the Guards there; these came over, and several other Troopers of the late King *James's* Guards, by two or three at a Time, that they might not be observ'd; particularly you will hear, that when Sir *George Barclay* was come over, several Troopers were sent to by King *James* himself to come to him at *St. Germain's*, and there he told them he had a Piece of Service for them to do in *England*, and that they should observe Sir *George Barclay's* Orders and Directions. More particularly there was one *Harris* and *Hare*, two Troopers in the Guards, were sent for by the late King *James* into the late Queen's Bed-Chamber at *St. Germain's*, where Colonel *Parker* was present; they were told by the late King, He was sensible they had served him faithfully, and He would advance them, and he had now a Piece of Service for them to do, which would enable him to do it; He told them they must go over into *England*, and be sure to obey Sir *George Barclay's* Directions, and they were order'd to endeavour to find out Sir *George Barclay* when they came into *England*; and were told by him, that they would meet Sir *George Barclay* twice a Week in *Covent-Garden* Square, in the Evening, and the Token by which they should know him, was, he would wear a white Handkerchief out of his Pocket; this they were told by the late King, when he sent them upon this Errand. Colonel *Parker* was by at the same Time, and being there he was ordered to go to Mr. *Carol* Secretary to the late Queen, who had order to furnish them with Money, to bear the Charges of their Journey into *England*, and if they were detained by contrary Winds, they had Letters of Recommendation to Monsieur *Latour* the French King's President at *Callis*, to furnish them with Money, to bear their Charges over into *England*, and accordingly they went; but being detained at *Callis* for want of Wind, they were furnished by the French President; and by the Beginning of *February*, they came over.

But I omitted one Thing, Gentlemen: Before they came over, the late King when they were with him took a List out of his Pocket of Names, and told these two, *Harris* and *Hare*, what Names they should go by in *England*; *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiny*, and accordingly they came over in a Boat, and landed in *Kent*, and when they came to Town they endeavour'd to find out Sir *George Barclay*: The first Time I think they did not find him; but the second Time they did find him; and he saluted them, and told them he was glad to see them come over, and he would furnish them with Money, and he sent Major *Holmes* to them, and accordingly he did come, and give them Subsistence Money.

Now Gentlemen, you will hear that Sir *George Barclay* being come over with these Troopers and many others, to the Number of Sixteen, that at several Times were sent upon this Conspiracy, I say, after they were come, Sir *George Barclay* had frequent Meetings and Consultations with several other Persons that were to be engaged in the same Design; and they met at several Places, sometimes at Captain *Porter's*, sometimes at the *Nags-Head* in *Covent-Garden*, at another Time at the *Sum* Tavern in the *Strand*; and you will find by the Evidence, that the Prisoner at the Bar, Mr. *Rookwood*, was present at most of those Meetings, and there they did consult of

the best Ways and Methods for putting this Conspiracy in Execution; sometimes they thought of doing it by an Ambush, laid on the other Side of the Water, by Persons on Foot, in a little Wood there near *Richmond*, where the King was to pass by, whilst others on Horse-back were to take Notice of their Firing, and then to Attack the Guards. This was propos'd, but there was another Proposal to do it on this side the Water; and therefore to settle the Matter, one of the Conspirators, *King*, was sent to view the Ground on the other Side of the Water, and he did glory that he had found a very proper Place, and thought it a very convenient Method, but yet they were not all satisfied, and at the *Nags-head* Tavern in *Covent-Garden* they did debate the Matter again, and it was resolv'd to have the Ground viewed again, and *Porter*, and *Knightley*, and *King* that was executed went to view the Ground on both sides the Water, to see which was the most convenient Place; this was about the 12th of *February*, they did take an Account of the most convenient Places on either Side, and when they had done it, they came back in the Evening to give an Account what they had done, to several others of the Conspirators, who met for that purpose, and I think the Prisoner at the Bar, Mr. *Rookwood*, was present there at this Meeting; and you will hear, the Place agreed upon was the Lane that leads from *Turnham-Green* to *Brentford*, that they thought the most convenient Place because there were several Inns in and about *Turnham-Green* and *Brentford*, where they might place their Men by two or three in an Inn, that they might not be liable to Observation: This was the Place that was approved of.

Then next, the Manner of doing it was to be considered and adjust'd, and that was thus: That the whole Number, should be divided into three Parties, one Party to be commanded by Sir *George Barclay* to attack the Coach, and kill the King, and all that were in it, while at the same Time the two other Parties to be commanded by Captain *Porter*, and Mr. *Rookwood* the Prisoner at the Bar, were to set upon the Guards; and the Time agreed upon to put it in Execution was the Fifteenth of *February* on *Saturday*, that being the usual Day the King went to *Richmond* a Hunting, and you'll find that on *Saturday* Morning they met in several Parties, not all together, but under the several Heads of the Parties in order to be ready, if the King had gone out that Morning, to have Assassinated him.

Gentlemen, I say, you will hear of several Meetings that Day; there was one Meeting at Mr. *Charnock's*, where were present Mr. *Porter*, Sir *William Perkins*, and several others; and another Meeting you will hear of where the Prisoner at the Bar was present, at the Lodgings of one *Counter*, another of King *James's* Friends, that came over for this purpose, and there was Sir *George Barclay*, and there was the Prisoner at the Bar; and those that were to be under Sir *George's* Command met that *Saturday* Morning in order to make ready, in Case the King had gone abroad, to have Attack him: You will find by the Evidence that the Prisoner was there, and *Harris*, that was one of the Troopers sent over from *France*, was sent for, and came in and found them in a great Hurry, for *Harris* was not acquainted at *St. Germain's* with the immediate Design of

Assassinating

Affassinating the King, but finding them in a great Hurry, he ask'd them what was the Matter? And they told him they were to make ready immediately upon the Design. He wonder'd at it, and ask'd what it was, and then they told him they were to go to attack the Prince of *Orange* to affassinate him; and *Rookwood* the Prisoner at the Bar told him, if he would go to *Counter*, he should have particular Orders and Instructions from him what to do. Accordingly *Harris* went to *Counter*, he told him where his Horse, and *Hare's* Horse, and *Hungate's* Horse were; and there Horses happen'd to be placed in *Somerfet-Houfe*, by Mr. *Lewis*, in a Stable there recommended by him, to the Care of my Lord *Feversham's* Servants, who were to take Care of them, and of two or three more that were placed there, in all, six of these Conspirators Horses by the Recommendation of Mr. *Lewis* were lodged in that Stable in *Somerfet-Houfe*, and look'd after by my Lord *Feversham's* Men; and thither *Harris*, *Hare*, and *Hungate*, were directed by *Counter* to go for their Horses.

But it happen'd by very good Providence, that his Majesty did not go abroad that Day; and *Durance*, one of the Orderly Men that lodged at *Kensington* to give Intelligence, came from thence and acquainted them, that the King did not go out that Morning, so there was nothing more done; but *Harris* was told that he should have his Horse at that Time, and take it away, and in the mean Time till they were to go upon their Design, they were to ride out upon their Horses, as they had Opportunity, to make them fit for Service, or else it would be thought the Rider's Fault, if, at the Time of the Attack, they did not come up in good Time and Order to join with the rest, and it would be thought Want of Courage in the Rider; and accordingly Major *Hobmes*, another of those Conspirators, went with *Harris* and *Hare* to *Somerfet-Houfe* to take away their Horses, and they carried them to a Stable in *Sobo*; but for several Nights they had been kept at *Somerfet-Houfe*.

You will find, Gentlemen, that Mr. *Rookwood*, the Prisoner at the Bar, was concern'd in all these Consultations and Meetings, in making Preparations for the Affassination; they intended, as I said, to do it on the 15th of *February*; but that not taking Effect at that Day, between that and the *Saturday* following, Mr. *Harris* was frequently in the Company of Mr. *Rookwood*, and Mr. *Lowick*, and others, where they did discourse of this Affassination, and they did think it a very barbarous Thing; but however they resolv'd they would do it, for they had Orders to obey Sir *George Barclay*: And this was expressly declared by *Lowick* and the Prisoner, that they had Directions to obey Sir *George*, and what he would have them to do they would do: They must and would obey Orders; that was their Resolution even upon discoursing of the Heinousness of so bloody and barbarous a Design.

You will likewise hear, Gentlemen, by the Evidence, that the next *Saturday* being the Two and Twentieth of *February*, they resolv'd to put it in Execution again; and accordingly there was a Meeting on the *Friday* before at the *Sun Tavern*, where were present Sir *G. Barclay*, Mr. *Porter*, and others; and there they did resolve upon it, tho' they had at first some Apprehension the Thing was discovered; but they were soon satisfied there

was no such Thing, because they said among themselves, that if it had been so they should have been taken up, and not have been permitted to meet there: Therefore they resolv'd the next Day to put it in Execution, and accordingly they met at several Places, and got ready in the Morning in Cafe the King had gone abroad; the Prisoner met that Morning at *Porter's* Lodging, with several other Troopers, to make ready for the Enterprize, and there the Prisoner at the Bar did, at that Time, give a List of the Names that he was to command, for he was to have one Party of those that were to attack the Guards, of whom *Harris* was one, and *Hare* was another, and *Richardson* was another, and *Blackburne* was another, and his own Name was Chief, and he ordered *Harris* to go and see to get them ready, for they must go out that Morning: Accordingly *Harris* did go, and got them ready, and came back and gave an Account of it. His Majesty did not go abroad that Day, as it happened very fortunately by Reason of the happy Discovery; so that News being brought back again, though they had made all Things ready, those Preparations were put off, and they did nothing that Day, and quickly after the Discovery was fully made, and made publick by the Apprehension of the Conspirators.

Gentlemen, you will have this Matter fully proved to you by several Witnesses, that I think there can be no Room to doubt the Truth of it, that there was such a Conspiracy, and that the Prisoner was as highly concerned in it, as those who have suffer'd the just Punishment of the Law. We will call our Witnesses to prove this, and I believe they will be able to give you an Account of the whole Affair, better and more fully than I can do, or can pretend to open it.

Mr. *Sol. Gen.* Call Mr. *Harris* and Mr. *Porter*.

Sir *B. Shower*. We oppose the Swearing Mr. *Porter*: I must beg the Favour of the Court to hear us in it; if my Instructions be true, we insist upon it, that he is not capable of being a Witness, he stands convicted of Felony: Here we have the Record, and we desire it may be read.

Capt. *Porter*. I know nothing of the Matter, that there is any such Thing standing out against me.

Sir *B. Shower*. Then sure we are mistaken in the Man. Pray let us hear it read.

Cl. of *Arr.* (*Reads the Record.*) This is an Indictment of Murder against *George Porter*, for the Killing of Sir *James Hacket*, Knight.

Mr. *Att. Gen.* Do you know any Thing of this, Mr. *Porter*?

Capt. *Porter*. I came off with Manlaughter, and pleaded the King's Pardon in Court.

Mr. *Att. Gen.* Pray, read what was done upon it.

Cl. of the *Crown*. Here's the Jury's Verdict. *Quod prædictus Georgius Porter est culpabilis de felonica Interfectione prædicti Jacobi Hacket, & non culp.* as to the Murder. Here is a *Curia advisare vult*, and I suppose there was a Pardon afterwards.

Mr. Justice *Powell*. Was he not burnt in the Hand?

Capt. *Porter*. No, I pleaded the King's Pardon.

L. C. J. And there are several Acts of Pardon since.

Mr. *Cowper*. See the Time when the Indictment was.

Cl. of Arr. It is the Eighth of December in the Thirty Sixth Year of King Charles the Second.

Sir B. Shower. We agree that he did plead the King's Pardon, and then the Case is no more than this, a Man is convicted of Manslaughter, and the King pardons him, he still remains unqualified to be a Witness; we say, this has been the Case that has been much debated in *Westminster-Hall*, and upon Debate it has been resolved.

Mr. J. Powell. It has been so, but always against you.

Sir B. Shower. It was in the Case of my Lord *Castlemaine* at this Bar; one of my Lords the Judges went to the Court of *Common-Pleas* to ask their Opinion, and these Cases were put: In Case a Man be out-law'd of Felony and pardon'd; in Case a Man be convicted of Felony and had the Benefit of his Clergy; and in Case a Man was convicted and not attainted, but pardoned upon the second Case; they were of Opinion, that the Receiving the Punishment of Burning in the Hand, had purged the very Guilt, and did set him upright by the Statute of the 15th of Queen *Elizabeth*, they thought it did operate to that Purpose; but in the Case of a Pardon of a Man attainted or convicted, it was agreed he was not qualified to be a Witness; and *Dangerfield*, against whom the Objection was made, being burnt in the Hand, was received to be a Witness; and it was only made use of against him to take off his Credit. The Record of that Case is in this Court, and I looked upon the Print of the Trial this Day. We say, that there is a Case in 1 *Brownlow* 47. a Man attainted of Felony cannot be of an Inquest, though pardon'd; and we think, he that cannot be a Juryman, sure cannot be a Witness; there is the same Exception to his being a Witness as there is in the Case of a Juryman; for the one ought to appear as free, and stand as clear and unsuspected, in Respect of his Probity and Verity as the other, as the one is sworn to try and determine upon Oath, so the other is sworn, and his Oath is to sway and determine the Jury, and in Consequence it is all one, and upon these Reasons we hope he is not a good Witness.

L. C. J. Where is that Case in *Brownlow*?

Sir B. Shower. It is 1 *Brownlow* 47. and then there is 11 *H. IV.* 41. 2 *Bullst.* 154. there my Lord *Cook* says, if a Man be convicted of Felony, and pardoned, he cannot be a Juryman; for though the Punishment is pardoned, the Guilt remains, so that he is not *probus & legalis Homo*, and every particular Person has an Interest in it, that they have free and clear Persons to be Jurymen and Witnesses.

Mr. Phipps. My Lord, that is the Distinction we go upon, which was taken in *Dangerfield's* Case, upon the Trial of my Lord *Castlemaine*, where the whole Court were of Opinion, that a Pardon from the King only, would not make him a good Witness; but if he were burnt in the Hand, that by the Statute of *decimo octavo Elizabethæ*, amounted to a Statute Pardon, and set him right to all Intents and Purposes: And there they did take Notice of that Book that *Sir Bartholomew Shower* cited of 11 of *Hen. IV.* that a Man attainted could not be a Jury-man, though pardoned by the King: It was objected he might be a Witness; but *Mr. Justice Jones* said, it was the same Reason if he be not fit for a Jury-man, he is not fit for a Witness; they ought to be both *probi & legales Homines*, thus the Case stood there. And that other Book

of *Bullstrode* is the same, it was in the Case of a Prohibition for a *Modus Decimandi*, where the Suggestion is to be prov'd by two Witnesses, it was objected he had not prov'd it by two Witnesses, because they were both attainted of Felony, and though they were Pardoned, yet that did not make them good Witnesses in the Opinion of the Court.

L. C. J. This is quite another Case, it does not come up to your Point, here is no Attainder, and here is Pardon upon Pardon, by Act of Parliament.

Mr. Phipps. As to that we think the Parliament Pardon is out of the Case; for if the Pardon from the King be a good Pardon, there is no Guilt for the Act of Pardon to work upon.

Sir B. Shower. My Lord, this we think to be a good Distinction as to that Matter, a Man that is actually pardon'd the Punishment by the King's Pardon, and afterwards an Act of Pardon comes and pardons all Offences, that we say does nothing, for he is not a Subject of Pardon, for he was discharged of his Punishment before.

Mr. Att. Gen. Sure these Gentlemen are not in earnest when they make this Objection.

Sir B. Shower. When the King has once pardon'd him he is not an Offender within the Meaning of the Act of Parliament, and therefore the Act works nothing as to him, and so he stands as much disabled from being a Witness, as he was before.

Mr. J. Powell. In the Case of *Cutington* in *Hobbar*d, there it is said the Pardon takes away *tan Reatum quam Penam, &c.* an Action being brought for calling a Man Thief, who had been indicted for Felony, and convicted, and pardon'd, the Court adjudged, that he ought not to be called so; for he was no Thief, for the Pardon had washed him entirely clean, and he was discharged both of the Guilt and the Punishment, and all the Consequences of it.

L. C. J. Those Cases that have been put are no Authorities at all in this Matter; for where there is a Conviction of Manslaughter, and the Party is pardon'd, we think that Pardon of the King works in a Way of Discharge as much as the Burning in the Hand. I take it, it is the same Thing: They admit, that will discharge him to all Intents and Purposes, and so we think does this as effectually; for having his Clergy, and being burnt in the Hand, works by Way of Statute Pardon: For the Case of a Jury-man, I take it not to be the same with this Case; but even in that Case, I do not think that the Party convicted, after the King hath pardoned him, is disabled from being of a Jury; but supposing that to be so, yet there are many Cases wherein a Man may be a Witness, that cannot be a Jury-man. It is true, the Credit of such a Witness is left to the Jury, but it is no Objection against his being a legal Witness; and it is a very strange Argument to me, that because he was pardoned by the King, if that should be deficient, that therefore, the Act of Pardon should have no Effect. Truly, that is to say, that the King's Pardon works so, as to have nothing left for the Parliament Pardon to work upon, and certainly it sets him so right, that to all Intents and Purposes he is as good a Witness as ever he was; and if any Thing remained to be done, the Act of Parliament has done it, and supplied the Defect; but I think the King's Pardon is sufficient.

Mr. Att. Gen. My Lord, I suppose they do not insist upon it, as thinking there is any great Weight

in it, but only for Objection sake; but we hope that notwithstanding this Objection Mr. *Porter* shall be sworn.

Mr. *Soll. Gen.* My Lord, they take this Exception at an improper Time, for they speak to his Credibility.

L. C. J. No, they except to his being a Witness.

Mr. *Soll. Gen.* If so, your Lordship remembers a Case that was before your Lordship not long since, but in *Easter* Term last, when one was try'd at this Bar for Treason, and *Aaron Smith* was produced as a Witness, and the Prisoner took Exception against him as no good Witness, because he had stood in the Pillory, and your Lordship and the Court did say, that the Act of Pardon did restore him to all Intents and Purposes *ad liberam Legem*.

Mr. *Conyers.* In the Case of the Earl of *Castlemaine*, both the Courts of *King's-Bench* and *Common-Pleas*, held *Dangerfield* a legal Witness, tho' burnt in the Hand for Felony, and so was the Opinion of *Rolls*: In *Stiles* Reports 388, one that hath been burnt in the Hand for Felony, may notwithstanding be a Witness.

Sir *B. Shower.* My Lord, in answer to that Case that was put, that after the King's Pardon for one convicted of Felony, another Man has not the Liberty to call him Thief, that was an Objection in my Lord *Castlemaine's* Case, that may stand as good, and our Notion that we contend for, be good too; he cannot be impeach'd, or have Guilt imputed to him, when once the King has forgiven him, and yet that may not restore him to his entire Credit, as was my Lord Chief Justice *Scroggs's* Distinction in the Case of *Dangerfield*; and as to the Case of *Aaron Smith*, that was very different: The Reason in that Case was, because the Crime for which Mr. *Smith* was indicted, did not import any such scandalous Offence for which his Credit could be impeached.

L. C. J. No, no, we did not meddle with that, we went upon the Pardon.

Sir *B. Shower.* But in that Case, they did not insist upon it that he had a Pardon antecedent to the Act of Pardon, so that he was *Subjectum capax*, for the Act to work upon, he was an Offender that needed a Pardon, whereas Mr. *Porter* being pardon'd before, could not be an Offender needing a Pardon, and consequently not within the first Words of the Act of Indempnity, because he was pardon'd by the King before, but he was not by that Pardon, say we, restor'd to his Credit to make him a good Witness, and the Act of Parliament did not affect him, he being not *Subjectum Materiae*, as not being an Offender.

Mr. *Phipps.* As to Mr. Solicitor's Case of *Aaron Smith*, we agree the Act of Parliament did restore him, because he never was pardon'd before by the King, so there remained an Offence for the Parliament Pardon to work upon.

L. C. J. Do you agree that, then you may agree the other; for the Act of Parliament pardons none but those that the King can pardon generally.

Mr. *Phipps.* It is true, my Lord; but we say that an Act of Parliament Pardon, removes those Disabilities which the King's Pardon does not, for every one is in Law a Party to an Act of Parliament, and therefore no Person shall be permitted to alledge in Disability of another, any Crime which he himself hath pardon'd, for that is to

aver against his own Act, but 'tis otherwise in the Case of the King's Pardon.

L. C. J. Why, the very Parliament Pardon comes from the King; the King has a full Power of Pardoning, and where he does pardon under the Great Seal, it has the full Effect of the Parliament Pardon. A Pardon before Attainder, prevents all Corruption of Blood, so that tho' a Man forfeits his Goods by Conviction, yet after a Pardon he is capable of having new Goods, and shall hold them without any Forfeiture whatsoever, for the Pardon restores him to his former Capacity, and prevents any further Forfeiture. Indeed if he had been attained whereby his Blood was corrupted, no Pardon, whether it were by the King or by the Parliament, could purge his Blood without Reversal of the Attainder, by Writ of Error, or Act of Parliament, or express Words in the Act to restore Blood; but either Pardon makes him a new Creature, gives him new Capacity, and makes him to all Intents and Purposes, from the Time of the Pardon, to be *probus & legalis Homo*, and a good Witness. Indeed this Crime might be objected against his Credit, but it is not to be urged against the Sufficiency of his Evidence, that is, his being a Witness.

Mr. *Att. Gen.* My Lord, we desire he may be sworn. (*Which was done.*)

Mr. *Soll. Gen.* Now, Mr. *Porter*, do you give my Lord and the Jury an Account, what you know of this intended Assassination, how it came to your Knowledge, and what Share the Prisoner at the Bar had in it.

Capt. *Porter.* My Lord, the first Account that I had of this Assassination, was from Mr. *Charnock*, who brought to me Sir *George Barclay* and Major *Holmes* to my Lodging in *Norfolk-street*, where I was sick of the Gout. Sir *George Barclay* did not then particularly acquaint me with the Business, but said, he would leave it to Mr. *Charnock* to tell me what it was.

L. C. J. Who told you so?

Capt. *Porter.* Sir *George Barclay*; and after that we had several Meetings, at which the Prisoner at the Bar was present, particularly at the *Globe-Tavern* in *Hatton-Garden*, where it was consulted of the best Ways and Means to assassinate the King as he came from *Richmond*: Some were of Opinion that it was best to be done on the other Side of the Water; others were of Opinion that it should be done on this Side, by a Party of Men on Horseback: Upon this Difference of Opinion, there were Persons appointed to go and view both Places; I was appointed for one to go with Captain *Knightley*, and Mr. *King* went along with me, and we did view the Ground on both Sides, and when we came back, we gave an Account to Sir *George Barclay*, and those that sent us, and upon our Report, Sir *George Barclay's* Mind was chang'd, who was for the other Side of the Water before. And he agreed to do it in the Lane that leads from *Turnham-Green* to *Brentford*. Afterwards there was a Meeting at the *Globe-Tavern* in *Hatton-Garden*, and there it was agreed that the King should be attack'd on *Saturday* the 15th of *February*, by Sir *George Barclay* and his Party; and Mr. *Rookwood*, the Prisoner at the Bar, was to command a Party of Men that came over from *France*, who were to assault the Guards on one Side, and I and Mr. *Charnock* were to set upon
the

the Guards on the other Side. Sir *George Barclay*, with four Men out of each Party, was to attack the King in his Coach, and to kill him and all that were there in it.

L. C. J. Who were at that Meeting?

Capt. Porter. There were Sir *George Barclay*, Captain *Charnock*, Sir *William Perkins*, My self, Major *Holmes*, Captain *Rookwood*, and Captain *King*.

L. C. J. Where was this?

Capt. Porter. At the *Globe-Tavern* in *Hatton-Garden*, upon *Saturday* Morning the 15th, we having two orderly Men that lay at *Keufington* to give Intelligence, had Notice brought us first that the King would go out; *Durance*, who was one of them, used to go every Morning to Court to get us what Intelligence he could, and Sir *George Barclay* told me upon the *Friday*, that he should give me an Account as soon as ever he could the next Morning; and the next Morning at my Lodging in *Little Rider-street* in *St. James's*, he came to me, and told me, the Advance Guards were gone out, and the King's Kitchen was gone, and all was preparing for the King's going abroad, and there went a great many Noblemen and Gentlemen a Horse-back with him, and therefore he thought there would be no Opportunity of effecting the Thing; said I, that's no Objection at all, nor any Reason for putting it off, because when the Sport is over, all the Company goes away, and the King comes only in his Coach with the Guards; he said, he would give Sir *George Barclay* an Account of it, and he came back with Sir *George Barclay* and Mr. *Rookwood* to my Lodging, and upon repeating that Objection, and my giving the same Answer, it was agreed if the King had gone out that Day to have put the Design in Execution.

Mr. Att. Gen. Was the Prisoner at the Bar there at that Time when that was agreed upon?

Capt. Porter. Yes, he was.

L. C. J. Where do you say was that Meeting?

Capt. Porter. At my Lodging in *Little Rider-street*.

L. C. J. Had you that Discourse with Sir *George Barclay*, in the Presence of the Prisoner?

Capt. Porter. Yes, Sir *George* said, he doubted we could not do it, because there would go so many with the King; but I objected against that, that after the Sport was over, all the Company went away, and the King came back in his Coach; then it was agreed to go on, there was Sir *George Barclay*, *Durance*, and the Prisoner at the Bar and my self, in the Room.

L. C. J. This you say was *Saturday* the 15th, in the Morning.

Capt. Porter. Yes, my Lord, but I cannot say I saw the Prisoner at the Bar at any Meeting after that.

Mr. Att. Gen. Pray, tell my Lord and the Jury, what Method you were to take in putting this Design in Execution.

Capt. Porter. There were to be so many Horse-men armed and prepared for the Purpose. Sir *George Barclay* told me, we should be about 40 or 45 Horse-men, and they were to be divided into two Parties, and Sir *George Barclay* was to have four Men out of each Party, and his Business was to attack the King, and all that were with him in the Coach. Captain *Rookwood* was to command those that were come out of *France* to serve under Sir *George Barclay*, and Captain *Char-*

nock and I were to command the other Party, and both Parties were to set upon the Guards at the same Time that Sir *George Barclay* attack'd the King's Coach.

Mr. Att. Gen. If the Prisoner will ask him any Questions, let him.

Sir *B. Shower.* Pray, Captain *Porter*, when was that first Meeting at the *Globe-Tavern*?

Capt. Porter. It was one Day in the Week before the 15th.

Sir *B. Shower.* Was Mr. *Rookwood*, the Prisoner at the Bar, there that Day?

Capt. Porter. Yes, he was.

Sir *B. Shower.* How long before the 15th?

Capt. Porter. One Day that Week, but I cannot tell what Day.

Sir *B. Shower.* He says it was agreed so, and so I desire to know what Words Mr. *Rookwood* uttered at that Time.

Capt. Porter. It was discoursed by every one round, which was the best Way and Method. I heard Mr. *Rookwood* say, indeed, he believed it a very desperate Thing, and he was not very willing to engage in it; but when Sir *George Barclay* told him he should command his Party, he replied in *French*—

Mr. Soll. Gen. What's the Meaning of that?

Capt. Porter. There's an End of it.

Mr. Att. Gen. You say the Prisoner was at your Lodging *Saturday* the 15th, in the Morning, What Discourse had you there?

Capt. Porter. He was there upon *Saturday* in the Morning, the 15th of *February*, and *Durance* brought an Account that the King's first Guards were gone, and the King's Kitchen was gone before, and it was expected that the King would go about eleven a Clock, but it was said, that there were a great many were preparing to go with him, and therefore it would not be convenient to do it that Day; said I, that is no Objection at all, for the Nobility and Gentry go out of the Field as soon as the Sport is over, and the King used to go with a few People to Mr. — House at *Richmond*, and therefore it might be as well done at that Time, as any Time: *Durance* made that Objection at first himself, and when I made him that Answer, he went to Sir *George Barclay*, and he came back with Sir *George Barclay*, and the Prisoner was there by at the same Time, and Sir *George Barclay* made the same Objection; it was at my Lodging in *Little Rider-street*, and when I told them my Reason against the Objection, as I had done before, they all agreed to do it that Day.

Mr. Phipps. At that second Meeting, did Mr. *Rookwood* make any Proposal there?

Capt. Porter. I only say he came with Sir *George Barclay*, and what I heard, I tell you Sir *George Barclay* made that Objection, and I gave it that Answer.

Mr. Phipps. But what did he say?

Capt. Porter. I cannot say that I heard Mr. *Rookwood* say any Thing in particular, but they all agreed to do the Thing that Day.

Sir *B. Shower.* You remember nothing that he said?

Capt. Porter. Sir *George Barclay* said, we will go and prepare, and he went away with him.

Sir *B. Shower.* Pray, when did Sir *George Barclay* come into *England*?

Capt. Porter. Truly, Sir, I don't know that; the first Time that I saw him after he came,

Mr. *Charnock* brought him to my Lodging in *Norfolk-street*, but before that, Mr. *Charnock* told me, he was come into *England*.

L. C. J. Hark you, Mr. *Porter*, when you came back from Viewing the Ground before the first *Saturday*, and you said you made your Report, and then it was agreed that it should be done at such a Place; Do you say the Prisoner was there?

Mr. *Att. Gen.* No, my Lord, he does not say so. Do you say Mr. *Rookwood* was there at that Time?

Capt. *Porter*. No, my Lord, I don't say so.

Sir B. *Showers*. I am sure he did not say so before; and besides, your Lordship will observe there is no such Overt-Act as that laid in the Indictment against the Prisoner, that Mr. *Porter* made his Report upon the View, that only concerns Mr. *Knightley*.

L. C. J. No, that is not an Overt-Act, I agree it; but I only ask the Question, whether the Prisoner was there.

L. C. J. *Treby*. If it were an Overt-Act laid in the Indictment, it would not affect the Prisoner, because the Viewing of the Ground, and making the Report, is Captain *Porter's* Act, and it must be the Consulting and Debating afterwards that must affect the Prisoner, if he be concern'd.

Mr. *Conyers*. The Meetings and Consultations that are laid in the Indictment are the Overt-Acts.

Mr. *Soll. Gen.* Well, if they have done with Captain *Porter*, we desire Mr. *George Harris* may be sworn.

Sir B. *Showers*. My Lord, we beg Leave to oppose Mr. *Harris's* being sworn; here was a Proclamation that did take Notice of this barbarous Conspiracy to assassinate the King, and the Proclamation did signify, That the King had received Information of several Persons concerned in that Conspiracy; and for the Encouragement of taking those so accused, he did promise a Thousand Pounds Reward for the taking of any of the Conspirators; and in the Conclusion of the Proclamation there is a Clause, *That if any of the Conspirators should discover or apprehend any of the other Persons that were therein named, so as that they should be brought to condign Punishment, such Conspirator so discovering should receive a Thousand Pounds Reward for any of the other Persons apprehended, and his own Pardon.* My Lord, we have a Witness here ready to prove that this was Mr. *Harris's* Case; he was himself in the Proclamation, he did actually discover Mr. *Rookwood*, the Prisoner at the Bar, and was instrumental in the taking of him; and consequently upon this Clause of the Proclamation, if he be brought to Justice, then is Mr. *Harris* intitled to this Reward and his Pardon; and consequently he has such an Interest and Advantage to himself as will prevent his being a Witness. It is true, indeed, where it is at the King's Suit, in a capital Case, it is pretty hard to say that a Man has an Interest; but we think, as this Case is circumstantiated upon this Proclamation, that the same Objection lies against him as would do if this were a civil Cause; if we shew how he is to have an Advantage by the Event of this Cause, then he is not to be admitted a Witness.

L. C. J. Did he apprehend any Body upon the Proclamation?

Sir B. *Showers*. Yes, he apprehended Mr. *Rookwood* himself, or was the Cause of it, and thereby is intitled to the Reward and his Pardon.

Mr. *Phipps*. That upon which we ground our Objection is the different Penning of the Procla-

mation; for if any one that is not a Conspirator do but discover and apprehend any of the Persons named in the Proclamation, he is entitled to the Thousand Pounds; but the Conspirators themselves must go further; for a bare Discovery and Apprehending any of their Accomplices will not entitle them to the Reward mentioned in the Proclamation, but they must discover and apprehend their Accomplices so as they be brought to Justice before they can be entitled to the Reward: And to be brought to Justice for any Crime, is in common Understanding to be brought to such Punishment as the Law inflicts for the Offence. Now Mr. *Harris's* Case is this, he discovered Mr. *Rookwood*, and went with the Guards to the Compter and seiz'd him: And if Mr. *Rookwood* be not convicted, Mr. *Harris* is not to have any Thing for his Pains; but if he be convicted, Mr. *Harris* is entitled to the Thousand Pounds and his Pardon. And therefore surely Mr. *Harris* cannot be admitted an Evidence against Mr. *Rookwood*, since he is to receive so great a Benefit by his Conviction. Upon an Indictment for an usurious Contract, the Person whose Deed it is cannot be a Witness, because 'tis to avoid his own Act: So in an Indictment for Perjury, on the Stat. 5. *Eliz.* the Party injured by the Perjury cannot be a Witness, because he is to have half the Forfeitures.

Mr. *Att. Gen.* I suppose they will make out their Objection before they expect an Answer from us.

Sir B. *Showers*. I hope your Lordship will not put us to prove a Copy of the Proclamation from the Inrolment, but that we may have the same Favour as in the Case of the Statute-Book, that the Print of it may be allow'd for Evidence.

Mr. *Att. Gen.* My Lord, we will not stand with them for that, we know they are mistaken throughout, we consent the Proclamation should be read.

Cl. of Arr. Reads,

By the King a Proclamation.

William R.

Whereas His Majesty has received Information upon Oath, that the Persons herein after named, have with divers other wicked and traitorous Persons entered into a horrid and detestable Conspiracy to assassinate and murder His Majesty's sacred Person, for which Cause several Warrants for High Treason have been issued out against them, but they have withdrawn themselves from their usual Places of Abode, and are fled from Justice: His Majesty has therefore thought fit by the Advice of his Privy Council to issue his Royal Proclamation, and His Majesty does hereby command and require all His loving Subjects to discover, take, and apprehend James Duke of Berwick, Sir George Barclay, Major Lowick, George Porter, Capt. Stow, Capt. Walbank, Capt. James Courtney, Lieutenant Sherborne, Brice, Blair, ——— Dinant, ——— Chambers, ——— Boife, George Higgins, and his two Brothers, Sons to Sir Thomas Higgins, ——— Davis Cardell, ——— Goodman, ——— Cramburne, ——— Keyes, Pendergros, alias Pendergrafs, ——— Bryerly, ——— Trevor, Sir George Maxwell, ——— Durance, a Fleming, Christopher Knightley, Lieutenant King, ——— Holmes, Sir William Perkins, ——— Rookwood, wherever they may be found, and to carry them before the next Justice of Peace or chief Magistrate, who is hereby required to commit them to the next Goal, there to remain untill they be thence delivered

by due Course of Law. And His Majesty doth hereby require the said Justice, or other Magistrate, immediately to give Notice thereof to Him or His Privy Council. And for the Prevention of the going of the said Persons, or of any other, into Ireland, or other Parts beyond the Seas, His Majesty does require and command all His Officers of the Customs, and other His Officers and Subjects of and in the respective Courts and Maritime Towns and Places within His Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, that they and every of them in their respective Stations and Places, be careful and diligent in the Examination of all Persons who shall pass or endeavour to pass beyond the Seas, and that they do not permit any Person whatsoever to go into Ireland, or other Places beyond the Seas, without a Pass under His Majesty's Royal Sign Manual until further Order. And if they shall discover the said Persons above-named or any of them, then to cause them to be apprehended and secured, and to give Notice as aforesaid. And His Majesty does hereby Publish and Declare to all Persons who shall conceal the Persons above-named, or any of them, or be aiding and assisting in the Concealing of them, or furthering their Escape, That they shall be proceeded against, for such their Offence, with the utmost Severity, according to Law. And for the Encouragement of all Persons to be Diligent and Careful in endeavouring to Discover and Apprehend the said Persons, We do hereby further Declare, That whatsoever shall discover and Apprehend the Persons above-named, or any of them, and shall bring them before some Justice of Peace, or chief Magistrate, as aforesaid, shall have and receive as a Reward, the Sum of One Thousand Pound; which said Sum of One Thousand Pounds, the Lords Commissioners of His Majesty's Treasury are hereby Required and Directed to pay accordingly. And if any of the Persons above-named shall Discover and Apprehend any of their Accomplices, so as they may be brought to Justice, His Majesty does hereby Declare, That every Person making such Discovery, shall have His Majesty's Gracious Pardon for his Offence, and shall receive the Reward of One Thousand Pound, to be pay'd in such manner as aforesaid.

Given at our Court at Kensington, the 23d Day of February, 1695-6, in the Eight Year of our Reign.

GOD SAVE THE KING.

Mr. *Phipps*. My Lord, The different Penning of the Clauses is not only in that Proclamation, but it is the Language of every Proclamation that has gone out for the Apprehending any of the Conspirators.

Mr. *Att. Gen.* My Lord, All that we say in Answer to this Objection, is, That Mr. *Harris* is not nam'd in that Proclamation.

L. C. *J.* What say you to that Sir *Bartholomew Shower*? He is not named in the Proclamation: And so if he hath discovered and apprehended the Prisoner, he has earn'd his Money, whether he be Convicted or not, because *Rookwood's* Name is in the Proclamation, tho' his is not.

Mr. *Phipps*. Then, my Lord, with humble Submission, here is another Proclamation wherein he is nam'd, we desire that may be read.

Mr. *Sell. Gen.* And when it is read, it will be as little to your Purpose as the other.

Mr. *Att. Gen.* Let them read what they please, we need say nothing at all to it.

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L. C. *J.* Certainly upon this Proclamation, there's no Objection; for he is intitled to his One Thousand Pound already, tho' *Rookwood* be never convicted.

Mr. *Phipps*. But is he not by this Proclamation which mentions his Accomplices, intitled to his Pardon? If so, he swears to secure himself.

L. C. *J.* By the Apprehending and Discovering, he's intitled to his Pardon.

Mr. *Phipps*. But not without he be brought to Justice; that is to say, till he be convicted; therefore he cannot be an Evidence to convict him.

L. C. *J.* That is, as to any that are there named, if any of them discover and apprehend one another, it must be so as that they be brought to Justice; But if any Person that is not named there does apprehend any that is, he is intitled to the One Thousand Pound, barely by the Apprehension.

Mr. *Phipps*. Then there is another Proclamation where they are both named, as Mr. *Rookwood* tells me.

Sir *B. Shower*. My Lord, We will set this Matter right; we will show the other Proclamation, in which, if I am rightly inform'd, for I have not read it, Mr. *Harris* is nam'd.

Mr. *Att. Gen.* If you have not read it, I would advise you not to trouble the Court with it; for you will find the latter Part is restrain'd to three or four particular Persons, of which he is none.

Rookwood. I am named in the Proclamation.

Mr. *Att. Gen.* Ay, but read the latter Part of it, and you will find you are not nam'd in the Clause that they refer'd to: You need not read the former Part of the Proclamation, we agree the Prisoner is named there; but only look towards the bottom, which is the Clause that they refer to.

Cl. of *Ar.* (Reads) And we do hereby further declare, &c.

Mr. *Att. Gen.* They have not considered the Proclamation, and therefore make an Objection of they don't know what.

Sir *B. Shower*. We are in your Lordship's Judgment.

L. C. *J.* For what? See if you can make or state a Case for our Judgment.

Sir *B. Shower*. Mr. *Rookwood* is mention'd in the first Proclamation, and *Harris* is not, but there are the Word Accomplices: He is likewise mentioned in the last Proclamation, but not in the last Clause of it. I confess, if he had, it had been plain it would have taken off his Testimony; but now we must submit it to you, whether he is not an interested Person, and consequently no good Witness.

L. C. *J.* Truly I do not see any Colour for the Objection. Is he not as well intitled to his One Thousand Pound, tho' Mr. *Rookwood* had never been try'd, by the bare Apprehending of Mr. *Rookwood*, as if he was convicted?

Sir *B. Shower*. No, my Lord; because the Words are so as he may be brought to Justice.

L. C. *J.* That is not so, as to any Person that apprehends one mentioned in the Proclamation, if the Person that apprehends be not mention'd in it, and named himself; if any one that is not mention'd apprehend one that is mention'd, he is intitled, by the Apprehension, to the One thousand Pound. If any one that is mention'd apprehend another, then he is to bring him to Justice; now Mr. *Harris* is not named in this Proclamation, and so, as to the One thousand Pound, he stands in the same Condition as any other Per-

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son that discovered or apprehended one of the Persons there nam'd.

Sir *B. Shower*. But it seems he was one of the Conspirators, because he is himself described in another Proclamation.

Mr. *Att. Gen.* If it were so, it would not be material, nor any Manner of Objection; but as they have made their Objection upon these Proclamations, we think there is nothing for us to give an Answer to.

Mr. *Cowper*. Nay, my Lord, if it were so, will Sir *Bartholomew Shower* say his Client is not brought to Justice, unless he be convicted? I am sure the Words *Convicted* or *Attainted*, are not in the Proclamation.

L. C. *J.* There is nothing in it; you must swear Mr. *Harris*. (*Which was done accordingly*).

Mr. *Sol. Gen.* Will you give an Account to my Lord and the Jury, what you know of this Conspiracy against the King's Life, from the first Time you were acquainted with it, and what Hand the Prisoner at the Bar had in it.

Mr. *Att. Gen.* Pray give an Account of the whole Thing, your Coming over, and who sent you, and upon what Errand, and the whole that you know of this Conspiracy.

Capt. *Harris*. Upon the 14th of *January* last, the *French Stile*, *New Stile*, I was at *St. Germain's*, where I was sent for by King *James*, and was ordered to wait his Dinner till it was over, and accordingly I did wait till his Dinner was over, and then I came in, and Col. *Parker* was with him, and one Mr. *Hare*, who is also mention'd in the Proclamation, was there also: The King told me he was sensible I had served him well, and now he had an Opportunity of doing something for me; he told me he would send me into *England*, where I should be subsisted, and I was to follow the Orders of Sir *George Barclay*, and accordingly he order'd me ten *Lewidores* to be paid by Mr. *Carroll*, who is Secretary to the late Queen, and Col. *Parker* went along with me, and Mr. *Hare*, to *Carroll*, and told him he came from the King, and we had the *Lewidores*, and we went to *Calais*, in Order to our coming over hither: But we were told if we were wind-bound, that the Money we received would not bear our Charges; there was Orders given for our further Subsistence at *Calice*, to the President there. Accordingly we came to *Calice*, and the Wind did not serve us for eight or nine Days; and while I stay'd there, the Money that I spent at *Calice* was paid by the President of *Calice*, Monsieur *Lattour*. Afterwards I landed in *England*, near *Romney Marsh*, as I was told, and I came to the House of one *Hunt*, and he provided me and my Comrade with a couple of Horses; and coming from thence, I came in the first Place to one *Tucker's* an Apothecary in *Sandway*, and next from thence we came to *Rochester*, to *Charles Crofts's*, and from thence in a Coach to *Gravesend*, and from thence by Water to *London*: That Night we lay in *Grace-Church-street* at an Inn, it being Night, the Night-Tide, and something late. The next Day I came to a Lodging at an Acquaintance's of my Comrade's, Mr. *Hare*, at the *Urn* in *Brownlow-street*, one Mr. *Watemans*. The next Night I went to look for Sir *George Barclay*, whom the King told me I should certainly find by such a Sign of a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thursdays*, in *Covent-Garden*, where his Walk was to be in the Even-

ing, because he was not to appear in the Day-Time openly. It happen'd that upon *Monday* Night after I came to *Town*, I went there, and did not find Sir *George Barclay* according to the King's Direction, which I admired at; but there was one Mr. *Berkenhead*, who told my Comrade, a Day or two after, That Sir *George Barclay* would needs speak with me, and accordingly I met with him; and he asked me how the King, Queen, Prince, and Princess did, and I told him they were very well; I told him I was appointed to attend him, and obey his Orders. He told me he had no Money at present, but in two or three Days he would send some; and so he did, by Major *Holmes*. I had five Shillings a Day for Subsistence, and I had no Horse; and when I had a Horse, it was six Shillings a Day; after which rate I had Subsistence for a Month at five Shillings a Day, Guineas going then at Thirty Shillings. Major *Holmes* paid me the Money by Sir *George Barclay's* Order, as he told me, and he afterwards gave me a Guinea, and that was the first *Saturday* when the Assassination was design'd; for that we told him we wanted Money, and it was not reasonable we should take our Horses out of the Stable before we paid for them: And I met Sir *George Barclay* several Times at *Covent-Garden*, and he told me it was a suspicious Place, and desired me not to come any more there; but when he had any particular Orders to give me, he would give me Notice of it where I shou'd meet him; and accordingly I did meet him several Times.

Mr. *Att. Gen.* Now, Sir, will you tell what you know as to the Prisoner at the Bar.

Capt. *Harris*. As to Mr. *Rookwood*, the *Saturday* that the Assassination was design'd to be, the first Time that I knew of it, I met Mr. *Rookwood*, at one Mr. *Burck's* Lodging, where he was up, and I saw him in a great Hurry and some Consternation, and in came Mr. *Bernarde*; I ask'd him the Meaning of it, and what they were going about; and Mr. *Rookwood* told me, If I wou'd go down to Captain *Counter* I shou'd know; accordingly I went, and to the best of my Remembrance, he gave me a little Note to Captain *Counter*, but that I am not positive in. I went to Captain *Counter*, and as soon as ever I came, he told us, We must be immediately ready to go to *Turnbam-Green*.

Mr. *Att. Gen.* Where was that?

Capt. *Harris*. At the *Woolpack*, that was the Sign ——— as near as I remember. Mr. *Hare* and I were ordered together to come there, and there was Mr. *Hungate*, who had been there some Time, and when I came in, Sir *George Barclay* did declare Laughing, *These are my Fanisaries*: And he talk'd something of bringing the Garter, and of attacking the Coach; but he went out of the Room, and afterwards he came in and declared, *We were all Men of Honour, and that the Business we were going about, was to attack the Prince of Orange*; but *Durant* came in after that, and said, *The Prince of Orange did not go out that Day*. When he talk'd of attacking the Prince of *Orange*, I was very much startled, not knowing any Thing of it before; and I came the next Morning to Mr. *Rookwood*, and ask'd him if we were to be the Murderers of the Prince of *Orange*, says Mr. *Rookwood* to me, *I am afraid we are drawn into some such Business; but if I had known it before I came over, I should have begg'd the King's Pardon at St. Germain's, and not have come over hither*;

ther ; and said I, *This is very fine, we have serv'd to a very good Purpose, to be sent over upon such an Errand and Account.* After this Mr. Rookwood, and Mr. Lowick, and I, had a Meeting at Red-Lyon-Fields, where we did discourse about the Matter. I did often declare against it, That it was so barbarous a Thing, that no Man of Honour almost wou'd be guilty of it ; but Major Lowick answered, That we were to obey Orders, for sure Sir George Barclay wou'd not undertake a Thing of that Nature without Orders.

Mr. At. Gen. Pray what said Mr. Rookwood ?

Capt. Harris. He own'd it was a barbarous Thing ; but he was sent over to obey Sir George Barclay's Orders, which he had several Times declared he was resolv'd to do ; upon that we parted : so afterwards I came to Mr. Rookwood's Lodging ; it was the Saturday Morning I came to him, and so went to Sir George Barclay's ; while he was there, Mr. Rookwood gave me a Note, naming fo many Names, particularly Mr. Hungate, Mr. Hanford, Mr. Hare, and his own Name at Top, not the Name that he is arraigned by here ; but a sham Name that he had, as the rest of us all had sham Names, which at that Time we went by.

L. C. ¶. What was your Name ?

Capt. Harris. My Name is Jenkins.

L. C. ¶. Who gave you that Name ?

Capt. Harris. King James at St. Germain's, and he gave Mr. Hare the Name of Guiney, and Mr. Rookwood's Name was Roberts. King James told us in his Bed-chamber, We were to go by those Names.

Mr. At. Gen. Pray Sir, what did Rookwood say to you, when he gave you that List ?

Capt. Harris. He told me, he was to go to Turnham-Green, and I was to go along with him, and says he to me smiling, *You shall be my Aid de Camp* ; and get the Rest of the Gentlemen ready, and accordingly I went to look for several of the Persons — particularly for Mr. Blackburne : When I came back again, I found him lying on his Bed, and that Sir George Barclay had told him the Prince of Orange did not go out that Day, and from thence we went to Dinner, where Major Lowick din'd with us, and Mr. Bernarde and Major Lowick seeing me in a Heat, ask'd me, Why I was in such a Sweat ? I told him I were getting those Men ready for Mr. Rookwood, who had made me his *Aid de Camp* : Says Major Lowick to me, You may very well do it, for you have Six Shillings a Day allow'd you, and I have nothing ; I bring two Men at my own Charge. Said I, Major Lowick, I wonder you don't apply your self to Sir George Barclay, and then I believe, you may be subsidized too. He answer'd me, He did not think it worth the while to trouble him, since he had never spoke to him of it before : and Rookwood, and Bernarde, and Lowick, and my self, several Times met in Red-Lyon-Fields, and talk'd of attacking the Prince of Orange.

Mr. At. Gen. Who did ?

Capt. Harris. Rookwood, Bernarde, Lowick, and my self.

Mr. At. Gen. Pray Sir, let me ask you one Question. Where was your Horse at first ?

Capt. Harris. At first it was at my Lord Feversham's Stables, as they told me, in Somersethouse.

Mr. At. Gen. Where were the other Persons Horses ?

Capt. Harris. There was Mr. Hungate's and Mr. Hare's Horses in the same Place, at the same Time, as they told me.

Mr. At. Gen. How came you by your Horse there ?

Capt. Harris. Maj. Holmes did deliver my Horse, and committed it to my Care, and I carry'd it thence to another Place.

Mr. At. Gen. Did you observe there was any more Horses there ?

Capt. Harris. I believe there was Five or Six, as near as I can guess.

Mr. At. Gen. Do you know where Rookwood was to have his Horse ?

Capt. Harris. He had a Horse ; but whence he had it I don't know.

Mr. At. Gen. Had you any Arms delivered you ?

Capt. Harris. Yes, I had by Capt. Counter.

Mr. Conyers. Were you at no other Place together that Saturday Night, the 22d of February, because you say you din'd together ?

Capt. Harris. Yes, we were at the Bear Tavern.

Mr. Conyers. What Discourse pass'd between you there ?

Capt. Harris. They were talking about the Assassination ; but what any particular Person said, I cannot tell.

Mr. Conyers. Pray who were there ?

Capt. Harris. There was Mr. Knightley, Captain Rookwood, and Mr. King ; and Knightley went out, and came in again, and declared, we must have a great deal of Care of our selves, or we should be taken up : and he whisper'd at first, and afterwards I asked him what it was ; and he told me, and said, *We must have a Care of our selves.* Says Mr. King, staring this Way with his Eyes, *Surely God Almighty is on our Side* ; and so we parted.

L. C. ¶. When was this ?

Capt. Harris. This was the Night of Saturday the 22d, when it was discover'd ; for some of them were taken up the next Day.

Mr. At. Gen. Was Rookwood there at that Time at the Bear Tavern ?

Capt. Harris. I cannot positively say whether he was or not.

Mr. At. Gen. What Discourse had you there ?

Capt. Harris. We talk'd of Assassinating the King ; but what it was in particular, I cannot tell.

L. C. ¶. Was Rookwood there ?

Capt. Harris. Yes, I believe he was ; but I cannot positively say.

L. C. ¶. You say it was the last Saturday that the King was to go abroad, that you apprehended you were discovered ?

Capt. Harris. Yes, we apprehended we were discover'd before that ; for Mr. Lowick told me, that three or four Days before, in that Week, that his Name, and one Harrison's, were given into the Council, and another, and another, Two or Three of them, as he told me ; I think Three or Four ; and upon that Account Major Lowick, went from his Lodging, and did not lie at his Lodging the Night before ; and I came to Major Lowick, and he told me the same Thing at the King's-Arms Tavern.

Mr. At. Gen. Can you remember what Discourse you had that Saturday Night ?

Mr. *Cowper*. You say that on *Saturday* the 22d, Mr. *Rookwood* gave you the List.

Capt. *Harris*. I do not say it was the 22d, for I cannot swear to the Day of the Month; but it was the second *Saturday* that we were to have gone about this Business.

Mr. *Cowper*. You say he gave you a List of Names: Pray, when he gave you that List, what Discourse happened in the Room, just before, or after the giving of the List?

Capt. *Harris*. Sir, I think I told the Court that before.

Mr. *Cowper*. Sir, I desire you would repeat it.

Capt. *Harris*. My Lord, I humbly desire to know whether I am to answer that Gentleman that Question?

L. C. J. Yes, you are to answer, being upon your Oath, and to tell the whole Truth.

Mr. *Cowper*. I asked him the Question so fairly, what Discourse introduced the giving of the List, and what followed upon it, that I perceive this Gentleman does not know which Side I am of.

Capt. *Harris*. Mr. *Rookwood* said we were to go to *Turnham-Green*; and he told me, that I was to be one of his Party, that we were to attack the Prince of *Orange*.

L. C. J. You say you were to be one of his Party; pray was it there that he told you, you should be his *Aid de Camp*?

Capt. *Harris*. Yes, he did tell me I was to be his *Aid de Camp*.

Mr. *Phipps*. Whose Hand-writing was that List?

Capt. *Harris*. I cannot tell, I had it from that Gentleman.

Mr. *Phipps*. But whose Writing was it?

Capt. *Harris*. Indeed I know not his Hand-writing, and therefore cannot tell whose it was: He is for his Life, but I believe he cannot deny any Thing that I have said, I suppose not: I should be very sorry to accuse Mr. *Rookwood* of any Thing that was not true.

Mr. *Phipps*. Pray whose Names were in that List?

Capt. *Harris*. I have mention'd Mr. *Hare*, Mr. *Hanford*, Mr. *Blackburne*, my self, and you Mr. *Rookwood*, had your own Name at Top.

Rookwood. What is that *Blackburne*?

Capt. *Harris*. He is a *Lancashire* Man.

Rookwood. It's a very strange Thing I should give you a List with a Man's Name that I don't know, I declare it, I know no such Person.

Capt. *Harris*. Mr. *Rookwood*, I believe you are very sensible I do not accuse you of any Thing that is not true.

Mr. *Phipps*. When did you see that List laid?

Capt. *Harris*. He gave it into my Hands, and had it from me again, or I threw it away afterwards.

Rookwood. But you that were to be an Evidence ought to have kept it to justify your Evidence.

Capt. *Harris*. Truly I did not intend to have been an Evidence at that Time.

Mr. *Att. Gen.* If they will ask him any Questions, let them.

Sir B. *Showers*. No, indeed, I will ask him no Questions.

Mr. *Att. Gen.* Then, my Lord, we have another Piece of Evidence which we would offer to your Lordship, which is not direct Evidence against the Prisoner, but only to prove a Circumstance or two of what has already been sworn:

We do acknowledge, my Lord, it does not affect Mr. *Rookwood*, but only to strengthen and confirm what they have sworn.

Sir B. *Showers*. With Submission we hope it will not be Evidence fit to be given as to the Prisoner at all; for because a Man may swear true in the particular Circumstance of a Thing, that therefore he swears true what he swears against the Prisoner, I think is no Consequence in the World.

L. C. J. It is a Thing distinct and foreign to the Matter, as to Mr. *Rookwood*.

Mr. *Att. Gen.* My Lord, we do not say it directly affects Mr. *Rookwood*; but when your Lordship has heard it, we shall submit it to you, how far it confirms even the Evidence given against him.

Mr. *Conyers*. My Lord, we say the Prisoner was to have his Horses from *Somerset-House*; and that there were Horses plac'd there for that Purpose we are going to prove.

Mr. *Att. Gen.* My Lord, it is one entire Conspiracy, in which every one had his Part; one was to have his Horses and his Party in one Place, and another in another: Now that there were at such Time such Horses at *Somerset-House*, and those Horses were delivered out from *Somerset-House*, is certainly a Confirmation of the Truth of what the Witnesses have said.

L. C. J. It is so. If that be it you offer, it is very material.

Mr. *Conyers*. We shall prove, That upon the Disappointment on the first *Saturday*, the 15th of *February*, they were to be ready against the 22d; and you will hear how the Horses were dispos'd of in the mean Time. Call *Chamberlain*, *Maskel*, and *Allen*.

Mr. *Att. Gen.* Call any one of them, I believe it is enough.

Mr. *Chamberlain* appeared, and was sworn.

Mr. *Att. Gen.* Pray will you give my Lord, and the Jury an Account what you know of any Horses that were brought to *Somerset-house* about *February* last, and how long they stay'd there?

Chamberlain. There was six Horses.

Mr. *Att. Gen.* Who brought them in.

Chamberlain. They were sent in by some Persons in Mr. *Lewis's* Name.

Mr. *Att. Gen.* Had you any Direction to take Care of them?

Chamb. Mr. *Lewis* sent in a Note to take Care of them for a Night or two.

Mr. *Att. Gen.* Who carried them away?

Chamb. I cannot tell: Some People came to see 'em that I never saw before, and they took care of them; I know not who they were, and I never saw them since.

Mr. *Att. Gen.* What Time was it that they came for them?

Chamb. It was about the middle of the Day.

Mr. *Att. Gen.* What Month was it in?

Chamb. I think it was much about the latter End of *February*, to the best of my Remembrance.

Mr. *Att. Gen.* How long was it before the Plot was discover'd.

Chamb. It was about a Week, or a small Matter, before the Plot was discover'd, to the best of my Knowledge.

Mr. *Att. Gen.* How long staid the Horses there at *Somerset-house*?

Chamb. Three of them staid a Night or two; but the other three of them about a Matter of a Week or ten Days.

Mr. *At. Gen.* Who own'd those Horses?
Chamberlain. They were sent in, in Mr. *Lewis's* Name; but who own'd them I cannot tell indeed.

Mr. *Conyers.* Then swear *John Allen.* (*Who was sworn.*)

Pray tell my Lords and the Jury, what you know concerning any Horses about the Time of the Breaking out of the Plot.

Mr. *Att. Gen.* We mean in *Somerset-House* Stable.

Allen. There was seven Horses came in.

Mr. *Conyers.* Who brought them?

Allen. There was Six in the first Place; one came in afterwards in the Evening.

Mr. *Conyers.* By whose Order were they brought there?

Allen. By Mr. *Lewis's* Order.

Mr. *At. Gen.* How long did they stay there?

Allen. Some of them staid there several Days; Three of them went away the next Day; as I think.

Mr. *Conyers.* Do you remember about what time those Horses were brought thither?

Allen. They were brought there, I believe, about seven or eight Days before the Plot broke out.

Mr. *At. Gen.* My Lord, We only call these Witnesses to confirm the Testimony of the others, that there were such Horses there at that time, and for the present we rest it here.

L. C. J. Then, Gentlemen, what say you to it for the Prisoner?

Sir *B. Shower.* If your Lordship please, we are of Council for the Prisoner; and that which we are to insist upon is this, which we submit to your Lordship's Judgment. In the first place, whether here be two Witnesses against the Prisoner to prove this Treason according to the Statute of *Edw. 6.* which requires two Witnesses in High-Treason, and lawful Ones; but that in the first Place we say there are not two Witnesses at all, at least not to any Overt-Act that is laid in this Indictment. As to what Captain *Porter* says of what pass'd between him and *Durance*, the Dialogue between them where *Rookwood* was present, we are in your Lordship's Direction; and we doubt not but the Jury will take it into their Consideration, how far that affects the Prisoner; that he shall not be concern'd in any Transaction between Mr. *Porter* and any other Persons; none of their Declarations, none of their treasonable Practices, can be imputed to or affect him in any way whatsoever. Now all that Captain *Porter* says of Mr. *Rookwood*, is, that he was once at the *Globe* Tavern, and there was a Discourse about this Matter; and then he tells your Lordship of a Dialogue between him and *Durance*, and an Account of what pass'd between them; but he does not say any Thing of Mr. *Rookwood* being any Ways concern'd in the Matter, but only that he dropped this Expression, It was a desperate Adventure, a dangerous Enterprize, and he seem'd against it, but in the End he concluded with something in *French*, which what they are, and what they mean, we must submit to your Lordship and the Jury; he interprets it, when Sir *George Barclay* said he must have a Share in it, then *Rookwood* replied, There's an End of it. But there is not one Word of Agreement sworn to, that Mr. *Rookwood* spoke to shew his Consent. There is but one Time more that Mr. *Porter* swears to, about

the Prisoner at the Bar, and that is, at his Lodgings in *Little Rider-street*; for as to the other Consults, Mr. *Rookwood* was not present there: It seems there was a Discourse about the Affair, but that *Rookwood* said nothing, but went away; there was not so much as the least Intimation of an Agreement to any such Design, or Approbation of what was agitated in the Company, and we insist upon it as to this in Point of Law, that it amounts to no more than Misprision of Treason at most. My Lord, I will not now contend about Notions, nor will I argue whether Consulting and Agreeing be Evidence of an Overt-Act; I submit to your Lordship's Directions, notwithstanding the Variety and Difference of Opinions that have been.

L. C. J. Sir *Bartholomew Shower*, I know not what Variety of Opinions you mean; there have been some Discourses in Pamphlets I agree, but it was always taken and held for Law, that Consulting and Agreeing was an Overt-Act.

Sir *B. Shower.* Here is no Evidence of any Agreement.

L. C. J. Pray let us hear what you say to that.

Sir *B. Shower.* It is not the being present where Traytors do consult and conspire the Death of the King, unless they actually agree; nor is it Evidence sufficient to guide or prevail upon a Jury's Conscience, to affirm upon their Oaths, that such a one is guilty of High Treason, because such a one was there and said nothing at all; for the not discovering afterwards, nor accusing is no Evidence at all against Mr. *Rookwood*. As to Mr. *Harris*, he gives you an Account of a great deal that does not affect Mr. *Rookwood*, neither all that past at *St. Germain's*, nor in their Journey into *England*, for all that may be true, and yet the Prisoner no way concern'd in it. As to what he affirms of the Prisoner, we shall submit it to your Consideration: What it amounts to, and all that his Deposition comes up to, is, That Mr. *Rookwood* complain'd that he was to obey implicitly Sir *George Barclay's* Orders; and *Harris* gives an Account but of one particular Time that Mr. *Rookwood* undertook or did agree to be concern'd in this Matter; it was but once, and that was, when he gave him the Note of those that were to go to *Turnham-Green*, and that he was to be his *Aid de Camp*: And as to that, we shall give you an Account by Witnesses whom we shall call, that these two Witnesses ought not to be believed as to what they have sworn, tho' they do not come up to make two Witnesses according to Law upon this Indictment: What they have said as to this Man is not credible, tho' they may speak true as to others; and no Doubt there was a barbarous Conspiracy; it appears there was such, beyond all Exception and Contradiction; and the Persons that have been condemn'd as Conspirators have acknowledg'd it: But, my Lord, that which is now before your Lordship and the Jury, is, to enquire whether the Prisoner is concern'd in this Affair at all, and how far; and we hope the Jury will be of Opinion he is not concern'd. The Heinousness of the Crime, and the Aggravations of it, being to be abhorred by all Mankind, we think ought not to sway with the Jury, nor Influence their Judgments to believe a Witness ever the sooner in accusing any other Person; it ought rather to have a contrary Allay; for the greater the Crime is, and the farther off from having any tolerable Opinion in the World, they ought to expect

expect the greater Proof; and no one is to be presum'd guilty of such an Act, without very sufficient Evidence of it; and the greater the Crime, the Proof ought to be the more positive and undeniable: It is not their being plainly positive that is sufficient, but whether it is such that is good in Law, and about that we are sure your Lordship will give true Directions in point of Law: and whether the Witnesses be credible or no, must be submitted and left to the Jury, after we have call'd some Witnesses, who will give you an Account of their Reputation.

Mr. *Phipps*. My Lord, we humbly insist there are not two Witnesses, such as the Law requires, to prove the Charge upon this Indictment against the Prisoner: The two Overt-Acts that touch Mr. *Rookwood*, are first Consulting and Agreeing how to kill the King; the other is the finding Arms and Horfes for that purpose: But as to this latter, the finding Arms and Horfes, there is not one Evidence that comes up to it: And as to the former, the Consultations, whether there be sufficient Evidence that comes up to that, is very much a Question with us: But we say, with Submission, there are not two Witnesses in that Case; for Mr. *Porter* says only what he was told by Sir *George Barclay*, that Sir *George* propos'd this Matter; but withal he tells you, that when Sir *George Barclay* propos'd it, and Mr. *Rookwood* was inform'd what the Design was, he was so far from Conspiring, Consulting, or Agreeing to do it, that he said it was a barbarous Act, and he recoi'd at it. Then at last says Sir *George Barclay*, *You must command a Party*.

L. C. J. Well, and what said *Rookwood* then?

Mr. *Phipps*. *Porter* says, he then said, *There's an End of it*. Now, my Lord, what Evidence is this of a Consultation and Agreement? And this is all that *Porter* says. As to what Mr. *Harris* says, we are to consider whether the List given to him be an Overt-Act; and there the Point in Question is, Whether that List can be given in Evidence against Mr. *Rookwood*, upon this late Act of Parliament, as an Overt-Act, it not being laid in the Indictment? There is indeed an Overt-Act of a List laid in the Indictment, as given to *Cranburne*, but none as given to Mr. *Rookwood*.

L. C. J. Pray take the Evidence right: First, What will you make an Overt-Act? What do you think when there is a Debate among divers Persons about killing the King?

Sir *B. Shower*. With Submission that will be no Overt-Act, if there be a Debate of such a Matter, tho' he be present.

L. C. J. Aye; but when there is a Consult, and upon Debate a Resolution is formed, and tho' he does at first dislike it, yet when he is told he must command a Party, he says he is content, or there's an End of it; What do you make of that?

Sir *B. Shower*. He said he did not like it, it was a barbarous desperate Design:

L. C. J. It's true, but when Sir *George Barclay* said he shou'd command a Party, he acquiesced, and said there was an End of it: There was a Discourse about Cutting off the King, and that was agreed upon in the Company at that Time; and tho' at first he did not like it, yet he might afterwards agree to it.

Sir *B. Shower*. My Lord, that is it which we deny; we say there is no Proof of his Agreement to it.

L. C. J. Capt. *Porter* says, he did declare that he said he look'd upon it as a desperate Design,

and was averse from being engag'd in it, but afterwards did agree to it; Whether is not that such an Overt-Act, as is laid in the Indictment?

Sir *B. Shower*. My Lord, We must beg Leave for the Prisoner in a Case of this Nature, that it may be recollected what the Evidence did say. Mr. *Porter* did not take upon him to affirm that Mr. *Rookwood* consented to it, but only said, *There was an End of it*. Now we must leave that to the Jury, what they can make of such a doubtful Expression.

L. C. J. Call Mr. *Porter* in again.

Mr. *Conyers*. My Lord, the first Meeting Mr. *Porter* speaks of, where the Prisoner Mr. *Rookwood* was, is at the *Globe Tavern*, where this Discourse was; the next Meeting that he speaks of, was on the *Friday* Night, before the first *Saturday* when the Business was to be done, and afterwards he met at *Porter's* Lodgings, on *Saturday* Morning, in *Rider-street*.

Then Capt. *Porter* came in again.

L. C. J. Hark ye, Mr. *Porter*, the first Time that this Matter was propos'd, when Mr. *Rookwood* was present, you say was at the *Globe-Tavern*.

Capt. *Porter*. Yes, my Lord, it was.

L. C. J. And you say he dislike'd it, and did not care to be concern'd in it.

Capt. *Porter*. Yes, my Lord, he did so.

L. C. J. Well, What said Sir *George Barclay*?

Capt. *Porter*. Sir *George Barclay* said he ought to obey his Orders, for he had such a Commission for such a Thing, and he drew out a Scheme how it was to be done; and when Sir *George Barclay* told Mr. *Rookwood* he shou'd command his Party, he replied in *French*,

There's an End of it.

L. C. J. This was at the *Globe-Tavern*, Was it not?

Capt. *Porter*. Yes, my Lord, it was.

Mr. *Att. Gen.* Pray then, Capt. *Porter*, let me ask you another Question, Was he afterwards with you at any other Meeting, and when and where?

Capt. *Porter*. He was with me upon *Saturday* the 15th, at any Lodging in *Little Rider-street*, where was Sir *George Barclay* and others.

Mr. *Att. Gen.* What Discourse happen'd then, I pray?

Capt. *Porter*. They did there discourse the whole Matter, and Sir *George Barclay* was not for going at that Time, because there was so many People that went with the King; that there wou'd not be a good Opportunity to effect the Design: But I told him they wou'd go off after the Hunting was over, and so it was agreed upon to go on with the Undertaking.

Mr. *Att. Gen.* Pray, at that Time did Mr. *Rookwood* pretend to dislike the Affair, or refuse to be any Way at all concern'd it?

Capt. *Porter*. No, my Lord, I can't remember that he spoke one Word.

L. C. J. Was Mr. *Rookwood* there?

Capt. *Porter*. Yes, there was Mr. *Rookwood*, Sir *George Barclay*, and Mr. *Durance*.

Mr. *Att. Gen.* And had you Discourse at that Time about this Business?

Capt. *Porter*. Yes, my Lord, there was that Objection made of so many People going with the King, and I made that Answer that I tell you.

L. C. J.

L. C. J. Why then, suppose at the *Globe-Tavern*, such an Expression had not dropt from the Prisoner, but a Man is present at two Consults that are held about the Death of the King, but says nothing either at the first or second, What would you make of that Case?

Sir B. Shower. My Lord, I confess this is a Case of a very barbarous Nature, of which I hope my Client will acquit himself: But I think we have the Authority of Parliament on our Side, that this does not amount to a Proof of Treason. It seems they lay a Stress upon this, that Mr. *Rookwood* came to Captain *Porter's* Lodgings on the Saturday Morning the 15th: But then take the Case as it is; for ought that does appear upon the Proof, he knows not, upon what Account the Meeting is, beforehand. I think that is the Case of my Lord *Russel*, upon which the Reverfal of his Attainder went, that the Evidence came short, and that it was but Misprision; for the Evidence was, That he was present at the supposed Declaration's reading, but said nothing at all to it.

L. C. J. But I speak of two Meetings; there was but one.

Sir B. Shower. My Lord, I do not know whether there were two Meetings or one then: But this is the Ground we go upon, there ought to be two Witnesses: And if there be two Meetings upon such a Design, the second may be accidental, and it does not appear to be a design'd Meeting; and there was no Appointment of Mr. *Rookwood* to be there, nor any Negotiation by way of Message or otherwise, to that Purpose. Is this, my Lord, an Overt-Act? Suppose a Man be present at a Consult about treasonable Practices, and he uses Words that are indifferent; it is true, in the Case of a Wager it amounts to an Assent, but it hardly will come to that when People meet by Accident, or for they don't know what.

L. C. J. How is this by Accident?

Sir B. Shower. It does not appear that it was by Design or Appointment.

L. C. J. They were Acquaintance.

Sir B. Shower. He had no Acquaintance with him but in Sir *George Barclay's* Company.

L. C. J. But besides, there was an express Consent at the *Globe Tavern*, when *Rookwood* said, *There is an End of it.*

Sir B. Shower. That is as much as to say, I will not do it, I will not go with you——

Mr. Sol. Gen. Sir *G. Barclay* was the Person whom they were to obey; and *Harris* tells you he told them what they were to do, and six Horses were first plac'd, and three of them afterwards remov'd.

Sir B. Shower. That won't affect him what Sir *George Barclay* said, any more than *Lewis's* appointing of the Horses.

L. C. J. Then here is another Thing, Why did he give a List to Mr. *Harris*? the List that was given had Mr. *Rookwood's* Name at Top, as he was to command the Party, and there was *Harris's* Name and *Hare's* Name as of his Party; that is, their feign'd Names: Mr. *Rookwood's* feign'd Name was *Roberts* that was at Top, and they were to go to *Turnbam-Green*, and *Rookwood* told *Harris*, he should be his *Aid de Camp*.

Sir B. Shower. My Lord, for that I think we have a Point of Law, that we apprehend will turn off all that Evidence, and sure we may take that Exception now: The Words of the Act are, That

no Evidence shall be given of any Overt-Act that is not expressly laid in the Indictment. Now cannot I shew upon this Indictment, that there is no Overt-Act in such a positive direct Manner as they now urge about this List? Will not that satisfy your Lordship's Judgment to set aside all this Evidence? To make the Indictment good for Treason, there ought to be a Compassing of the Death of the King laid, and an Overt-Act laid declaring that Compassing; but no Evidence is to be given of any Overt-Act that is not laid in the Indictment.

L. C. J. You are not to take Exceptions to the Indictment now, but only to the Evidence.

Sir B. Shower. I have this one Exception more; there is never a *Quodque*, nor a *Juratores ulterius presentant*.

L. C. J. There does not need; but that is a Fault, if any, in the Indictment, and is not to be stir'd now.

Sir B. Shower. If there be not a Presentment by the Jury, then there is no Overt-Act alledged: And if there be no Overt-Act alledged, or no such Overt-Act, then we are within the Words of the Act, That no Evidence shall be given of any such Overt-Act but what is alledged; and it is, if not expressly alledged, as if it were not alledged at all: Now here it is very loose, &c. *idem Christophorus Knightley*, and so it goes on with the rest, did so and so. There is a Presentment at first, that they did compass and imagine the Death of the King; and then the Indictment comes farther, and says, that Forty Men should do this Business, and of those Forty these four should be some; and then the *idem* bought Horses and Arms, and so it must go to the last Antecedent, and then there is no express alledging of any Overt-Act, and then it is as if no Overt-Act at all was alledged.

L. C. J. This Exception is not to the Evidence, but to the Indictment: It begins, *Juratores presentant quod*; Does not that relate to all?

Sir B. Shower. No, my Lord; and I can tell you a Reason why not: If it be not so well alledged as it should be, it is in an Indictment as if it were never alledged at all; and so within the Words of the Act of Parliament this is not an Overt-Act alledged, and therefore they cannot give Evidence upon it.

Mr. Sol. Gen. Truly, my Lord, I can't imagine what they are doing, they are moving in Arrest of Judgment before a Verdict given: They say the Overt-Act is not expressly laid; Is that an Exception to the Evidence, or to the Indictment?

Sir B. Shower. If my Lord will please to give us the Liberty, we would shew there can be no Verdict given upon this Indictment.

L. C. J. Certainly this is an irregular Proceeding; this is not a Time of Exception to the Judgment.

Mr. Phipps. Then, my Lord, we are in your Judgment, as to the Proof that has been given: If a Man be present at a Meeting of several Persons, and there is a treasonable Debate about killing the King, and this Man is only present, but neither assents, nor makes the Proposal how it shall be done, whether the bare being silent, and saying nothing, is such an Overt-Act as shall convict a Man of Treason.

L. C. J. I tell you, Consenting to a traitorous Design is an Overt-Act of High Treason, if that Consent be made to appear by good Proof: Now
the

the Question is, What is a good Proof and Evidence of this Consent? A Man is two or three Times at a treasonable Consult for killing the King, and though perhaps at the first he did not, yet at the second he did know that the Meeting was for such a Design, (supposè for the Purpose there was but two Meetings) and at the second it is determin'd to go on with the Design; Is not that an Overt-Act, tho' it cannot be proved that the Prisoner said any Thing?

Mr. *Phipps*. If the first Meeting is not a Consent, or an Overt-Act, neither will a second or a third be, if there was no more done than at the first, but they are like so many Cyphers without a Figure.

L. C. *J.* The first Meeting possibly might be accidental, he might not know what it was for, though that will go a great Way if he does not dissent or discover; but then he meets again with the same Company, knowing what they had in Design; Does not that prove a Consent? That was the Case of Sir *Everard Digby* in the Powder Plot.

Mr. *Phipps*. But where it may be uncertain, my Lord, whether it were with a good Design, or a bad Design, that he met with that Company, it ought to be taken most favourably for the Prisoner: This Man might be present in Order to a Discovery.

L. C. *J.* But besides, that is not this Case; you are mooted upon Points that are not in the Case. When Mr. *Harris* came to Mr. *Rookwood*, and finding them in some Disorder, and being inquisitive what was the Occasion, he was sent to Counter; and when he discovered what they were to go about, he afterwards meeting Mr. *Rookwood*, says to him, Are we sent over to murder the Prince of Orange? says *Rookwood*, if I had known of this Design before I came from France, I would have begg'd the King's, that is, King *James's* Pardon, and desir'd to have been excus'd. Hereby he expresses his Knowledge of the Design, and what he was to do; and though he disliked, yet would obey Orders.

Mr. *Phipps*. There is no Doubt, my Lord, but he knew of it; but whether your Lordship will construe his Silence as a Consent, in Treason, is the Question.

L. C. *J.* A Man is at frequent Consults about Killing the King, and does not reveal it, it is a great Evidence of his Consent.

Mr. *Phipps*. But it is not prov'd that he did actually consent to it.

Mr. *Soll. Gen.* My Lord, we must submit it to your Lordship, whether this is not totally improper and irregular at this Time; they are arguing how far the Evidence is to be believ'd, before the Time proper for such an Argument comes.

Mr. *Att. Gen.* If they will call their Witnesses, let them; or if they say they have none, then they may make their Observations upon the Evidence; but else we desire we may be kept to the usual Method of Proceedings.

Mr. *Phipps*. With Submission, we thought it fit to know the Opinion of the Court first, if there be two Witnesses against the Prisoner; for if there be not two Witnesses, as the Law requires, we need not trouble the Court with our Evidence.

Sir *B. Shower*. Then, my Lord, we must desire that the Record may be read of Captain *Porter's* Conviction of Manslaughter; a Man that has been guilty of doing such an Act, feloniously, malici-

ously, and voluntarily, as that is, sure is not a competent Witness.

Cl. of Ar. It has been read already.

Mr. *Att. Gen.* I thought we had been over that Objection before.

Sir *B. Shower*. We think it is proper for us to move it now again; for though it is no Objection to his being a legal Witness, yet we hope it will influence his Reputation as to his Credit; for he that has been guilty of killing a Man in such a Manner as the Indictment lays it, will find but little Credit, we hope, with a Jury of Countrymen. But since it has been read, and your Lordship and the Jury have taken notice of it, we will call some other Witnesses as to Mr. *Porter's* Reputation and Behaviour, we think they will prove Things as bad as an Attainder. I shall not open them to your Lordship, but beg Leave to call our Witnesses, who will acquaint you what they have to say.

Mr. *Att. Gen.* Certainly, my Lord, you will not think fit to let them do so. I desire they would not usher in any Thing of Evidence without acquainting the Court what they call them for: For that were the Way to let them in to call Witnesses to Things that are not proper.

L. C. *J.* Nay, without doubt it is not regular to produce any Evidence, without opening it.

Mr. *Att. Gen.* For if it be for any Crime that a Man may be present for, and there is no Conviction; I think that ought not to be given in Evidence to take away a Witness's Credit: If it be only to his general Reputation and Behaviour, so far they may go, and we can't oppose it. Therefore I desire Sir *Bartholomew Shower* will open to the Court of what Nature his Evidence is.

Sir *B. Shower*. Well, I will tell you then what I call them to.

L. C. *J.* You must tell us what you call them to.

Sir *B. Shower*. Why then, my Lord, if Robbing upon the High-way, if Clipping, if Conversing with Clippers, if Fornication, if Buggery, if any of these Irregularities, will take off the Credit of a Man, I have Instructions in my Brief, of Evidence of Crimes of this Nature, and to this Purpose against Mr. *Porter*; and we hope that by Law, a Prisoner standing for his Life is at Liberty to give an Account of the Actions and Behaviour of the Witnesses against him. I know the Objection that Mr. *Attorney* makes, a Witness does not come prepar'd to vindicate and give an Account of every Action of his Life, and it is not commonly allowed to give Evidence of particular Actions; but if those Actions be repeated, and a Man lives in the Practice of them, and this Practice is continued for several Years, and this be made out by Evidence; we hope no Jury that have any Conscience, will upon their Oaths give any Credit to the Evidence of a Person against whom such a Testimony is given.

Mr. *Phipps*. We are speaking only, my Lord, to the Credit of Mr. *Porter*, and if we can shew by Evidence that he is so ill a Man as to be guilty of those Crimes that we have open'd, according to the Instructions in our Brief; we hope the Jury will not think him fit to be a good Evidence against us in this Matter.

L. C. *J.* What say you to this, Mr. *Attorney*?

Mr. *Att. Gen.* My Lord, they themselves know, that

that this Sort of Evidence never was admitted in any Case, nor can be, for it must tend to the Overthrow of all Justice and legal Proceedings; for instead of trying the Prisoner at the Bar, they would try Mr. *Porter*. It has been always deny'd where it comes to a particular Crime that a Man may be prosecuted for, and this it seems is not one Crime or two, but so many and so long continued, as they say, and so often practis'd, that here are the whole Actions of a Man's Life to be ript up, which they can never shew any Precedent when it was permitted, because a Man has no Opportunity to defend himself. Any Man in the World may by this Means be wounded in his Reputation, and Crimes laid to his Charge that he never thought of, and he can have no Opportunity of giving an Answer to it, because he never imagined there would be any such Objection: It is killing a Man in his good Name by a Side-wound, against which he has no Protection or Defence. My Lord, this must tend to the preventing all Manner of Justice; it is against all common Sense or Reason, and it never was offer'd at by any Lawyer before, as I believe, at leastwise never so openly; and therefore I wonder that these Gentlemen should do it, who acknowledge, at least one of them did, that as often as it has been offer'd it has been over-rul'd; and I know not for what End it is now offer'd, but to make a Noise in the Court: They know that it is irregular as much as any thing that could be offer'd.

Mr. *Sol. Gen.* Indeed, my Lord, if the Prisoner at the Bar had offer'd this Matter, it had been excusable; but, that Gentlemen of the long Robe, and who are so well acquainted with the Practice of the Courts of Law, should pretend to do such a Thing, is unaccountable. There was somewhat like this that was offer'd at *Manchester*, but that was by the Prisoner, to prove that one *Lunt* who was a Witness had two Wives, and they brought a Copy of an Indictment upon which there was no Process; after that they endeavour'd to prove him guilty of several Robberies; but all that Sort of Evidence was refus'd. I only give them this Instance to shew, that where the Prisoner has attempted it, it has been always rejected; and I am sure they cannot shew me that ever it was allowed, even to the Prisoner himself, to give any Thing of this Kind in Evidence; and this I must say, they can never shew me any one particular Instance, when Council ever endeavour'd to do it, before this Time.

Sir *B. Shower*. My Lord, I mentioned the particular Crimes, the Faults which I had in my Instructions to object against the Credit of the Testimony of Capt. *Porter*, in Answer to Mr. *Attorney's* Desire, that I would open the Particulars of the Evidence, that I would call my Witnesses to the Truth of it; I was loth to repeat the Words, I think the Things themselves so abominable; but we conceive with Submission, we may be admitted in this Case to offer what we have offered. Suppose a Man be a common, lewd, disorderly Fellow, one that frequently wears to Falshood for his Life: We know it is a common Rule in Point of Evidence, that against a Witness you shall only give an Account of his Character at large, of his general Conversation; but that general Conversation arises from particular Actions, and if the Witnesses give you an Account of such disorderly Actions repeated, we hope that will go to his Discredit, which is that we now are labouring

for, and submit it to your Lordship's Opinion whether we may not do it.

L. C. J. Look ye, you may bring Witnesses to give an Account of the general Tenour of his Conversation, but you don't think sure that we will try now at this Time, whether he be guilty of Robbery or Buggery.

Sir *B. Shower*. My Lord, we will give you an Account that he us'd to have a private Lodging; and come in with his Horse tir'd, and several other such Things, as that he us'd to go out in Disguises, and the like.

Mr. *Phipps*. My Lord, I cannot imagine why a Man that has been guilty of any such Crimes, and is not taken, should be of greater Credit than a Man that has been taken and punish'd.

L. C. J. What is that you say Mr. *Phipps*?

Mr. *Phipps*. My Lord, I say 'tis the Crime that renders a Man infamous, and I do not know why a Man that has had the good Fortune not to be taken and punished for great Crimes by him committed, should be in a better Condition as to the Credit of his Testimony, than one that is taken and undergoes the Punishment of the Law.

Mr. *Sol. Gen.* Mr. *Charnock* urg'd that as far as it would go, but we are oblig'd, it seems, to hear Things that have been over-ruled over and over; but I desire to know of them, whether they can shew he has been guilty of a greater Crime than he has confess'd himself guilty of in Court, I mean of the intended Assassination.

Mr. *Phipps*. No, we agree we can't; but pray let us prove him guilty of as many Crimes as we can.

Mr. *Sol. Gen.* But, my Lord, I hope you'll keep them to the general Question of the common ordinary Tenour of his Conversation.

Sir *B. Shower*. Call Mr. *Oldfield*, Mr. *Nicholas*, Mr. *Milford*, *Black Will*.

(*Mr. Milford appeared.*)

Crier. Lay your Hand on the Book. The Evidence that you shall give on behalf of the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

Sir *B. Shower*. Pray will you give my Lord and the Jury an Account whether you know Captain *Porter*, and how long you have known him.

Milford. I have known him about Four Years.

Sir *B. Shower*. What Reputation is he of?

Milford. I never knew any Hurt by him in my Life.

Sir *B. Shower*. Pray what is your Name?

Milford. *Frederick Milford*.

Sir *B. Shower*. But the Name in my Brief is *John Milford*, that is my Man.

L. C. J. But you see this Man knows him.

Sir *B. Shower*. Call Mr. *Oldfield*.

(*Which was done, and he appear'd accordingly.*)

Mr. *Phipps*. Do you know Captain *Porter*?

Oldfield. Yes I do.

Mr. *Phipps*. How long have you known him?

Old. I believe about Twenty Years.

Mr. *Phipps*. Pray will you give my Lord and the Jury an Account of his Life and Conversation.

Oldfield. I can say nothing, he was always civil in my Company, but he was lewd in his Discourse.

Sir *B. Shower*. What do you mean by being lewd in his Discourse?

S f f f

Oldfield.

Oldfield. Why he would be talking very extravagantly.

Mr. Phipps. What do you mean in talking, was it of what he had done himself, Sir?

Oldfield. No otherwise than that he had whor'd, and those Kind of Things.

Sir B. Shower. What other Things beside Whoring?

Oldfield. I know no other Part of it.

Sir B. Shower. Where is *Edward Bowceby*?

(*He did not appear.*)

Mr. Phipps. Call *William O Bryan*.

(*He did not appear.*)

Sir B. Shower. Where is *Mr. Page*, and *Mr. Hardiman*?

(*None of them appeared.*)

Cryer. There is not a Man of them here, Sir.

Sir B. Shower. *Mr. Webber*, Do you know where they are, for the Court stays for them.

Mr. Webber. Indeed I do not, they were summon'd to be here.

Sir B. Shower. Where is *black Will*?

Cryer. *Black Will*.

(*He appear'd, and was a Moor.*)

L. C. J. Ask him if he be a Christian.

Cryer. I have ask'd him, and he says he is a Christian.

(*Then he was sworn.*)

L. C. J. Well, What do you ask him?

Rookwood, Will, Pray give an Account of your Master, and of his Life and Conversation.

Mr. Phipps. You are sworn to tell the Truth, Sweet-heart.

Will. I served him almost Eight Years, and he has been a very good Master to me, my Lord.

Sir B. Shower. What do you know him to be guilty of?

Will. Nothing at all.

Sir B. Shower. I believe they have put in these Men to confirm his Reputation.

L. C. J. Indeed, I think the King's Council should have called these Witnesses, if there had been Occasion.

Sir B. Shower. We submit it to your Direction, how far this Evidence will affect him; there is nothing said, as we apprehend that will amount to Treason: If the Prisoner has a Mind to say any Thing himself, we hope your Lordship will please to hear him.

L. C. J. Ay, if he will, let him.

Rookwood. My Lord, *Mr. Porter* does not say, that I consented to command a Party.

L. C. J. Is that all you have to say? Then, Gentlemen, will you sum up?

Mr. Conyers. My Lord, we are agreed, we submit to the Court on both Sides.

L. C. J. Then Gentlemen of the Jury, the Prisoner at the Bar, *Mr. Rookwood* is Indicted for High-Treason, in Compassing, Imagining, and Intending the Death and Destruction of the King, by a most barbarous and wicked Assassination; you have had an Account of this Design from Two Witnesses that have been produced, the One is *Captain Porter*, and the Other is *Mr. Harris*, who swear they were both concerned as Actors in it.

Captain Porter tells you, about the latter End of *January*, or the Beginning of *February* last, *Sir George Barclay* came over into *England* from *France*; and there was a formed Design to mur-

der the King; and after several Meetings and Conferences among the Conspirators, they came to a Resolution that he should be assassinated; but which way to effect it, admitted of a Dispute among them; for the King, as you have heard, going frequently, about once a Week a Hunting, on the other side the Water near *Richmond*, the Design was first to assassinate him at *Richmond Park*, or thereabouts, as he returned from Hunting, and Preparation was made accordingly; but that not being so fully agreed upon, the Conveniency of the Place held still some Debate; for some were of Opinion, that it was better to make the Attempt on this side the Water, than on the other; therefore as *Mr. Porter* tells you, to determine that Difficulty, there were several Men sent, whereof he was one, *Knighley* another, and *King* a Third, to view the Ground on both sides the Water, and to make their Report; the Ground being view'd and the Report made to some of their Accomplices, who to receive it met at the *Nagg's-Head* in *Covent-Garden*, which was about the Tenth or Twelfth of *February* last; it was then agreed, that the King and his Guards should be attack'd on this side the Water about *Turnham-Green*.

Mr. Porter has told you, that at several Meetings for the carrying on this Design, the Prisoner *Mr. Rookwood* was present, more particularly at the *Globe-Tavern* in *Hatton-Garden*, where were also *Sir George Barclay*, *Mr. Charnock*, *Sir William Perkins*, himself, and others, and there they did enter into a Consult how they might assassinate the King; and it being propos'd, *Mr. Rookwood* did not like it, as *Mr. Porter* says, but said it was a desperate Attempt, and thereupon *Sir George Barclay* pulled out a Scheme that he had, and shew'd it at that Time to *Mr. Rookwood*, and said you are sent over from *France*, and are to obey my Orders, and you are to command a Party; and then *Mr. Rookwood* made an Answer in French, *there's an End of it*, which, as he says, imports a Consent.

Then at another Time, which was the *Saturday* Morning the 15th of *February*, they met at *Captain Porter's* Lodging, and there was a Discourse about going on to put the Design in Execution; and one *Durant*, one of the Men that was to watch the King and the Guards going out at *Kensington*, came in, and the Question was, whether they should go that Day upon the Design; they had Discourse about it, and *Mr. Rookwood* the Prisoner was there present, and there did not appear any Dissent in him to the Prosecution of the Design, but it seems it was readily agreed among them, to pursue it according to the former Determination.

Then the next Witness that is produc'd is *Mr. Harris*, who gives you a large Account of the Beginning of his Knowledge, and of his being concern'd in this Matter; he tells you he was in *France*, and at the Court of *St. Germans*, where the late King then was, and that he spoke with him, and where was also *Colonel Parker*, and *King James* took Notice of him and of his faithful Service, and told him, he always design'd him a Kindness, and then had Opportunity of doing it, and said he would send him over into *England*, where he should be substituted, and directed him to obey the Orders of *Sir George Barclay*; and there being one *Hare* by, who was to come

come over with him, King *James* gave them both Names of Disguise, which they were to go by in *England*, and, as it seems, others that came over did also assume; for Mr. *Rookwood* went by the Name of *Roberts*, *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiney*; they were directed to apply themselves to Sir *George Barclay*, and had Directions how they should find him, which were to go into *Covent-Garden* in the Evening, upon a *Monday* or a *Thursday*; and if they saw a Person that had a white Handkerchief hanging out of his Pocket, they were to take Notice of him to be Sir *George Barclay*, and they had Ten *Lewis d'Ores* a-piece for their Journey's to carry them off; and you have heard from whom they had them; and they were told, that if at *Calais* they were kept longer than they expected, whereby their Money was spent, Care was taken that they should be supplied from the Governor of *Calais*, the President there; and it seems Mr. *Harris* and Mr. *Hare* went together to *Calais*, and lay a considerable Time for want of a Wind, whereby their Money fell short of defraying their Expences; but they were afterwards supplied by the Governor of *Calais*, according as was promised at *St. Germain's*.

Gentlemen, he tells you, that after they came into *England*, the first Time they went to seek Sir *George Barclay*, was upon the *Monday* Night, but they did not find him at that Time, but afterwards they met with him, and Mr. *Harris* had Subfistence-Money from him, according to King *James's* Promise, which was at the Rate of 5 s. a Day when he had no Horfe, and afterwards when he had a Horfe at 6 s. a Day; this is the Account he gives you how he came over, and of his Journey and meeting with Sir *George Barclay*.

And now he comes to speak particularly concerning the Prisoner at the Bar, Mr. *Rookwood*: He tells you that on *Saturday* Morning the 15th of *February*, the first Day when this Assassination was designed to be committed, he went to the Lodging of one *Burk*, where Mr. *Rookwood* was, with others, and he found them all in a great Disorder; and thereupon he ask'd them, What was the Matter, and what they were going to do? And *Rookwood* bid him go to one *Counter*, and he should know of him what was the Matter: Accordingly he went to his Lodging, and *Counter* told him and those who were with him, That they must get ready to go to *Turnbam-Green*; and at the same Time and Place he met with Sir *George Barclay*, and after some Discourse of attacking the Coach, Sir *George Barclay* at the first said, They were his Janizaries; and afterwards going out, he came in again and said, They were Men of Honour, and that they were to go abroad to attack the Prince of *Orange*.

The next Day, or a little Time after, Mr. *Harris* met with Mr. *Rookwood*, and enters into Discourse with him to this Effect: What! are we sent over to murder the Prince of *Orange*? It is a strange Sort of Employment: (for it seems they were not informed in *France* what they were to do here, but they were to put themselves under the Conduct of Sir *George Barclay*, and obey his Orders.) Mr. *Rookwood* said, He was afraid the Thing was so, and that they were drawn in; but said, If he had known of the Design before-hand, he would not have come over but have begg'd the King's Pardon. Which shews not only his Know-

ledge of the Design, but his being engaged in the Prosecution of it.

And then, Gentlemen, you are told further, That upon the Going out upon *Saturday* the 22d, which was the second Time it was to have been put in Execution, there was a List of Men that Mr. *Rookwood* gave to Mr. *Harris* of several Names that he has mentioned to you; he says, Mr. *Rookwood's* Name was at the Top, as one that was to command the Party, and the Name he went by was *Roberts*; and there was *Harris's* counterfeit Name, which was *Jenkins*; and *Hare's* counterfeit Name, which was *Guiney*; and they were to make ready to go to *Turnbam-Green*. He told him, There was a List, and that he and *Harris* was to be of his Party, that he was to attack the Prince of *Orange*, and that Mr. *Harris* should be his *Aid du Camp*.

Gentlemen, I forgot to tell you, That between the first *Saturday* and the second, Mr. *Harris*, Mr. *Rookwood*, and Mr. *Lowick*, walking in *Red-Lyon-Fields*, and there in Discourse among themselves, Mr. *Harris* and Mr. *Rookwood* did express themselves to be much concerned that they were to be employed upon such a Design as this was, which they owned to be very barbarous; but Mr. *Rookwood* and *Lowick* said, They were under Command, and must obey Orders, tho' Mr. *Rookwood* did not like the Design they were engaged in.

Gentlemen, they have told you of Horfes that were placed at *Somerfet-House* in a Stable there, under the Care of Mr. *Lewis*, my Lord *Feversham's* Gentleman of the Horfe, about six or seven Horfes, and those six Horfes that were there at that Time were afterwards taken away; but that is only a Circumstance.

So that, Gentlemen, this is now the Sum and Substance of this Evidence that has been given you, as far as it relates to the Prisoner; his Council in his Defence have insisted upon several Things; in the first Place, tho' it was last mentioned in Time, yet it ought to have the first Consideration; The Council for the Prisoner have endeavoured to take off the Credit of Mr. *Porter*, and have opened indeed very great Crimes that he should be guilty of, which must render him a Person not to be believed, but they have not proved any Thing; no Witness that they have called against Mr. *Porter* says the least against him to invalidate his Testimony, or to induce you to disbelieve what he has said.

Then they say in Point of Law, There is no Overt-Act proved of any Design against the King's Life that affects Mr. *Rookwood*; now that Matter you are to consider of, Whether or no it does appear by the Testimony of two Witnesses, that Mr. *Rookwood* was concerned in this Design of Assassinating the King; Capt. *Porter* is positive that he was at the Consult at the *Globe* Tavern, where it was proposed, debated, and resolved upon; but Mr. *Rookwood* says, he did dislike it; so says Captain *Porter*, he did not approve of it at the first upon his being acquainted with it; but being sent over to obey the Orders of Sir *George Barclay*, and Sir *George Barclay* producing a Scheme ready drawn, wherein he was to command the Party, telling him, That he must obey Orders. You hear what he said, and the Answer he return'd in *French*, There's an End of it; Whether that does not amount to

a Consent and Agreement to be engaged in this Design, is left to your Consideration, for if it do, it is plainly an Overt-Act.

Then, Gentlemen, you hear further that *Harris* was told by Mr. *Rookwood*, that he should be of his Party, and be his *Aid du Camp*, and go to *Turnham-Green*, to attack the Prince of *Orange*, and he had a List of Men given him by *Rookwood*, and was directed to get the rest ready.

Rookwood. That was not in the Indictment.

L. C. J. But you were at that Meeting, which is laid in the Indictment.

Rookw. My Lord, that List is not in the Indictment; the List in the Indictment refers to Mr. *Cranburne*.

L. C. J. No, but that is an Evidence of your being in the Design; I hope that List of Men will be some Evidence of the Consent and Agreement that Mr. *Rookwood* was to command a Party.

Sir B. Shower. With Submission, my Lord, the Words of the Act seems otherwise, and that no Overt-Act should be given in Evidence, that is not expressly alledged.

L. C. J. But cannot there be one Act, that may be Proof of another Act which is alledged.

Sir B. Shower. Then there is no Advantage of this Law; for my Lord, the End of the Act was, That they should know the particular Crimes that they were to answer to.

L. C. J. That could never be the End of the Law, that all particular Facts that are but Evidence of the Facts alledged should be set forth in the Indictment; it was sufficient before the Act, to alledge any Overt-Act, and any other Overt-Act, though not alledged, and had no Relation to the Overt-Act that was alledged, yet if it were to the same Sort of Treason, might be given in Evidence.

Sir B. Shower. The Law says, ye shall not give Evidence of any Overt-Act that is not expressly mentioned.

L. C. J. It is not urged as an Overt-Act, but as Evidence of an Overt-Act that is alledged; for Instance, the Overt-Act alledged, is, That they did meet and consult, shall not they give in Evidence what was said and done at those Meetings, tho' not alledged? *Sir George Barclay* produced a Scheme at the *Globe Tavern*, shall not the producing of that Scheme be given in Evidence? if it may, why not the giving the List to *Harris*?

Mr. Phipps. My Lord, it is plain it was Mr. *Attorney's* Opinion, it could not be given in Evidence, unless it was alledged in the Indictment; because he has particularly alledged the List in *Cranburne's* Case, in this very Indictment

Mr. Sol. Gen. I know not what those Gentlemen mean by this Sort of Practice; certainly there never were so many Irregularities committed in any Trial as in this, and now particularly to break in upon the Court in the midst of the Charge.

L. C. J. Nay, nay, if there be any Mistake, let us hear them, that it may be rectified.

L. C. J. Treby. I think we should receive them, to try if they can make it out. But the Objection I do not very well understand yet; for, as I take the Matter to stand, it is alledged in the Indictment, That they had prepared Men, and Arms, and Horses, for the Execution of this Design. Now is it not reasonable, or can there be any Thing more proper, than to give in Evidence, and prove that the Prisoner had, and delivered to some of the Complices, a List of those Men that were to

do it. Why, it proves the very Thing alledged; but let us see whether it be so?

Sir B. Shower. My Lord, there is no such Thing alledged.

L. C. J. That is strange, Pray see if it be not in the Indictment.

Clerk of Arraignment. (Reads.) *Conveniebant, proposuerunt, tractaverunt, consultaverunt, consenserunt, & agreeverunt, ad ipsum Dominum Regem nunc ex Insidiis & Dolo percipiendum, Anglice, to assassinate, interficiendum, & murdrandum; & ad execrabilem, horrendam, & detestabilem Assassinationem, Anglice, Assassination, & Interfectionem illam citius exequendum & perpetrandum, postea, scilicet eisdem Die & Anno, ac diversis aliis Diebus & Vicibus, apud Parochiam predictam in Comitatu predicto, proditorie tractaverunt, proposuerunt, & consultaverunt de Viis, Modis & Mediis, ac Tempore & Loco, ubi, quando, qualiter & quomodo dictum Dominum Regem sic ex Insidiis facilius interficerent; & consenserunt, agreeverunt & assenserunt, quod quadraginta Homines equestris aut eocirciter, quorum iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent quatuor, & quilibet horum proditorie super se suscepit esse unum, cum Bombardis, Sclopis & Sclopetis, Pulvere bombardico & Globulis plumbeis oneratis, & cum Gladiis, Ensisibus & aliis Armis armati insidiati forent, & essent in Subsestu, Anglice, in Ambush, ad eundem Dominum Regem in Rheda sua, Anglice his Coach, existentem, quando foris iret invadendum; quodque quidam & competens Numerus de Homibus illis sic armatis in Satellites, Anglice the Guards, ipsius Domini Regis eum tunc attendentes & secum existentes aggressi forent, & eos expugnarent & devincerent, dum alii eorundem Hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderent & murrarent.*

Mr. Conyers. And my Lord, there is Evidence of some of these Forty Men, whose Names were given in a List by *Rookwood* to *Harris*.

Mr. Phipps. But now in *Cranburne's* Part, the List is expressly alledged as an Overt-Act.

L. C. J. Never talk of *Cranburne*, we have not him before us now, but what do you say to this of the List given by *Rookwood* to *Harris*?

Sir B. Shower. My Lord, we say this is not Evidence of an Overt-Act, according to this Act of Parliament; which says, No Evidence shall be given of any Overt-Act, that is not expressly alledged in the Indictment; now the Indictment says, they did agree that Forty Horsemen armed, of which the Four named were to be Four, and every one undertook to be one, who should lie in wait to set upon the King in his Coach, and a competent Number should set upon the Guards; and then it says, in order to fulfil this, they did prepare Horses and Arms, and one of them by the Consent of all the rest, did carry forward and backward a List, that is, *Cranburne*; and that particular List is a particular Overt-Act alledged in the Indictment, which makes it plain, they thought it necessary to be particularly alledged by this Act of Parliament, or they could not give any Evidence of it; now the List that Evidence is given of, is supposed to be delivered by the Prisoner to *Harris*. Now first we say, it is not Evidence that Forty should do it, for they may do it without a List; and next it is not Evidence of the List that

that they have mentioned, for that is alledged to be carried about by *Cranburne*, and as the Prisoner himself has observed, this List given to *Harris* is not in the Indictment, and therefore no Evidence can be given of it.

Mr. Conyers. It is an Evidence of that Overt-Act which is expressly alledged in the Indictment, that they met together to consult how to effect this Treason.

Mr. Cowper. My Lord, we are in a very strange Case here, if we be not very proper in this Part of our Evidence; the Overt-Act laid, is, That the Prisoner met together with others to consult how to assassinate the King, and there the Prisoner among the rest did agree it should be done so and so. 'Tis admitted the Prisoner was there; but, say they, if you only prove that he fate by, while there was a general Discourse of such a Matter, but do not prove that he said or did any Thing, expressing his Assent, that will not amount to a Proof of the Overt-Act laid; and yet, if we go about to prove further, any Act done that manifests his Assent, then they say you go too far, and prove an Overt-Act that is not mentioned in the Indictment: Thus they grant, the Agreement is a sufficient Overt-Act, but object, that being present barely is not a sufficient Proof of his Agreement; then when we go to make Proof of any Thing that is a sufficient Proof of his Agreement, they tell us it is not proper upon this Act of Parliament, because not laid in the Indictment, though his Agreement be laid in the Indictment: And so they would amuse us, rather than make any solid Objection to our Evidence. This Doctrine is certainly very odd, my Lord, and we doubt not will have little Weight with the Court or the Jury.

Mr. Att. Gen. According to this Doctrine all the Evidence must be put in the Indictment.

L. C. J. They ask you what this giving this List does prove?

Mr. Att. Gen. His Agreeing at that Meeting to the Conspiracy, and the Execution of it, by giving that List of the Names of them that were to be of his Party, and his own Name as Commander of that Party, this he gives to one that was to be of the Party, and particularly was to be his *Aid du Camp*, in order to get them ready for the Execution; is not this an Evidence of the Agreement, which is the Overt-Act? No Man in the World can be convicted of Treason, if this Doctrine be true.

Mr. Sol. Gen. My Lord, they have not express'd something in the Indictment that has been read, which will make it plain that this is the most proper Evidence of the Overt-Act laid in the Indictment. The Indictment says, they agreed there should be forty Men or thereabouts armed, of which a certain Number should make an Assault upon the King's Coach, while another Part should set upon the Guards: Now the Proof we make is, that *Mr. Rookwood* the Prisoner, was to command a Party that was to set upon the Guards, and in order to it, he gives a List of his Men to *Harris* who was to be his *Aid du Camp*, and bids him get those Men ready; and this was upon the Day that this Matter was to be acted: So that it proves very plainly that Overt-Act that we suggest in the Indictment, that a certain Number of those Men were to assault the King's Person, and another Part the Guards. And therefore they needed not to have interrupted your Lordship; for this List

that *Harris* speaks of, is a very good Proof of the Overt-Act that is laid in the Indictment.

L. C. J. Then, Gentlemen, as to this Matter which they have objected, that this List given on the Day of the intended Assassination, ought not to be allowed as Evidence to prove the Treason, because it is not specially laid in the Indictment, but is by the late Act of Parliament excluded from being proved to convict the Prisoner; now tho' the Act doth exclude the giving in Evidence of any Overt-Act that is not laid in the Indictment, yet it doth not exclude such Evidence as is proper and fit to prove that Overt-Act that is laid in the Indictment. Therefore, the Question is, whether this giving of the List does not prove some Overt-Act that is alledged in the Indictment? There is in the Indictment an Agreement laid to kill the King, and if that be proved, that's an Overt-Act of this Treason; now when the Consent and Agreement of *Mr. Rookwood* to that Design is proved, surely the Proof of his giving a List of Men is a further Proof that he did agree to it, and then it is very proper to be given in Evidence; for if by the new Statute no one Act can be given in Evidence to prove another, then must not only the Overt-Act, but also the Evidence of that Act be expressed in the Indictment.

Gentlemen, you have heard the Witnesses what they say concerning this Matter. In the first Place, if you do believe that there was such Consults and Meetings, where this intended Assassination of the King was debated and resolved upon, and that *Mr. Rookwood* was present and did agree to it, that is an Overt-Act; and again, if you are satisfied that there was an Agreement to prepare and provide a Number of Men to set upon the King and his Guards, in the Manner you have heard, and he was concerned in making this Provision, and was to have a Post, and command a Party in that Attack, that is a further Proof of that Consent and Agreement, that is laid in the Indictment.

Gentlemen, I must leave it to you, upon the Evidence that you have heard; if you are satisfied, upon the Testimony of these two Witnesses that have been produc'd, that *Mr. Rookwood* is guilty of this Treason of which he is indicted, in Compassing and Imagining the Death of the King, then you will find him Guilty: If you are not satisfied that he is Guilty, you will acquit him.

Cl. of Arr. Cryer, swear an Officer to keep the Jury.

(Which was done.)

L. C. J. Now if you have any Thing to move on Behalf of your other Clients pray do it.

Sir B. Shower. Yes, we have an Exception, but never a one of false Spelling.

L. C. J. If so be it be any such Matter as you can move in Arrest of Judgment, it had best be reserv'd till after the Verdict.

Sir B. Shower. Our Exceptions will serve if Occasion be for *Mr. Rookwood* in Arrest of Judgment, and they will serve for the others also to prevent the Trouble of the Trial, if we have your Lordship's Opinion that they are good Exceptions.

Then the Jury withdrew to consider of their Verdict, and after a Quarter of an Hour's staying out return'd, and gave in their Verdict.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names. *Samuel Powel.*

Mr. *Powell*. Here.

Cryer. Vous avez. (*And so of the Rest.*)

Cl. of Ar. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. Our Foreman.

Cl. of Ar. *Ambrose Rookwood*, hold up thy Hand, (*which he did.*) Look upon the Prisoner; how say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed?

Foreman. None to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that *Ambrose Rookwood* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods,

or Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Jury. Yes.

Mr. *Powell*. We desire we may be discharged.

L. C. J. We cannot do that, till we see whether there be enough upon the other Pannel, we will give you as much Ease as we can, we shall not I suppose try the other till the Afternoon, therefore you may take your Ease for the present, but you must be about the Court when the other Trials come on.

While the Jury was withdrawn, the Court offered to the Council for the Prisoners, that they might move what Exceptions they had before the Jury was sworn as to any of the other; which accordingly they did; but that relating to the Case of Mr. Charles Cranburne, in whose Presence, being then at the Bar, the Objections were made, that Part is left to his Trial.



CLIV. *The Trial of CHARLES CRANBURN, for High-Treason*, April 21, 1696. 8. Will. III.

At the Session of Oyer and Terminer for the County of Middlesex, sitting in the Court of King's-Bench at Westminster.

AFTER the Trial of *Ambrose Rookwood* was over, while the Jury were withdrawn to consider of their Verdict, the Court proceeded in this Manner.

Sir John Holt. *L. C. J.* Mr. *Attorney*, Whom will you have try'd next?

Sir Thomas Trevor, Mr. *Att. Gen.* *Cranburne*, if your Lordship pleases.

Cl. of Arr. Then, Keeper of *Newgate* set *Charles Cranburne* to the Bar.

L. C. J. You, Gentlemen, that are of Council for the Prisoner, if you have any Thing to move for your Client, you may move it; but first let the Prisoner be here.

Then Charles Cranburne was brought to the Bar in Irons.

L. C. J. Look you, Keeper, you should take off the Prisoners Irons when they are at the Bar, for they should stand at their Ease when they are try'd.

Keeper. My Lord, we have no Instruments here to do it just now.

Cl. of Arr. You may send to the *Gate-house*, and borrow Instruments.

Mr. *J. Powell*. It should be done indeed; they ought to plead at Ease.

L. C. J. Well go on *Sir Bartholomew Shower*.

Mr. *Att. Gen.* My Lord, before *Sir Bartholomew Shower* enter upon his Exceptions, unless those Exceptions of his are some of the Particulars mention'd in this Act he must not do it now, after Plea pleaded, before the Trial; but he must do it in Arrest of Judgment.

L. C. J. Treby. It is true, regularly; but let him use his own Judgment.

L. C. J. It is very true; the Course has not been to allow them to move to quash an Indictment for Treason, or Felony; but it may be done.

Mr. *Att. Gen.* Sure it must be only for such Things as they cannot take Advantage of in Arrest of Judgment after the Verdict.

L. C. J. It has not been the Course, but it may be done.

Mr. *Att. Gen.* Not where there is an Issue join'd, and a Jury return'd to try that Issue; I believe that never was done, nor attempted.

L. C. J. Treby. If there were any Prejudice to the King by it, it were not fit for us to alter the Course; but let us hear what his Exceptions are.

Sir B. Shower. I have several Exceptions; five at least; one of them is within the very Words of the Act, that is, improper *Latin*; I am sure some of it is so.

L. C. J. Well, let's hear what that is.

Sir B. Shower. It says, *Anno Regni dicti Domini Regis nunc Septimo*, and *Lewis* is the last King mentioned before; and so here is no Year of the King of *England* mention'd. It is a certain Rule, that Relatives must refer to the last Antecedent, and that Rule holds always, unless there be Words that accompany the Relative, which undeniably shew to what it refers.

L. C. J. Ay; but do we call the *French King Dominus Rex*?

L. C. J. Treby. He would have been so, if he had succeeded in his Invasion, and this Assassination.

Sir B. Shower. In every Indictment, if there be Occasion to mention a former King, it is always *super*

nuper Rex, and such a one, naming the Name of the King, where the present King's Name does intervene, to prevent Confusion; and so in civil Actions it is the same; and so it should have been here.

L. C. J. Ay; but I tell you, it is *Dominus Rex nunc*, which is our King.

Mr. Phipps. It is not said *Anglia*.

L. C. J. But wherever it is *Dominus Rex*, we understand it of the King of *England*, and no Body else. Read the Indictment.

Cl. of Arr. *Necnon eundem Dominum Regem ad Mortem & finalem Destructionem ponere & adducere, ac subditos suos fideles, & Liberos Homines Hujus Regni Angliæ in servitutem intolerabilem, & miseriam Ludovico Regi Gallico subjugare, & mancipare, Decimo Die Februarii, Anno Regni dicti Domini nunc Regis, septimo, & diversis aliis Diebus, &c.*

L. C. J. Can any Man imagine this to be the *French King*?

Sir B. Shower. My Lord, your Lordship is not to imagine one Way or other.

Mr. Cowper. In the strictest Sense and Grammar in the World, it must mean King *William*, and no other. We do not need any Imagination, when in the strictest Construction, it is plain who it refers to.

Sir B. Shower. I am sure no Grammar can make it good; nothing but a Supposition can help it.

Mr. Cowper. When it is said *Dictus Dominus Rex*, if Sir *Bartolomew Shower* can find out another *Dominus Rex* in the Indictment, than he may make something of his Objection; but the *Dominus* is only apply'd to our own King throughout.

L. C. J. Treby. Besides, as to the Rule that Sir *Bartolomew Shower* mentions, it is that *ad proximum Antecedens fiat Relatio nisi impediatur Sententia*. That's the Restriction of the Rule, it must relate to the next Antecedent, unless the Sense would be prejudiced; but here if this Construction should be, it would make this Clause to be no better than Nonsense, *viz.* That the Subjects and Freemen of this Realm were to be brought into intolerable Slavery to *Levis* the *French King*, such a Day in the Seventh Year of the Reign of our Lord the *French King*.

Sir B. Shower. We say it is little better than Nonsense, I am sure it is loose, and uncertain, and not Grammar, but carries a new Form with it.

L. C. J. No, it is as well as it can be.

Sir B. Shower. Then, my Lord, there is another Exception; it is said, *Diversis Diebus & Vicibus tam antea quam postea*; and then afterwards it says, *postea scilicet eodem Decimo Die Februarii*; that is repugnant; it is as much as to say, That upon the Tenth of *February*, and two Days afterwards (to wit) the said Tenth Day of *February*; that is, after two Days after the Tenth of *February*, *viz.* upon the same Tenth Day.

Mr. Att. Gen. That *Postea* is another Sentence, and relates to other Matters.

Sir B. Shower. It can't in Propriety of Speech be said to be afterwards the same Day.

Sir *John Hawley*. Mr. *Sell. Gen.* If Sir *Bartolomew Shower* remembers the Evidence that we have given this Day, he will find it was in Fact so; they met on the *Saturday Morning*, and afterwards met again the Night of the same Day.

L. C. J. There is nothing in that Objection

sure, it is a common Form, when they tell of different Matters.

Sir B. Shower. Well then, if you will hear the rest which are not of the same Nature, we shall come to what we think a fatal Exception; we say this Indictment of High-Treason being against a Subject born, ought to have had the Words in it, *Contra supremum naturalem Ligeum Dominum suum*; according to *Calvin's Case* in the 7th Report, *Fol. Septimo*.

L. C. J. It is *Contra Ligeantiae suæ Debitum*, is it not?

Sir B. Shower. That won't help it, my Lord, for all that is applicable to an Alien born: And so is the Case in my Lord *Dyer*, 144. where it is said, That if an Indictment of Treason be against an Alien, you must not put in the Word *naturalem*, if you do, it will be faulty, because he owes but a local Allegiance to the King of *England*; and not a natural one. Now we say, there are none of these Prisoners but are Subjects born, and the constant Form in Queen *Elizabeth's* Time, and Queen *Mary's*, was to put in the Words *Naturalem Dominum*, and they cannot shew me any of those Precedents without it. There was Occasion in *Tucker's Case* to look into this Matter, and search all the Precedents. I have look'd into my Lord *Coke's* Entries, and all the Precedents; I have seen my Lord of *Esssex's* Indictment, and all the others in Queen *Elizabeth's* Time, and those of the Traitors in the Powder-Plot, and those of the Regicides, and *Tucker's* own Indictment it self; all along it is *Naturalem Dominum suum*; and the Reason for it is, he that is Alien born, you never put in *Naturalem Dominum suum*, because he owes a double Allegiance; one Natural, to his own King under whose Dominion he was born, and the other Local, to the King in whose Dominions he resides, for he is bound to observe the Laws of the Place where he lives: And if he violate them, he does break the Allegiance that he owes to the Government where he lives, upon Account of the Protection he enjoys under it. But if he be born a Subject of the King of *England*, he has but one natural Liege-Lord; and he being an *Englishman* born, the King stands in that Relation to him, as he does to all his native Subjects, but not to Foreigners; and therefore it was thought requisite to be, and has always been inserted into Indictments of Treason against Subjects born. And, my Lord, we think the very Resolution of the Court, afterwards affirm'd in the House of Lords that revers'd *Tucker's* Attainder, went upon this Opinion, That the Law required *naturalem Ligeum Dominum* to be put in. There the Exception was, that *Contra Debitum Ligeantiae suæ* was omitted; To which it was objected, that there was *Dominum Supremum Naturalem*, which was equivalent: No, it was answer'd, both were requisite, because every Act charg'd in the Indictment ought to be laid against the Duty of his Allegiance. Now in Indictments of Treason, there are certain Words that are essential, because of their Relation between the King and his People. There are certain Forms of Words, which if the constant Practice has been to make Use of them, the Omission is an Error. Those usual Forms ought to be observ'd, and the Want of them will be a fatal Exception; so we think it would be in this Case, as much as if the Word *Proditorie* had been left out; or as if in a Case of Felony and Burglary, the Words *Felonice*, and *Burglariter* had been left out.

Mr. *Phipps*. My Lord, we take the Practice, and Precedents to be the Rule of Law in the Case; and I have look'd over a great many Precedents, besides those that Sir *Bartolomew Shower* has cited; and I never saw any one Precedent of an Indictment of Treason against a Subject born without the Word *naturalem*; and all the Cases cited by Sir *Bartolomew Shower* are full in the Point. *Conuter's Case* in my Lord *Hobart*, 271. where 'tis said, that if there be an Indictment against a Subject born, it must be *Contra naturalem Dominum*; if against an Alien, *naturalem* must be left out. To say *Contra Ligeantia suae Debitum* will not do, it is not enough; for that may be said against an Alien, because he owes a local Allegiance, tho' not a Natural one. And I take it, upon this Difference, this Indictment is not good.

Mr. *Att. Gen.* My Lord, I do not know how far you will think it proper to enter into this Matter before the Trial.

L. C. J. Mr. *Attorney*, I think you had as good speak to it now as at another Time; tho' I must confess it is not so proper in Point of Practice.

Mr. *Att. Gen.* Well, my Lord, then we will speak to it now. The Objection is, That the Words *naturalem Dominum* is not in the Indictment; which they say is contrary to the usual Form: As to the Precedents, there are a great many where it has been, and I am sure a great many where it has not been; and I am sure for this Six, Seven, or Eight Years last past, it has always been omitted: And, with Submission to your Lordship, it is not at all necessary, if there be Words in the Indictment which shew, that what he did was against the Duty of his Allegiance to his Lawful and Undoubted Lord (which are the Words in this Indictment.) It is true, if he be not a Subject born, *naturalem* cannot be in, because that is contradictory to the Obedience which he owes, for it is not a natural Obedience that he owes, but a Local; but if a Man be a Subject born, and commits Treason against the Allegiance that he owes, that is against his natural Allegiance; for whatsoever he does against his Allegiance, he does against his natural Allegiance, and so there's no need to put in the Word *naturalem*; because he owes no other Allegiance but that; it is sufficient if that be put in which shews its being against his Allegiance. If they could shew that a Subject born has two Allegiances, one that is natural, and the other that is not natural; then if you would prosecute him, you must shew, whether it was against his natural, or against his other Allegiance. But when he has none but a natural Allegiance, certainly against his Allegiance, without putting in natural, will be well enough. It is true, where there is no natural Allegiance, it must be wrong if you put it in, because you put in that Allegiance which he does not owe; but where he is a Subject born, to put in natural Leige-Lord there is no Ground at all for it; there are Words enow that shew it was against his Allegiance to his Lawful and Undoubted Lord.

L. C. J. Look you, Sir *Bartolomew Shower*, how does it appear, that these Men are Subjects born? The Matter you go upon does not appear upon the Indictment, and you are not to go off from that.

Sir *B. Shower*. Every Man is presum'd to be so, unless the contrary appears.

L. C. J. You quote *Calvin's Case*, and the other Cases that are there put; those are all Cases of Aliens; there is *Dr. Lopez's Case*; He being an Alien comes into *England*, and commits High-Treason: Why, say they, how shall we indict this Man? We cannot say it is *Contra Naturalem Dominum suum*; for he owes no natural Allegiance to the Queen of *England*; How shall we do to frame a good Indictment against this Man? They considered of this; and they said it will be a good Indictment, to charge him with High-Treason, or any one else, leaving out the Word *Naturalem*: For if it appear he has committed an Offence against the Laws of the Kingdom, and against the Duty of his Allegiance, which is High-Treason, that's enough. Now as to *Tucker's Case*, it was reversed for want of the Conclusion, *contra Debitum Ligeantia suae*. Those Words are material; for let the Offence be never so much against the Person of the King, as to assassinate him, or levy War against him, yet still if it be not against the Duty of his Allegiance, as it cannot be if he owes him none, it is not High-Treason. And therefore if it be against his Allegiance, whether that Allegiance be natural or local, it is all one, it's enough to make it High-Treason.

Mr. *Soll. Gen.* In that Case in *Dyer*, they shew where it was a Fault to put the Word in, but they can shew no Case where it has been adjudged to be a Fault to leave the Word out.

L. C. J. No Doubt it would be a Fault to have that in, *Contra Naturalem Dominum suum*, where there is only a local Allegiance due.

Mr. *Phipps*. How does it appear whether it is the one or the other that is due?

L. C. J. It is no Matter whether the one or the other do appear, it is High-Treason be it the one or the other, if it be against the Duty of his Allegiance.

Mr. *Phipps*. Suppose an Indictment against an Alien were, *Contra Naturalem Dominum*.

L. C. J. That would be ill, because then you had laid it more specially, and otherwise than really it is, and restrained it where you ought not to do it.

Mr. *Phipps*. How then, my Lord, shall it appear that he only ow'd a local Obedience?

L. C. J. It may be given in Evidence, That he is an Alien born.

Mr. *Soll. Gen.* He may plead it in Abatement to the Indictment.

L. C. J. He ought to be acquitted, for you have indicted him of a Crime against his natural Allegiance, when he owes no such. But Allegiance generally comprehends all Sorts of Allegiance, Natural, and Local.

Sir *B. Shower*. How then, my Lord, come all the Lawyers of all Ages to put in those Words in Indictments of High-Treason against Subjects born?

L. C. J. No, I have seen Abundance of Precedents, that have only *Contra Ligeantia suae Debitum* generally, and so the most part are; for Allegiance is the *Genus*, and if that be suggested, all the *Species* are contain'd under that.

Mr. *Att. Gen.* Well, have they any more?

Sir *B. Shower*. Yes, we have more.

L. C. J. Well, you shall have them all in time.

Sir *B. Shower*. My Lord, here is another Objection, and that's this; Here is one Fact that they have laid, and that's the 2d Overt-Act in this Indictment,

dictment, that they consented and agreed that Forty Men, (whereof these Four were to be Four) but do not lay it to be done traiterously. They say *Consenferunt Agreeaverunt & Assenserunt*, but not *proditorie*; and I never saw an Indictment that laid an exprefs Overt-Act, without repeating the Word again. If your Lordship pleases, the Words in the Indictment are thus; as to the first Overt-Act, it is laid in this manner; *Et ad execrabilem Assassinationem illam exequend.* at such a Time and such a Place *proditorie tractaverunt proposuerunt & Consultaverunt de vijs modis & mediis, &c.* and then comes this which we except against; *& Consenserunt Agreeaverunt & Assenserunt quod Quadraginta Homines, &c.* Now this is a plain distinct Act, and there is no *proditorie* to it; and if ever they can shew me any Indictment, in which an Overt-Act was laid, of which they gave any Evidence, and it had not the Word *proditorie* in it, I am very much mistaken. I am sure, I never saw any such. And it is not enough to say, that the Nature of the Thing is such, as that it cannot but be a Treasonable Act; but they must alledge it to be so, by the exprefs Use of that Word, which the Law has appointed to exprefs this Crime by. In the Case of an Indictment for Felony, if it be not said Felony, it is not good. They are not to describe that by Circumlocution, which is a particular Crime fixt by Law, they must use the *Verba Artis*, the Terms of Art, and no other: If your Lordship pleases it may be read.

Mr. Sol. Gen. Let it be read if you please; but take it in *English*, and it is no more than this, they did traiterously compass the Death of the King, and for that purpose they did traiterously meet, and consult about the Ways and Means, and did consent and agree that forty Men, &c.

Cl. of Arr. Reads, *Et ad Execrabilem Horrendam & Detestabilem Assassinationem Anglice Assassinationem & Interfectionem illam Citius exequendum & anno ac Diversis aliis Diebus & vicibus apud parochiam predictam in Comitatu predicto proditorie tractaverunt, proposuerunt & Consultaverunt de vijs modis & mediis ac Tempore & Loco ubi quando qualiter & quomodo Dictum Dominum Regem sic ex Insidiis facilius Interficerent.*

Sir B. Shower. There is an End of that, now go on.

Mr. Att. Gen. No, Sir *Bartholomew*, you mistake, there is no End of it, that's done at the same time with that which follows.

Sir B. Shower. No it is not the same Overt-Act; but let him go on.

Cl. of Arr. *Et Consenserunt Agreeaverunt & Assenserunt quod quadraginta Homines Equestris.*

Sir B. Shower. Well, you need read no further for our Objection. We say, there wants the Word *Proditorie*: For there are two Overt-Acts, the One is, that they traiterously did consult of the Ways and Means, how to kill the King, and that Overt-Act we agree to be well laid: But then it says they consented, and agreed that there should be Forty Men, whereof these Four should be Four, but does not say they traiterously agreed; are not these distinct Acts?

Mr. Phipps. Surely, My Lord, they are distinct Acts; for this Part of the Indictment upon which Sir *Bartholomew* grounds his Objection, is that Overt-Act of which the List in Mr. *Rookwood's* Case was urged by the King's Council, and agreed by the Court to be an Evidence.

Then the Jury against Mr. *Rookwood* came in, and delivered in their Verdict, as it is in his Trial, then afterwards the Court went on thus.

Mr. Att. Gen. My Lord, the Objection is, that *Proditorie* is not inserted into that particular Clause of the Indictment, which shews their particular Agreement that there should be forty Men, whereof the Four named in the Indictment were to be Four. Now your Lordship observes how the Indictment runs, it is for Compassing and Imagining the Death and Destruction of the King; and it sets forth for this Purpose, that to effect this Compassing and Imagining, they *Proditorie tractaverunt & Consultaverunt de vijs mediis & Modis*, how they should kill the King. Now that which immediately follows after is, the particular Method and Means that were agreed upon, that is, that there should be forty Men. Now this is the strangest Suggestion that ever was, when we have set forth, that traiterously they did so agree of the Ways and Means, and then set forth the particular Means, that here must be *proditorie* again to that. This is such a Construction as I cannot but admire how it could come into any one's Head. It is Part of the Sentence; for the other Part, as we have laid it, is not compleat before: It may be it might be sufficient without setting forth the particular Ways and Means; but when it is set forth, it is Part of the Sentence, and refers to the first Beginning.

L. C. J. Aye sure it does

Mr. Att. Gen. I cannot tell what they would have, unless they would have us repeat the Word *proditorie* in every Line.

Mr. Sol. Gen. Or before every Verb.

Sir B. Shower. No, but I think it ought to be repeated at every Overt-Act.

Mr. Conyers. If your Lordship pleases, after that they have set forth that this was the particular Method and Way agreed upon at their Consultation, that forty Horsemen or thereabouts should go about it, of which the Persons indicted were to be Four, it goes on, *Et Quilibet eorum proditorie super se Suscepit esse unum*, there it is put in, and it appears to be as particular as possible can be.

Mr. Cowper. Sir *Bartholomew Shower* says, that when we have alledg'd that they did traiterously treat, propose and consult of the Means and Ways of killing the King, there we have done the Sentence and made that one Overt-Act. Now how is the Sentence done? The next Word is a Conjunction Copulative, *& Consenserunt, &c.* And what is the Use of a Conjunction Copulative? But to convey the Force of the Words in a former Sentence to the Sentence following, and to prevent the Repetition of every Word in the subsequent Sentence that was in the Precedent: But it is plain, they are both one and the same Overt-Act, and these subsequent Words are only an Explanation, more particularly of the Overt-Act set forth in the precedent Words.

Sir B. Shower. In Answer to that, that has been said, if they shew me any Precedent, where an Indictment has been for High-Treason, setting forth several Overt-Acts, and not the Word *proditorie* set to every Overt-Act, then they answer my Objection. If the Word *Quod* had come in, that would have made them distinct to be sure; and I think they are as distinct Acts now; suppose they had concluded at the End of the Word *Interficerent*, that had been a good Overt-Act; I

am sure they will agree that: And if it be so, then the other is a good Overt-Act too. For it is a distinct Thing from that which was a perfect Sentence before; and it either requires a *Like-wise*, or the Word *Proditorie* must be repeated. They have not so much as said *similiter Consequuntur* or *simili modo*; there is an (E) indeed, but that does not so couple the Sentences together, as not to make them distinct Acts. There are several *Ets* thorough the whole Indictment, but that does not, as Mr. *Cowper* would have it, couple all together to make one Overt-Act.

Mr. *Phipps*. My Lord, if what Mr. *Cowper* says be allow'd, (*viz.*) that the (E) makes it one intire Sentence, then there is no Overt-Act at all; for after the Treason alledg'd, the Clauses are coupled to one another by an *Et*, and consequently by Mr. *Cowper's* Way of arguing the whole Indictment is but one intire Sentence.

L. C. J. I do not understand your Meaning as to that; they tell you *Proditorie* is alledged to the Consulting, Contriving and Agreeing, then they tell you what was the subject Matter of that Contrivance and Agreement to assassinate the King, and in order to that they agreed there should be 40 Men, is not that good enough, without *Proditorie* to every Line

Sir B. *Showers*. No, it is not said in *Ordine ad*, there is no such Thing; but only they did consult of the Ways and Means, and did agree that 40 Horsemen should do it, and afterwards did agree to provide Horses and Instruments of War. Now that being with a *Quodque*, they say makes a new Overt-Act; but I cannot understand why *Quodque* is not as much a *Copulative* as *Et*, and the one should not have the same effect as the other.

L. C. J. First it tells you there was a Consult and Agreement to assassinate the King, and for the Accomplishment of the said Assassination, afterwards *eisdem die & Anno Proditorie Tractaverunt & Consultaverunt de vijs & modis*, how they should kill the King.

Sir B. *Showers*. That is one Overt-Act, say we, and there you should stop.

L. C. J. *Et Consequuntur & Agreeverunt quod quadraginta Homines, &c.* it is all at the same time, and must be intended the same Consult and Contrivance; that they consulted of the Ways and Means, and then agreed so many Men should be provided.

Mr. *Phipps*. No, My Lord, we say that is another Overt-Act.

L. C. J. *Treby*. It seems to me to be a specifying and particularising the Ways and Means, that they had consulted of, and concluded on.

Sir B. *Showers*. If it had been a specifying, it had been much better to put in either then and there, or that this was the Result of the Consultation.

L. C. J. *Treby*. It does seem to me so, that it was the Result of the Consultation, and it is well enough.

L. C. J. You had better have sav'd these kind of Exceptions till the Trial was over.

Sir B. *Showers*. But, my Lord, if there be one Overt-Act ill laid, I submit it whether they can give any Evidence of that Overt-Act.

L. C. J. *Treby*. No doubt of that they cannot; but we think it is as well laid as it could be laid.

L. C. J. Truly I am not well satisfied, that it is necessary after you have laid the *Proditorie*, as

to the particular Treason, to lay it again to the Overt-Act. For the Overt-Act is but Evidence of the Treason: The Treason it self lies in the Compassing, which is an Act of the Mind.

L. C. J. *Treby*. You cannot Indict a Man of Treason for Assassinating or killing the King, but you must in every such Case frame the Indictment upon the Article for Compassing and Imagining the Death of the King; which must be laid to be done traiterously. Then when afterwards you say the Person accused did wound him, or imprison him, or consult and agree to assassinate him, or did actually assassinate him, these are but so many Overt-Acts of compassing the Death, and you having first said that he did *Proditorie* compass and imagine the King's Death, you have thereby shewn that you charge him with a greater Offence than Felony (which my Lord *Coke* says is the Use of the Word *Proditorie*;) and that being thus done, I do not apprehend it to be necessary that you should add *Proditorie* to all the rest of the following Particulars; for they are only external Discoveries of the inward Treason; and more properly deemed to be Evidence of the Treason, than to be the Treason it self.

L. C. J. The Treason is consummate in the Intention, besides the Words of the Statute make that the Treason, not the Overt-Act, that is but Evidence, and so it was held, (not upon this Exception, but upon the Reason that my Lord speaks of) in the Case of the Regicides of King *Charles* the First, That the Indictment should not be for killing the King, but for compassing and imagining his Death, and the Killing was alledg'd as an Overt-Act.

Sir B. *Showers*. It must be so if it were for levying of War.

L. C. J. Most true; for levying the War is the Treason, but in this Case we think it is no Exception.

Mr. *At. Gen.* Then let us have the Fifth.

Sir B. *Showers*. Then, my Lord, here is another Thing. It is a Question whether there be any Overt-Act presented by the Jury at all. The Indictment says, *Juratores pro Domino Rege presentant*, that they as false Traytors did compass the Death of the King, and the Slaughter of his Subjects, and they did meet, and consult, and agree how to do it, *Et iidem Christophorus Knightly* and the rest, to fulfil their said traiterous Intentions and Imaginations did, afterwards, the tenth of *February*, buy Arms and Horses. Now our Objection is, That it does not appear, that any one of these Overt-Acts are the Presentment of the Jury; with Submission they ought to have begun it again, either with a *Quodque*, or something that should have referred it to the first, *Juratores presentant*, or else they must have begun quite again, with a *Juratores Ulterius presentant*, and not have coupled them as this is with an *Et*. The most Forms begin with an *ulterius presentant*, but here we find no Overt-Act is so introduced. They might present Part, and not present the other Part, for any Thing that does appear. Every Thing ought to be laid positively, as the Jury's *Dictum*; it may be only the Clerk's Saying, and not the Jury's, for any Thing that does appear. Your Lordship remembers the Case of the King and *Trobridge* upon a Writ of Error to reverse a Judgment for erecting and continuing a Cottage against the Form of the Statute; now *Contra formam Statuti* was in the Beginning of the Indictment,

ment, but not in the Conclusion; to the erecting but not the continuing. And though there was there *Juratores ulterius dicunt*, it was not *super Sacramentum suum*, and they did not say, he did continue it against the Statute; and there being no formal Presentment, that he maintain'd the Cottage notwithstanding the Act, *Et* did not so couple it to the first Part, as to make it a good Presentment. So we say in this Case, this is a Fault, and different from all the common Forms; there ought to be a direct Presentment of each Overt-Act, and not coupled by an *Et*. For *Et* will not do it; for it is a distinct Overt-Act every one, and should have been *Et quod Consultaverunt, quodque Agreeverunt*, that a certain Number should do so and so; and to be sure, it should have been so at the last Overt-Act, which is only, *Et iidem Christophorus Knightly, &c.* did buy Arms and Horses. Now this last *Et*, being a loose Conjunction Copulative, in common Sense ought to refer to that which they had agreed upon, for that is last mention'd there, and the natural Sense leads thither, and not to the Beginning of the Bill *Juratores presentant quod*.

Mr. Phipps. I shall not trouble your Lordship further, they ought to have put in a *Quodque*, or an *Uterius presentant*.

Mr. Att. Gen. Where would you have the *Quodque*, or the *Uterius presentant*?

Mr. Phipps. Either to every Overt-Act, or at least to that last.

Mr. Att. Gen. The Indictment sets forth, that they committed such, and such a Treason; Their Objection is, that *Quodque* is not put into every Overt-Act; and our Answer is, that the first *Quod* governs all that relates to that Treason. It may be if there were two distinct Treasons in the Indictment, when you come to set forth the Second Treason, you should say *Juratores ulterius presentant* the Second Treason; but the Overt-Acts to prove the same Treason, are all Parts of that Treason, and make but one Species of Treason, which is the Imagining the Death of the King. There's the Treason; and to bring it to pass, they did so, and so: This, my Lord, must be Part of the Finding of the Jury as well as the Treason it self, of which these are the Overt-Acts. But then if you will lay the levying of War in the same Indictment, then it may be you must say *Juratores ulterius presentant quod, &c.* But it had been a strange Absurdity to say, *Juratores ulterius presentant*, such and such Overt-Acts: For the Overt-Act is not a further Indictment, but only a setting forth that which is Evidence, upon which they found the Indictment for Treason.

Mr. Sol. Gen. What the Indictment says, is as direct Affirmation as can be all along of the Presentment of the Jury, that the Prisoner and others did compass and imagine the Death of the King; and to bring it about, they did consult together, and did agree to make use of such and such Means, and were to have a Party of 40 Men, and they bought Arms and Horses. Now it does not repeat *quodque*, or *ulterius presentant quod*, to every one of those Sentences, that they did so and so, and that they did so and so. Now I would fain know the Difference between Saying, and they did such a Thing, and Saying, and that they did such a Thing. That's all the Difference that they think to overturn this Indictment for. The omitting of a *Juratores ulterius presentant*, certainly is nothing; for the first Presentment runs

through the whole Indictment, and there does not need an *Uterius*.

Sir B. Shower. Certainly there should have been a *Quodque* at least.

L. C. J. No indeed, I think it is better as it is, than as you would have had it; because the first *Quod* goes through the whole, That in order thereunto he did so and so; would you have it said *Et quod* in order thereunto he did so and so; but tho' that may be good Sense, I think it is not so good as the other. This Indictment is for one Sort of Treason, and that is, for Compassing the Death of the King; and it is, I think, more proper to have but one *Quod*, than to have more; for it makes the whole Indictment more entire. As to the *Juratores ulterius presentant*, that is never proper, where the Species of Treason is the same: For indeed if there had been two distinct Treasons, the one for compassing the Death of the King, and the other for levying of War, in that Case you must bring it in by *ulterius presentant*: Because they are two several Offences, though compris'd in one Bill, and they are in Law as two Indictments. And so it is in the Case that you mentioned of Cottages: It is one Offence to erect a Cottage, and another Offence to continue a Cottage, and they are to have several Punishments; and because they there jumbled them both together in one Indictment, that Indictment was held to be nought: For by Law, the Indictment for erecting a Cottage, ought to conclude *contra formam Statuti*, and then the Jury must begin again, *Et ulterius presentant quod* the Cottage was continu'd against the Form of the Statute; because they are several Offences. But here the High-Treason is but one and the same Offence, and the other Things are but Overt-Acts to manifest this Treason, the Compassing the Death of the King; and truly I think it is better as it is.

Mr. Phipps. I have seen several Precedents of Indictments, where the several Overt-Acts were to the same High-Treason, but still they had each an *ulterius presentant*.

Mr. Att. Gen. I believe it is hard to find many Indictments in the same Words: I am sure all are not.

L. C. Baron. Is it not as great an *Sir Edward Ward*. Affirmation to say, and they did such a Thing, as to say, and that they did such a Thing.

L. C. J. I cannot reconcile it to my Reason, but it should be as good Sense without *that* as with it.

L. C. J. Treby. In a long Deed it begins, *This Indenture witnesseth*, that the Party granted so and so, and the Party covenants thus and thus; and so it goes on commonly, without renewing the Word *That* to the subsequent Clauses: But yet the first Expression (*This Indenture witnesseth that*) governs the whole Deed, though it be many Skins of Parchment.

L. C. J. If you begin with an Indenture, you begin, *That* it witnesseth so, and so; without renewing, unless it be a very distinct Thing.

Sir B. Shower. My Lord, we think that Similitude makes for us. *A. B.* covenants so and so in a Conveyance, and then further, that so and so.

L. C. J. But there you restrain that in the Beginning of the Covenant to every particular in that Covenant.

Mr. At. Gen. Will your Lordship please to call the Jury now?

L. C. J. Have you a Mind to go on with the Trial, or to go to Dinner?

Mr. At. Gen. I believe your Lordship can try but one more to Night, and that may be as well after Dinner as before.

L. C. J. Well then, adjourn till 5 a-Clock, and in the mean time, you Keeper, knock off the Prisoners Fetters.

Keeper. They shall, my Lord.

Then the Court adjourned till 5 a-Clock in the Afternoon, it being then about 3.

Post Meridiem, the 21st of April, -96.

The Court returned, and was resum'd about 6 in the Evening.

Cl. of Ar. Keeper of Newgate, bring Charles Cranburne to the Bar, (which was done.) Charles Cranburne, hold up thy Hand (which he did.) Those good Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; and therefore if you will challenge them or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Cranburne, My Lord, I humbly desire I may have Pen, Ink, and Paper.

Court. Aye, Aye. (*He had them.*)

Cl. of Ar. Where is George Ford?

Cryer. Vouz Avez.

Cranburne. I challenge him.

Cl. of Ar. William Underhill.

Cranburne. I challenge him.

Cl. of Ar. William Withers.

Cranburne. I challenge him.

Mr. Phipps. If your Lordship please, those that were of the last Jury I hope shall not be call'd of this Jury: This Prisoner being tried upon the same Indictment the last was.

L. C. J. If they be not, it shall be in Ease to them, but it is not in Favour of you.

Mr. Phipps. We humbly conceive, having given their Verdict upon the same Indictment, they are not such indifferent Persons, as the Law intends they should be, and think it is good Reason they should not serve upon this Jury.

L. C. J. What though it be upon the same Indictment? the Evidence is not the same; for they are distinct Offences.

Mr. Phipps. I do not know whether it be a good Cause of Challenge, but submit it to your Lordship.

L. C. J. Well, you may doubt of it if you please, and try the Exception.

Cl. of Ar. Thomas French.

Cranburne. I challenge him.

Cl. of Ar. John Wolfe.

Cranburne. I challenge him.

Cl. of Ar. James Bodington.

Cranburne. I challenge him.

Cl. of Ar. Jonathan Andrews. (He did not appear.) *John Raymond.*

Cranburne. I challenge him.

Cl. of Ar. George Hawes.

Cranburne. I challenge him.

Cl. of Ar. Francis Barry.

Cranburne. I challenge him.

Cl. of Ar. Arthur Bailey.

Cranburne. I challenge him; he was upon the last Jury.

L. C. J. That is no Reason; Will you challenge him pre-emptorily?

Cranburne. I do challenge him.

Cl. of Ar. John Caine.

Cranburne. I do not except against him.

Cl. of Ar. Hold Mr. Caine the Book, Cryer.

Cryer. Look upon the Prisoner, Sir. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence, so help you God.

Cl. of Ar. Thomas Glover.

Cranburne. I challenge him.

Cl. of Ar. Dormer Sheppard. (He did not appear.) *George Tredway.* (He did not appear.) *Matthew Bateman.* (He did not appear.) *Timothy Thornbury.*

Cranburne. I challenge him.

Cl. of Ar. James Partberich.

Cranburne. I challenge him.

Cl. of Ar. Thomas Freeman. (He did not appear.) *Robert Bredon.*

Cranburne. I do not except against him. (*He was sworn.*)

Cl. of Ar. Joseph Blisset.

Cranburne. I challenge him.

Cl. of Ar. Timothy Lanno. (He did not appear.) *John Harris.* (He did not appear.) *John Billiers.*

Cranburne. I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. Richard Bourn.

Cranburne. I do not except against him. (*He was sworn.*)

Cl. of Ar. George Carter. (He did not appear.) *Francis Chapman.*

Cranburne. I challenge him.

Cl. of Ar. Alexander Forth.

Cranburne. I challenge him.

Cl. of Ar. Nicholas Roberts.

Cranburne. I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. Thomas Playstead.

Cranburne. I challenge him.

Cl. of Ar. William Atlee.

Cranburne. I challenge him.

Cl. of Ar. John Marjlb. (He did not appear.) *Andrew Cook.*

Cranburne. I do not except against him. (*He was sworn.*)

Cl. of Ar. John Hall.

Cranburne. I challenge him:

Cl. of Ar. William Partridge.

Cranburne. I challenge him.

Cl. of Ar. Peter Levigne.

Cranburne. I challenge him.

Cl. of Ar. Thomas Moody.

Cranburne. I challenge him.

Cl. of Ar. Richard Belinge.

Cranburne. I challenge him.

Cl. of Ar. Thomas Evans.

Cranburne. I do not except against him. (*He was sworn.*)

Cl. of Ar. Thomas Ramage.

Cranburne. I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. Edward Townsend.

Cranburne. I challenge him.

Cl. of Ar. William Gunson.

Cranburne. I challenge him.

Cl. of Ar. Philip Wightman.

Cranburne. I say nothing against him. (*He was sworn.*)

Cl. of Ar.

Cl. of Ar. *John Wyborne.*

Sir *B. Shower.* I hope you take an Account of the Challenges, Mr. *Hardistey.*

L. C. J. Nay, you should take care of the Challenges, who are his Council; if he had no Council; we wou'd take care of him.

Cryer. Here is Mr. *Wyborne,* What say you to him?

Cranburne. I have nothing to say. (*He was sworn.*)

Sir *B. Shower.* I hope your Lordship will also be of Council for him.

L. C. J. We are to be equal and indifferent between the King and the Prisoner: But you that are now his Council by Law, ought to take care that he lose no Advantage.

Cl. of Ar. *William Strode.*

Cranburne. I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. *Daniel Byfield.* (*He did not appear.*)
Benjamin Noble. (*He did not appear.*) *Thomas White.*

Cranburne. I do not except against him. (*He was sworn.*)

Cl. of Ar. *Cryer* Countez. *John Caine.*

Cryer. One, &c.

Cl. of Ar. *Thomas White.*

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Twelve Sworn were these,

<i>John Caine, Esq;</i>	}	<i>Thomas Evans, Gent.</i>
<i>Robert Bredon, Esq;</i>		<i>Thomas Ramage, Gent.</i>
<i>John Billers, Esq;</i>		<i>Philip Wightman, Gent.</i>
<i>Richard Bourn, Esq;</i>		<i>John Wyborne, Gent.</i>
<i>Nich. Roberts, Gent.</i>		<i>William Strode, Gent. and</i>
<i>Andrew Cook, Gent.</i>		<i>Thomas White, Gent.</i>

C. of Ar. Cryer, make Proclamation.

Cryer. Oyez. If any one can inform my Lords the King's Justices of Oyer and Terminer, the King's Serjeant, or the King's Attorney General, before this Inquest be taken of the High-Treason, whereof the Prisoner at the Bar stands Indicted, let them come forth and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance.

L. C. J. Mr. Attorney, Do you think we shall be able to try the other to Night.

Mr. *At. Gen.* That is according as this holds, my Lord.

L. C. J. I speak it for the Ease of the Jury, that they might be dispatched, and not attend another Day.

Mr. *At. Gen.* I doubt we cannot try any more than this to Night.

L. C. J. Well it is no great Matter, it will be but a Morning's Work; it may be too great a Stress and a Hurry to do any more to Night; and therefore we will discharge the Jury for to Night, those of them that are not sworn; but we will be here to Morrow Morning by Seven a Clock; and therefore pray Gentlemen attend early.

Cl. of Ar. *C. Cranburne* Hold up thy Hand. (*which he did.*) You that are sworn look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Charles Cranburne,* late of the Parish of *St. Paul Covent-Garden,* in the

County of *Middlesex,* Yeoman, for that he, with *Christopher Knightley,* late of the same Parish and County, Gentleman, *Robert Lowick,* late of the same Parish and County, Gentleman, and *Ambrose Rookwood,* late of the same Parish and County, Gentleman, the Fear of God in their Hearts not having, nor weighing the Duty of their Allegiance, but being mov'd and seduced by the instigation of the Devil, against the most Serene, most Illustrious, most Clement, and most Excellent Prince, our Sovereign Lord, *William the Third,* by the Grace of God, of *England, Scotland, France and Ireland,* King, Defender of the Faith, &c. their Supreme, True, Rightful, Lawful, and undoubted Lord, the Cordial Love, and the true and due Obedience, Fidelity and Allegiance which every Faithful Subject of our said Lord the King that now is, towards him our said Lord the King shou'd bear, and of Right ought to bear, withdrawing, and wholly to extinguish intending and contriving, and with all their Strength, purposing, designing and conspiring the Government of this Kingdom of *England,* under him our said Lord the King that now is, of Right, duly, happily, and very well established, altogether to subvert, change and alter; as also our said Lord the King to Death and final Destruction to put and bring, and his Faithful Subjects, and the Freemen of this Kingdom of *England* into intolerable and most miserable Slavery to *Lewis the French King* to subjugate and enthrall, the 10th Day of *Feb.* in the 7th Year of the Reign of our said Lord the King that now is, and divers other Days and Times, as well before as after; at the Parish of *St. Paul Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine and contrive, purpose, design and intend our said Lord the King that now is, to Slay, Kill, and Murder, and a miserable Slaughter among the faithful Subjects of him our said Lord the King, throughout this whole Kingdom of *England* to make and cause; and their said most wicked, impious, and devilish Treasons, and traiterous Compassings, Contrivances and Purposes, aforesaid, to fulfil, perfect, and bring to Effect, they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood,* and *Charles Cranburne,* and very many other false Traitors, to the Jurors unknown; afterwards, to wit, the same Tenth Day of *February,* in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, traiterously, and with Force and Arms, did meet, propose, treat, consult, consent, and agree, him our said Lord the King that now is, by lying in wait and wile, to Assassinate, Kill and Murder: And that execrable, horrid, and detestable Assassination and Killing the sooner to execute and perpetrate; afterwards, to wit, the same Day and Year, and diverse other Days and Times, at the Parish aforesaid, in the County aforesaid, traiterously did treat, propose, and consult of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what manner our said Lord the King is by lying in wait the more easily they might Kill: And did consent, agree, and assent, that Forty Horsemen, or thereabouts (of whom they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood,* and *Charles Cranburne,* should be four;

and every one of them traiterously took upon himself to be one) with Guns, Muskets, and Pistols, charged with Gun-powder and Leaden Bullets, and with Swords, Rapiers, and other Weapons, Armed, should lie in wait, and be in Ambush our said Lord the King, in his Coach being, when he should go abroad, to set upon; and that a certain and competent Number of those Men so armed, upon the Guards of our said Lord the King, then attending him, and being with him, should set upon, and them should fight with, and overcome; whilst others of the same Men so armed, him our said Lord the King should Assassinate, Slay, kill, and Murder. And they the said *Christopher Knightly*, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, the Treasons, and all their treasonable Intentions, Purposes and Contrivances aforesaid, to execute, perform, fulfil, and bring to effect, afterwards, (to wit) the aforesaid Tenth Day of *February*, in the Seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords and Rapiers, and other Weapons, Ammunition, and Warlike Things, and Military Instruments, falsely, maliciously, secretly and traiterously did obtain, buy, gather together, and procure; and to be bought, obtained, gathered together, and procured, did cause, with that Intent them in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King that now is, as aforesaid, to be us'd, employ'd, and bestowed: And the same Premises the more safely and certainly to execute, do, and perpetrate, the aforesaid *Christopher Knightly*, with one *Edward King* (late of High-Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attained) by the Consent and Assent of divers of the Traitors and Conspirators aforesaid, the aforesaid Tenth Day of *February*, in the Seventh Year aforesaid, traiterously did go, and came unto the Place proposed, where such intended Assassination, Killing, and Murdering of our said Lord the King, by lying in wait, should be done, perpetrated and committed, to view, see, and observe the Convenience and Fitness of the same Place for such lying in wait, Assassination, and Killing, there to be done, perpetrated and committed; and that Place so being seen and observed, afterwards, to wit, the same Day and Year, his Observations thereof to several of the said Traitors and Conspirators did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid; and the said *Charles Cranburne* the same Day and Year there, in order to the same execrable, horrid, and detestable Assassination and Killing of our said Lord the King, by the Traitors and Conspirators aforesaid, the more readily and boldly to execute, perpetrate, and commit, advisedly, knowingly, and traiterously did bear and carry among divers of these Traitors and Conspirators forward and backward from some to others of them, a List of the Names of divers Men of them who were designed and appointed our said Lord the King, so as aforesaid, by lying in wait, to Kill and Murder, against the Duty of his Allegiance, and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and whereunto hath pleaded not guilty, and for his

Trial hath put himself upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High-Treason whereof he stands indicted, or not guilty; if you find him Guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so and no more: And hear your Evidence.

Mr. *Montague*. May it please your Lordship, and you Gentlemen of the Jury; this is an Indictment of High-Treason that is found against four Persons; but the particular Treason against the Prisoner at the Bar, is for Compassing and Imagining the Death of the King, and endeavouring to subvert the Government, and enslave the Nation to *Lewis* the *French King*: And the Indictment sets forth, that the Prisoner at the Bar did for this purpose meet and consult with several false Traitors to the King and Government, of the Ways, Manner, and Means how, and the Time and Place when and where to Assassinate the King; and at length they agreed that forty Horsemen should go together, and set upon the King in his Coach, as he returned from Hunting; some to attack the Coach, while others set upon the Guards. The Indictment does further charge him with getting Horses and Arms, and particularly with carrying a List of the Assassimators from one to another. These are the particular Things charged in the Indictment, and to this Indictment he has pleaded not guilty; if we prove the Fact, Gentlemen, we don't doubt your Justice.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury; the Prisoner at the Bar, *Charles Cranburne*, is indicted for High-Treason, in compassing and imagining the Death of the King. Gentlemen, the Overt-Acts laid in the Indictment to prove the Prisoner guilty are, That he was at several Meetings and Consultations about the Manner of putting this Design in Execution; at which Meetings it was agreed, that there should be about forty Horsemen in Number prepar'd, and arm'd for that Purpose, and they did provide Horses and Arms for that very Thing, and did agree to put it in Execution.

Gentlemen, the Evidence that you will hear produced against the Prisoner at the Bar will be of this Nature. You will hear from the Witnesses, that about *Christmas* last, or the Beginning of *January*, Sir *George Barclay*, did come over from *France* from the late King *James*, to whom he was an Officer in his Guards, with a Commission for attacking the Prince of *Orange*, or levying War upon his Person. He came over about that Time, and several Troopers of the late King *James's* Guards, to assist him in that barbarous Conspiracy. When Sir *George Barclay* came over, he did acquaint with this Design several Persons in *England*, that he thought proper to be Accomplices with him in it; particularly Capt. *Porter*, Mr. *Charnock*, Sir *William Perkins*, and several others whose Names you will hear of, and they had several Meetings about it the Beginning

ginning of *February*, at Capt. *Porter's* Lodgings, at the *Nagg's-Head* in *Covent-Garden*, at the *Sun-Tavern* in the *Strand*, at the *Globe Tavern* in *Hatton-Garden*, and several other Places where they consulted in what manner they might attempt and accomplish this bloody Design.

Gentlemen, you will hear, that at these Meetings it was propos'd, that they should do it by Ambuscade as the King came from *Richmond* a Hunting, whither he used to go upon *Saturdays*: Others were for doing it on this Side the Water. And so their Opinions being divided, it was thought necessary to find out and settle which was the best Place; and in Order thereunto they employ'd Capt. *Porter*, Mr. *Knightley*, and Mr. *King* (who was executed) to view the Ground, and accordingly they went, and pitch'd upon the Lane between *Brentford* and *Turnham-Green* for this Purpose, as the most convenient Place: And having to do so, they came back, and gave an Account to thole that had appointed to meet 'em, to hear the Success of their Expedition, at the *Nagg's-Head* in *Covent-Garden*, and in that Place, you will find by the Evidence, that thole Persons, who were the Heads of the Conspiracy, undertook to find their several Proportions of Men, for whom they would undertake, that would go with them, and be concern'd in this Design. Sir *George Barclay* was to furnish about twenty. He had the Command of the Troopers that came from *France*, and thole other Officers that came thence, were under him. Capt. *Porter* was to furnish seven, *Charnock* was to furnish eight, Sir *William Perkins* was to furnish five Horses and three Men, and, I think, *Lowick* was to furnish some more: In the whole Number they reckon'd there should be about forty.

It will appear, Gentlemen, that the Prisoner at the Bar, Mr. *Cranburne*, was one of the Men that Capt. *Porter* undertook to get, and engage in this Design; and accordingly Capt. *Porter* did acquaint Mr. *Cranburne* with it; and he did undertake to be one, and to be ready to go with him, and be concern'd in this Assassination. You will find he was acquainted with it about the 14th of *February*, the Day before the first Time that they intended to assault the King: Then he did undertake and agree to prepare himself against the next Day. The next Day, which was the 15th of *February*, they had several Meetings, and they were making Preparation in Order to go out. It happen'd, by great Providence, his Majesty did not go abroad that Day, and thereupon they dispers'd themselves; but they had Meetings afterwards, at which Meetings the Prisoner was present, with Capt. *Porter*, Mr. *Pendergrafs*, *La Rue*, and several others that were concern'd in the Conspiracy, particularly the 21st of *February*, the Day before the second Time they were to have put this in Execution. Capt. *Porter* being at the *Sun-Tavern*, with several other Gentlemen, and they resolving to have it executed the next Day, if the King went abroad; Capt. *Porter* sent for *Cranburne*, and *Keys* that was executed, and *Kendrick* and *Sherborn*, four of thole that he had undertaken for, (of whom, I say, *Cranburne*, the Prisoner at the Bar, was one) and then he acquainted 'em that they were resolv'd to go on with it the next Day. And then they agreed to be in a Readiness accordingly. The next Day the Prisoner, with some others, met at Mr. *Porter's*, where they were preparing to go out and attack

the King, and they had several Discourses about the Ways and Means of doing it; and particularly Capt. *Porter* at that Time said, that he had a very good Gun that held about six or eight Bullets, and that Mr. *Pendergrafs* was to have, who was to attack the Coach, and shoot into the Coach: Mr. *Cranburne* was there present at that Time, and Mr. *Cranburne* was employ'd particularly by Capt. *Porter* to carry a List that *Porter* writ of the Names of several Men that were to act in it under him, and this he was to carry to *Charnock*; *Porter* writ it and gave it him, and he carry'd it with Directions to bring it back with the List of the Names of Mr. *Charnock's* Men. *Cranburne* did accordingly at that Time carry the List of the Names to Capt. *Charnock*, and brought it back with an additional List, from Capt. *Charnock*, of his Men.

At that Time, you will hear further, when *Cranburne* brought the List, he brought an Account that he heard the King did certainly go abroad: For Mr. *Charnock* had Intelligence so from *Chambers*, who lay at *Kensington* to get Intelligence: At which there was very great Rejoycing among all that were present at that Time, hoping they should have an Opportunity to put this execrable Design in Execution; and so they prepar'd all of 'em to go out. There were several Inns in *Turnham-Green* and *Brentford*, and thereabouts, and they were to be placed two or three in an Inn, that they might be ready to get together when Time should serve. It happen'd the King did not go abroad that Day neither, there being some Discovery of this Design, and so they did disperse themselves, as apprehending it was discover'd.

Gentlemen, it will appear by several Witnesses, that the Prisoner at the Bar was engaged in this horrid treasonable Design, and was to have acted a Part in it. We will call our Witnesses that will make the Particulars out to you, and we do not question but you'll do what is right. First, call Capt. *Porter*; (*who was sworn.*)

Mr. *Sol. Gen.* Pray, if you please, Capt. *Porter*, give the Court and the Jury an Account what you know of this wicked intended Assassination, and what Share the Prisoner at the Bar had in it.

Capt. *Porter*. My Lord, before this wicked Assassination was on Foot, the Prisoner at the Bar, Mr. *Cranburne*, was employ'd by me to buy Arms. I used to give him Money to go to the Brokers to buy Arms at second-hand, and he brought a Sword-Cutler to me, of whom I bought about twenty Swords. And when Sir *George Barclay* came into *England*, and this Business was resolv'd upon, I acquainted him with the Design, and promis'd to mount him. He never was at any of the Meetings with Capt. *Charnock*, Sir *George Barclay*, or Sir *William Perkins*; but he went to look for a Horse, and was ready both *Saturdays* to go along with me. On *Saturday* the 22d I sent him with a Message to Sir *William Perkins*, for the Note for the two Horses, which he had promis'd me to furnish me with, out of his five that he was to furnish; he came back again, and told me that there was a Messenger came and said that the King did go out, and he knew where to have the two Horses; that Mr. *Charnock* was afraid we should not have the full Number of Men, and desired me to send him the Names of my Men; I did write a List of the Names of my Men, and I went afterwards to the *Blue-Posts* in *Spring-Garden*,

Garden, whither he was to come to me; he did so, and he brought back the List of my Men, with the List of Mr. *Charnock's* Men written underneath it, and at the same Time News was brought that the King did not go abroad that Day.

L. C. J. You say, that before the Assassination was set on foot, you employed him to buy Arms and Horses.

Capt. Porter. My Lord, I acquainted him with it the *Friday* before the first *Saturday*.

L. C. J. You said before the Assassination you employed him to buy Arms: When was that?

Capt. Porter. I said before the Assassination was on foot I employed him to buy Arms. I told him I was to be a Captain in Colonel *Parker's* Regiment, and promised to make him my Quarter-Master.

L. C. J. How long ago was this? Was it a Week before the Assassination was on foot?

Capt. Porter. He has known of my being a Captain in Colonel *Parker's* Regiment this two Years.

Mr. Att. Gen. I do doubt my Lord, he does not distinguish the Times when he bought the Arms, and when the Assassination was.

L. C. J. Yes, yes, he does now; I misapprehended him at first, and thought he said he had employed him to buy Arms a Week before the Assassination was on foot; but he says it was a longer Time.

Mr. Att. Gen. I desire my Lord, he may be ask'd what Time he bought Arms before this Assassination: When was the last Time he bought Arms;

Capt. Porter. It was several Months before the Assassination.

Mr. At. Gen. Was it within a Year before it.

Capt. Porter. Yes I believe it was within a Year. I gave him several Times Money for that purpose, in all above ten Pounds, and he told me, one with another, he had bought ten Case of Pistols, and kept them in the House till there were Occasion.

Mr. At. Gen. How long ago is it?

Capt. Porter. I believe about a Year; within a Year.

Mr. At. Gen. When did you first acquaint him with the Assassination?

Capt. Porter. Presently after Sir *George Barclay* acquainted me with it, I sent to him, to desire him to get the Pistols clean and ready.

Mr. At. Gen. Did you tell him of the Design?

Capt. Porter. I told him there was a Design on foot, and I would tell him more when I saw him next; and I desir'd him to get the Swords from the Sword-Cutlers, and the Pistols clean and ready. And I met him afterwards, and told him of the Design, and that we intended to do it on *Saturday* the fifteenth; and he engaged to be ready and make one. On the *Friday* before the twenty-second he went with me to the Cock-pit, and there we met with one Mr. *Gunn*, and I ask'd him if he knew where any good Hackney-Horses might be had? He said he believed he did; and I sent *Cranburne* with him, and he came back, and told me he had found two or three out in *Bloomsbury*.

L. C. J. Look ye, *Capt. Porter*, you must not speak so fast, it is impossible to understand so much Matter as you deliver without distinguishing of Times. You said, that some long Time before the Assassination was on foot you sent him to buy Arms, for what Purpose were those Arms?

Mr. At. Gen. My Lord, he has told you—

L. C. J. Pray let me hear it from him again.

Capt. Porter. I say, my Lord, he knew of my being a Captain in Colonel *Parker's* Regiment this two Years.

L. C. J. But what were those Arms for that he bought?

Capt. Porter. To be ready against King *James* landed, which was designed several Times.

L. C. J. Why, now you make the Matter clear to me.

Mr. At. Gen. My Lord, that is not the Thing we go upon, that is but introductory to the Business that we are now a Trying. Therefore we desire to know of him: *Captain Porter*, when did you first acquaint *Cranburne* of the Assassination of the King?

Capt. Porter. As soon as Sir *George Barclay* acquainted me with it, and desired me to get what Men I could to effect it, I sent for *Cranburne* to my Lodgings in *Norfolk-street*, and he came to me one Morning; and I told him there was a Design on foot, and I would tell him more of it afterwards.

Mr. Sol. Gen. When was it that Sir *George Barclay* acquainted you with it?

Capt. Porter. About the latter End of *January*.

Mr. At. Gen. And what said he to it when you acquainted him with it?

Capt. Porter. He did agree to go with me, and I promised to furnish him with Horse and Arms; and on *Friday* before the fifteenth I sent him with three Case of Pistols to Sir *William Perkins*, to furnish the three Men he was to mount with his own Horses.

L. C. J. Who was to have those three Case of Pistols.

Capt. Porter. Sir *William Perkins*, and he carried them to Sir *William Perkins's*.

Mr. At. Gen. How long was this, do you say, before the Assassination was to have been?

Capt. Porter. It was *Friday* before the fifteenth.

Mr. At. Gen. That was before the first Time that it was to have been done.

Capt. Porter. Yes; and *Friday* before the last, I sent him to look after the Horses that *Gunn* said he believed he could help me to, and he came to me to the Sun-Tavern in the *Strand*, and told me he and *Jeffery Gunn* had found three Horses in *Bloomsbury*, and I came out of the Room where I was with Sir *George Barclay* and others, and there was *Kendrick*, and *Keys*, and *Cranburne*, and I told them we were resolved to put it in Execution the next Day.

Mr. At. Gen. Well, pray what Discourse had you with him the next Day?

Capt. Porter. The next Day, the 22d, he came to my Lodging at *Maiden-Lane*, and I sent him to Sir *William Perkins* for a Note for the two Horses, that I was to mount of his: He came back and told me he knew where to have them, and that *Captain Charnock* was afraid we should not have our Compliment of Men, and desired me to send him an Account what Men I could bring, which I did by Mr. *Cranburne*, and being to go to the *Blue-Posts*, ordered him to bring it to me thither, and he did bring it back to me to the *Blue-Posts* with *Captain Charnock's* List underneath.

Mr. Sol. Gen. Pray *Captain Porter*, was there any Body present when you sent the List, and the Prisoner brought it back to you?

Capt.

Capt. Porter. Yes there was Mr. *La Rue*, and Captain *Pendergrafs*, and Mr. *King*, I know of none else.

Mr. *At. Gen.* Pray do you remember what Healths were drunk after you heard the King was not to go abroad?

Capt. Porter. I don't remember what Healths were drunk that Day particularly, but whether it were *Thursday* or *Friday*, (I cannot tell particularly the Day) We drank a Health to the squeezing of the *Rotten Orange* upon the next *Saturday*.

Mr. *At. Gen.* Who was present that Day when that Health was drunk?

Capt. Porter. Mr. *Cranburne* was there present at that Time, and did drink the Health.

Mr. *Cooper.* Pray, Sir, did he meet you by Appointment on *Saturday* the 15th, or was it by Accident?

Capt. Porter. By Appointment, as all the rest did, to get ready as all the rest did, to go upon the Design; and so it was both Days.

Sir *B. Shower.* If they have done with Mr. Porter, we would ask him a Question or two for the Prisoner: We desire to know when it was that those Arms were bought that he talks of: For we must acknowledge that Mr. *Cranburne* heretofore went upon several Messages for Capt. Porter; When was that buying of Arms?

Capt. Porter. I tell you I cannot exactly tell the Month.

Mr. *Cranburne.* Do you remember the Year?

Capt. Porter. I believe it was less than a Year before the Assassination was on Foot.

Mr. *Cranburne.* If you remember, Sir, it was a Month before Col. *Parker* was put in the Tower.

Capt. Porter. It was several Times, I cannot tell the particular Times.

Sir *B. Shower.* My Lord, I desire to know when he first communicated this Design to Mr. *Cranburne*, and who was by, and where it was.

Capt. Porter. I told you I sent for Mr. *Cranburne* one Day in the Week before the 15th, and he came to me at my Lodging in *Norfolk-street*, and I acquainted him that Sir *George Barclay* was come, and there was such a Design on Foot; and I desired him to get those Pistols that he had of mine ready, and cleaned; that they might be ready for the Execution.

Sir *B. Shower.* What Day was that?

Capt. Porter. One Day in the Week before the 15th.

Mr. *Cranburne.* Did you ever name Sir *George Barclay* to me in your Life?

Capt. Porter. Yes I did, I told you he was come from *France*.

Mr. *Cranburne.* Where was that, at Mr. —

Capt. Porter. In *Norfolk-street*, where I lay?

Mr. *Cranburne.* Who was by?

Capt. Porter. No Body but my self.

Sir *B. Shower.* Upon what Occasion did you meet there?

Capt. Porter. I sent for him to my Lodging.

Sir *B. Shower.* How long had Sir *George Barclay* been in Town, before that Time?

Capt. Porter. I cannot tell the Time when he came to Town.

Sir *B. Shower.* How long was it after he came to Town before you saw him? Had you seen him a Week or a Fortnight before? Pray recollect your self.

Capt. Porter. I told you that the first Time I heard of him, was the latter End of *January*;

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Capt. *Charnock* told me he was come, but I was then sick of the Gout.

Sir *B. Shower.* Now then I would desire to know, who was by, upon the *Friday* before the 22d, at the *Sun-Tavern* in the *Strand*, when you and Mr. *Cranburne* were there?

Capt. Porter. I did tell you, Sir.

Sir *B. Shower.* I desire to know, whether there was any Body besides Mr. *Cranburne*, *Kendrick*, and *Keys*?

Capt. Porter. Sir, I will tell you all I can remember; I was in one Room with Sir *George Barclay*, and there was Sir *William Perkins*, Capt. *Charnock*, and my self; and afterwards I went into another Room, where there was *Kendrick*, and *Cranburne*, and *Keys*; and *Jeffrey Gunn* came in afterwards; I remember no Body else.

Mr. *Phipps.* Was not *Gunn* there when you first came in?

Capt. Porter. To the best of my Remembrance, he came in afterwards.

Sir *B. Shower.* My Lord, this may be a very material Part of our Defence, and therefore we must enquire a little the more into it. Mr. Porter is pleased to say, that he was in a Room with Sir *George Barclay*, and *Charnock*, and Sir *William Perkins*; and he came out into another Room where was Mr. *Cranburne*, *Kendrick*, and *Keys*; and there he says, after he had been there some Time, *Gunn* came in; I desire to know, whether *Gunn* was there when he first came in?

Capt. Porter. To the best of my Remembrance, he came in afterwards; but I cannot positively tell, for I was in and out several Times.

Mr. *Phipps.* At the Time that you communicated this Design to Mr. *Cranburne*, what said he to you?

Capt. Porter. When I first communicated the Thing to him, I told him there was a Thing on Foot for the Service of King *James*, and desired him to go along with me.

L. C. 7. What kind of Service did you tell him it was?

Capt. Porter. He asked me, what kind of Service it was? I told him Sir *George Barclay* was come over, and I told the whole Design of the Assassination of the Prince of *Orange*, that it was intended to take him off, as he came from *Richmond* from Hunting.

Mr. *Phipps.* And pray what did Mr. *Cranburne* say to you?

Capt. Porter. He said he would be ready to go along with me.

Mr. *Phipps.* You say, you sent by him three Case of Pistols to Sir *William Perkins*, at that Time did you tell him for what Design those Pistols were?

Capt. Porter. I told him, they were for the three Men that Sir *William Perkins* was to mount upon three of his five Horses.

Mr. *Cranburne.* Did you speak to me to carry those Pistols to Sir *William Perkins*?

Capt. Porter. I think so, to the best of my Remembrance I ordered you my self to carry them.

Sir *B. Shower.* Captain Porter, I desire you to recollect your self, and tell us plainly, whether the Design was communicated to Mr. *Cranburne* before the 15th.

Capt. Porter. Certainly Sir.

Sir *B. Shower.* Are you sure of it?

Capt. Porter. Yes Sir, I am sure of it.

Sir B. Shower. I ask you, because you know what has been said upon this Occasion in other Trials.

Cranburne. Where did you write the Note, that you say you sent to Sir William Perkins? Was that Note sealed or was it not?

Capt. Porter. I did not tell you that I writ a Note.

Cranburne. You swore that you wrote a Note, and sent it by me to Sir William Perkins for two Horfés.

Capt. Porter. I said no such Thing, Sir.

Mr. Sol. Gen. Look you, Capt. Porter, let him ask you any Questions, and if they be proper answer them, and if they be proper affirmations, or Mistakes provoke you to be angry.

Capt. Porter. I said, I sent him to Sir William Perkins, for a Note to have the Horfés from Mr. Lewis.

Mr. Phipps. Did you send him with a Letter, or was it a Message by Word of Mouth?

Capt. Porter. I did send him by Word of Mouth, for a Note.

L. C. J. Pray, Gentlemen, observe the Evidence, Sir William Perkins was to give a Note for two Horfés, and Capt. Porter sent Cranburne for the Note.

Mr. Phipps. The Question therefore that I ask, is, Whether he sent a Letter for the Note, or whether by Word of Mouth?

Capt. Porter. I sent by Word of Mouth.

Mr. Cranburne. Pray will you tell the Court what you said upon the 22d to Mr. Pendergrafs and me, after you came down from the Blue-Posts leaning upon the Rail.

Capt. Porter. I don't remember a Word of it, for I cannot remember every Word that I have spoken.

Sir B. Shower. If you can remember one Particular, sure you can remember another. If you can't remember this, how came you to remember any Part of the Discourse that happen'd at the Blue-Posts.

Capt. Porter. Because that was material to this Business, for I had very soon after a particular Occasion to recollect it upon the breaking out of the Plot.

Mr. Cranburne. Pray what Hour was it this Saturday the 15th that you communicated this Design to me?

Capt. Porter. I cannot tell what Hour, but I say you met me at the Blue-Posts Saturday the 15th.

Mr. Cranburne. You say, you communicated it to me the 15th.

Mr. At. Gen. He says he communicated it to you, before the 15th.

Mr. Cranburne. I desire to know where he was the 14th.

Capt. Porter. I say, one Day before the 15th; in that Week I sent for you to come to my Lodgings, and you did come, and there I communicated it to you.

Cranburne. Sir, I was not at your Lodgings that Week.

Mr. Phipps. What Day of the Week?

Capt. Porter. I cannot be positive whether it was Thursday, or Friday, or what Day; but one Day that Week it was.

Mr. Phipps. You ought to be positive when it was.

Capt. Porter. I do tell you as near as I can.

Mr. Phipps. With Submission, my Lord, he ought to be positive one Way or other.

L. C. J. Nay, I don't see that he ought to be positive to a Day; he may be so if he can.

Cranburne. Pray what Day did you say you sent me to Sir George Barclay?

Capt. Porter. I do not say that I ever sent you to Sir George Barclay?

Mr. Phipps. Can you take upon you to say, That he was at your Lodgings that Week before the 15th?

Capt. Porter. To the best of my Knowledge it was one Day that Week.

Mr. Phipps. To the best of your Knowledge: Are you sure of it?

L. C. J. Speak as certainly as you can.

Capt. Porter. Indeed, I believe so, it was before the 15th. I am sure, I think, it was within three or four Days after Sir George Barclay had acquainted me with it, I sent to the Prisoner to come to me to my Lodgings, at Mrs. ——— in Norfolk-street, and acquainted him with it.

L. C. J. And when you acquainted him with it, What did you tell him? What Part was he to act in it?

Capt. Porter. I told him, I would have him go along with me, and that I had set him down for one of my Party, and would provide him Horse and Arms; and he did agree to go along with me.

Sir B. Shower. Mr. Webber, Pray let me see Charnock's Trial.

Mr. Sh. Buckingham. Why, Sir Bartholomew, is the Trial any Evidence?

Sir B. Shower. Mr. Sheriff, I know what Use I can make of it.

Mr. Sol. Gen. Will you ask him any more Questions?

Sir B. Shower. No, Sir.

Mr. Sol. Gen. Then swear M. De la Rue. (which was done.)

Pray, Sir, give the Court, and the Jury, an Account what you know of the intended Assassination, and what Share the Prisoner had in it.

M. De la Rue. It is too long a Story to tell you all that I know of this Matter; but, if you please, I will tell you what concerns the Prisoner at the Bar. I am heartily sorry that I have Occasion to appear against him, as I would be truly against any Body: But since I am here upon my Oath, I must declare the Truth, and nothing but the Truth; and I hope I shall not declare any Thing but what is Truth. Upon Saturday, the 15th of February, the Day that the Design was to have been put in Execution against his Majesty, and all that were in the Coach with him, and against his Guards, I went to Mr. Charnock's Lodgings in Norfolk-street, to inform my self whether they resolved on that Day to go out upon the Design; and I found by Mr. Charnock that they did resolve it, and I stay'd there a while, till such Time as Mr. Chambers came in; I did not know whence he came then, but, as I was informed afterwards, he came from Kensington to Mr. Charnock, and his Boots were dirty; and Mr. Charnock told me he had sent a Messenger to Mr. Porter, And, says he, if you will stay a little Time, I shall have an Answer. The Messenger came back, and told him, That Capt. Porter din'd at the Blue-Posts in Spring-Garden. I did not go to dine with him, but went Home, where I saw Mr. King at my Lodging, who told me, that the King did not go out

out that Day. I told him, I heard he did not: I found by Mr. *Chambers's* coming back, and that we had no Notice from Mr. *Charnock*, that it was concluded the King did not go out as it was supposed he shou'd have gone. When I had din'd at my Lodging, I went to the *Blue-Posts* in *Spring-Garden*, to Mr. *Porter*, and there were four, or five, or six People with him; there was one Mr. *Sberborn*, and Mr. *Kendrick*, and two People that I never saw before, and another Person, but I can't tell now who he was. When we had been there a little while, comes in this unfortunate Man at the Bar, Mr. *Cranburne*; I don't know where he had been; but by his coming in so late, I suppose he had not din'd, and he ordered the Drawer to get him some Costelets. This is all that I can say as to that Day. I had seen Captain *Porter* twice or thrice between that and the 22d, and he desired me to be at Home on *Friday* Night between Eight and Nine, and he wou'd send to me: He did send, and I was from Home. But when I came, I was informed his Servant had been to speak with me; and in the Morning, about Eight or Nine a Clock, *Saturday* the 22d, he sent his Servant to me to tell me his Master would speak with me at his Lodgings. I went to his Lodgings, and he then lay in *Maiden-Lane*, at one *Brown's* a Surgeon: When I came in, he was in Bed; and he told me in *French*, *Touts Parties sont prests*, All Parties are ready. I understood all along that there were three Parties to be engag'd; one to attack the King's Coach, and the two others the Guards; Sir *George Barclay* was to head the first, and *Porter*, and *Rookwood*, the rest. Mr. *Porter* arose and dress'd himself, and in came Mr. *Cranburne*; and Mr. *Porter* went out to him into the Dining-Room, and what he said I can't tell: But soon after came in *Pendergrafs*, Mr. *Keys*, and Mr. *King*, and then he takes Pen, Ink, and Paper.

Sir *B. Shower*. Who took that?

M. De la Rue. Capt. *Porter* took Pen, Ink, and Paper, and writes down a List of his Party, and puts me down first. Mr. *Pendergrafs* ask'd me if I was the Captain, and I made him some Answer, but what in particular I cannot tell; I think I told him, I knew of the Thing before the most did. But I can remember particularly that List was given to Mr. *Cranburne*, to carry to Mr. *Charnock*; upon what Account it was, I cannot tell; but I concluded, that Mr. *Charnock* was to be acquainted with those Persons that Mr. *Porter* was sure of: And Mr. *Porter* at that time told me that he was disappointed of some People, and desired me to get him some other Men in their Rooms; and he sent particularly to one that Mr. *King* proposed; and I did go, and brought him to the *Blue-Posts*, where Capt. *Porter* told me he was to dine; and the Gentleman I went to, told me he wou'd meet me at the *Blue-Posts* in *Spring-Garden*. When I came back to Mr. *Porter's* Lodgings, Mr. *Porter*, and Mr. *Pendergrafs*, and Mr. *Oldfield*, and I, went in a Coach to the *Blue-Posts* in *Spring-Garden*; and when we had been there a little while, Mr. *Cranburne* came back to give an Account of the Errand Mr. *Porter* had sent him upon, and he brings this List.

Mr. *At. Gen.* Who brought it?

M. De la Rue. Mr. *Cranburne*?

Cranburne. Whither did I bring it?

M. De la Rue. To the *Blue-Posts* in *Spring-Garden*.

L. C. J. You must not ask any Questions till they have done with him. But Mr. *De la Rue*, let me ask you what Day was this?

Mr. *De la Rue*. This was *Saturday*, the 22d of *February*; and he told Mr. *Porter* there was a List of Mr. *Charnock's* Men at the Bottom of that List; and I took the List in my Hand, and there was Mr. *Charnock's* List of Six or Seven, or thereabouts, of his Party, and at the Bottom of it was R. C. I think, for *Robert Charnock*. Mr. *Porter* takes Mr. *Cranburne* from the Company into another Room, and I went after them, and he told Captain *Porter*, in my hearing, that the King did not go out that Day. There is one Thing I forgot, which now I recollect, and I an upon my Oath to tell the Truth, and the whole Truth: When I was at Mr. *Porter's* Lodging, he told me the King was to go out; and that Mr. *Chambers*, the orderly Man, had sent Word, That the King resolv'd to go out between Ten and Eleven.

L. C. J. Who said so?

Mr. *De la Rue*. Mr. *Cranburne* told me so at Mr. *Porter's* Lodgings, I say I had forgot it, but it occurs to my Memory now, that he told me there before he went to the *Blue-Posts*, that the King did go out that Day between 10 and 11; for Mr. *Chambers*, the orderly Man, had been with Mr. *Charnock* or Sir *William Perkins*, to let them know so much. And afterwards when he came back with the List of Captain *Porter's* Men, to Captain *Porter* at the *Blue-Posts* in the *Spring-Garden*; there was at the Foot of that List, a List of Mr. *Charnock's* Men in another Hand, I suppose writ by himself, but that I cannot swear whose Hand it was; and Mr. *Porter* took him into another Room, and then Mr. *Cranburne* told him the King did not go out, and I believe it was then between 11 and 12 a Clock; and he also told Mr. *Porter*, that Mr. *Charnock* was apprehensive the Thing was discovered, and therefore desired him to have a Care of himself, for he himself was resolv'd not to lie at home that Night; I think, my Lord, Mr. *Porter* did send back Mr. *Cranburne* to Mr. *Charnock*, I cannot be positive whether he did or not, but I believe he did; because I am sure Mr. *Cranburne* did tell Mr. *Porter*, Sir *George Barclay* would speak with him; and Mr. *Porter* made Answer, why should he desire me to go to him, when he knows I am under some ill Circumstances, and he can better come to me? and I believe Mr. *Porter* did send Mr. *Cranburne* once again to Mr. *Charnock*.

L. C. J. Well, pray do not say any Thing of any Matter but what you can be positive in.

Mr. *De la Rue*. But Mr. *Porter* did not go to Mr. *Charnock*, nor did Mr. *Charnock* come to him, therefore they stay'd there and dined; and after Dinner, or a little before Dinner, *Keys* the Trumpeter came up, and told us, that my Lord of *Oxford's* Regiment of the Guards was returned from *Richmond*, foaming; *Keys* went down Stairs again to learn Intelligence, as I thought, and came up and told us he saw the King's Coaches newly return'd to the *Mews*, and Mr. *Cranburne* was by all the Time; I think this was before Dinner, and then we went to Dinner.

L. C. J. I tell you again, don't speak any Thing that is material, but what you can be positive in.

Mr. *De la Rue*. I am positive as to the Thing, and that it was the 22d of *February*, but I cannot be positive as to all the Circumstances. After Dinner there was the usual Healths, the Jacobite

Healths to King *James*, and the Prince of *Wales*, and the Restoration, and the like; and after that I think it was Mr. *Porter* took an Orange in his Hand and squeeze'd it, I am sure one in the Company did, and drank something to the Rotten Orange, I cannot very well remember just now what it was; but I would be cautious of saying any Thing but what is Truth; but if your Lordship will give me leave to recollect my self, I will tell you what it was—Oh! it was to the squeezing of the Rotten Orange, and the Health went round, and Mr. *Cranburne* was in the Company, and drank the Health. But being disappointed and frustrated of the Design by the King's not going abroad that Day, and Mr. *Porter* being cautioned by Mr. *Charnock* to take care of himself, and being told that Mr. *Charnock* would not lie at home that Night, and the Guards returning in that Manner, they were all apprehensive that the Thing had taken Air, and the Design of Assassinating the King was discovered, and therefore Mr. *Porter* concluded of going out of Town; several Healths were drunk round, and I think about Two a Clock he went out of Town, and then the Company broke up. This is what I can say as to the Prisoner, and I hope I have said nothing but what is Truth.

M. *Sol. Gen.* Then, my Lord, we desire to know whether they will ask him any Questions?

Mr. *Phipps*. At the Time you say this List was given by Captain *Porter*, to Mr. *Cranburne*, did Mr. *Porter* declare to what purpose the List was sent?

Mr. *De la Rue*. No, Sir, not a Word of any such Thing. Mr. *King* was by, and Mr. *Pendergrafs* was by, and I think Mr. *Keys* was by, and he writ a List of his Party, putting me down first; and Mr. *Pendergrafs* said to me, you are Captain, and he gave it to Mr. *Cranburne* to carry it to Mr. *Charnock*; what the particular Message was, I cannot be positive: Indeed I don't very well remember the Message, but the List was carried to Mr. *Charnock*, and to the best of my Memory it was to give Mr. *Charnock* an Account what Men he was sure of; for Mr. *Porter* told me of several Disappointments he had had, of Persons that had promis'd him and fail'd.

Mr. *Phipps*. Can you remember what Mr. *Cranburne* said upon that?

Mr. *De la Rue*. No, I do not.

Cranburne. What Message was that, you say, I brought from Sir *George Barclay*?

Mr. *De la Rue*. I do not say that you brought any Message from Sir *George Barclay*?

Cranburne. You said that I brought a Message that Sir *George Barclay* would see him.

Mr. *De la Rue*. I do not say so: but I say that you told Mr. *Porter* that Mr. *Charnock* sent you with a Message to let him know that Sir *George Barclay* was desirous to see Mr. *Porter*, to confer about taking care of themselves.

Cranburne. Did you hear me name Sir *George Barclay's* Name?

M. *De la Rue*. Yes, I say you told Mr. *Porter* that Mr. *Charnock* bid you caution him to take care of himself, and that he would go that way, for Sir *George Barclay*, and he desired to see him; and Mr. *Porter* said it was an unreasonable Thing for Mr. *Charnock* to desire it, because they knew he was under Circumstances that it was not proper for him to go, and he wondered they would not rather come to him.

L. C. J. What time a Day was this?

Mr. *De la Rue*. It was about Twelve a Clock, I think.

L. C. J. Was it after such time as the News was brought that the King did not go abroad that Day?

Mr. *De la Rue*. Yes, my Lord, it was after that time.

Mr. *Phipps*. Were you with Sir *George Barclay* when he was here in *England*? Did you see him here?

Mr. *De la Rue*. I did not see him on this Side of the Water. I knew him abroad, and a great many other unfortunate Persons, that were concern'd in this Affair; I knew some of them here, and that they were concern'd in the Design, but I did not converse with many, indeed with but a very few about it; for to shew that I was not a Man that designed to trapan or insnare any Man, I did never exchange Two Words about this Matter with any Persons that I knew were concern'd in it, but Sir *William Perkins*, (and that but in a small Measure) and Mr. *Charnock*, and Mr. *Porter*, and Mr. *King*, and Col. *Parker*; except what pass upon the 22d, between Mr. *Porter*, and Mr. *Charnock*, when Mr. *Porter* sent Mr. *Cranburne* to Mr. *Charnock*. Mr. *Cranburne* was one who Mr. *Porter* called his Quarter-Master: I know this Gentleman was commonly depending upon Mr. *Porter*, but I think I never was much in his Company, I did not know what Design he had upon him, but I was told by Mr. *Porter*, that he intended to make him his Quarter-Master, and I understood Mr. *Porter* was to have a Troop of Horse in Col. *Parker's* Regiment.

Mr. *Phipps*. You say you knew a great many of them that were concern'd, but you discourd and conversed but with a few?

Mr. *De la Rue*. I do so, Sir.

Mr. *Phipps*. How do you know that they were concern'd, when you did not discourse with them?

Mr. *De la Rue*. By Information from Mr. *Charnock*, and Mr. *Porter*.

Mr. *Phipps*. Do you know any thing more of Mr. *Cranburne*, than the List, and what you have said already?

Mr. *De la Rue*. I give you an Account of all that I do know.

L. C. J. Answer that particular Question. Do you know nothing more than what you have said?

Mr. *De la Rue*. No, my Lord, I do not remember nor know any more as to Mr. *Cranburne* than what I have declared, and I am sorry I had Occasion to declare so much.

Mr. *At. Gen.* Then call Mr. *Pendergrafs*. (who was sworn.)

Mr. *Sol. Gen.* Pray will you give my Lord and the Jury an Account of what you know of the Intended Assassination, and how far Mr. *Cranburne*, the Prisoner at the Bar, was concern'd in it.

Capt. *Pendergrafs*. My Lord, the 13th of February last, I came out of *Hampshire*, Mr. *Porter* sent for me to come to Town, and I met him that Day at the *Blue-Posts* in *Spring-Garden*, and there he told me of the Assassination that was to be done on Saturday following: The next Day we dined at the *Rose-Tavern*, where the Prisoner dined with us, and we talk'd of the Business, that was Friday the 14th, and we were to be in readiness the next Day to assassinate the

King,

King, as he was coming from *Richmond*; but some Company coming in afterwards, we left off the Discourse, and talk'd no more that Night. The next Day that we were to do the Business, we met at the *Blue-Posts* in *Spring-Garden*, and finding the King did not go abroad that *Saturday*, we dined there at the *Blue-Posts*, and talk'd over again of Assassinating the King, and the Prisoner was by at the same time; they were all mightily concerned the King did not go that *Saturday*; but when we had dined there, we had no further Discourse about the Assassination that Day, but every Body was to prepare against the next *Saturday*.

L. C. J. Was that agreed upon then?

Capt. *Pendergrafs*. Yes it was, by all the Company; so we parted that Day. Some time the next Week I met Mr. *Porter*, and Mr. *Porter* ask'd me if I had a Horseman's Sword; I told him no: Says he to Mr. *Cranburne*, let Captain *Pendergrafs* have one of the Horsemen's Swords that you have got. Says Mr. *Cranburne* to me, if you will come to my House you shall make choice of one your self, for I have several at home. Said I, Mr. *Cranburne*, I cannot go that Way, but I'll take one of your choosing, if so be you'll leave it at my Lodgings: He said he would do it, and did; he left it at my Lodgings in *Suffolk-Street*, which Sword I have still. The Day following I met him, and he ask'd me if I had received the Sword; I said I had it; and he said, it was very well. After this I did not see Mr. *Cranburne* till *Saturday* the 22d, at which Time I came to Mr. *Porter's* Lodgings between Nine and Tena-Clock in the Morning, and the Prisoner at the Bar was there, and I heard Mr. *Porter* give him a Message to go to Sir *William Perkins* for some Horses, I know not how many. The Prisoner went, and in some Time after, came back again, and brought an Account that the King went out that *Saturday* the 22d to *Richmond*; so every Body was to get ready: And Mr. *Cranburne* said, that Mr. *Charnock* desired that Mr. *Porter* would send a List of his Men; upon which Mr. *Porter* wrote a List of his Men, and gave it to the Prisoner to carry it to Mr. *Charnock*, and bid him meet him at the *Blue-Posts*; and Mr. *Porter*, and Mr. *De la Rue*, and I, took Coach, and went down to *Spring-Garden*, and when we came to the *Blue-Posts*, there were some Persons that I think Mr. *De la Rue* had appointed to come there; the Prisoner comes thither, and brought the List back, with a List of Mr. *Charnock's* Men underneath. I know not who the Men were, for I saw it only on the one Side of the Table, in Mr. *Porter's* Hand; at the same Time the Prisoner brought an Account, that the King did not go Abroad that Day, and presently after we had the same Account from other Hands; and Captain *Porter* and I went out of Town, and we heard no more of it.

L. C. J. Are you sure that he did agree to this Matter before the 15th?

Capt. *Pendergrafs*. Yes, I am sure of it, he agreed to it *Friday* the 14th, at the *Rose Tavern* in *Covent-Garden*.

L. C. J. On the 15th, it seems they were disappointed; are you sure there was an Agreement to pursue it the 22d?

Capt. *Pendergrafs*. Yes, I am sure there was, my Lord.

L. C. J. Was the Prisoner there?

Capt. *Pendergrafs*. Yes, my Lord, I am sure that the Prisoner at the Bar was there.

Cranburne. Pray, Mr. *Pendergrafs*, was there any Discourse about this Thing when I was there?

Capt. *Pendergrafs*. Yes, Mr. *Cranburne*, you cannot but remember there was.

Cranburne. What Hour did I come there, pray Sir?

Capt. *Pendergrafs*. Truly, I cannot be positive to an Hour; but you were there while the Discourse was.

Cranburne. Whether did I stay there all the while, and who was in the Company?

Capt. *Pendergrafs*. All the Company broke up about six a-Clock, there was Mr. *King*, Captain *Porter*, Mr. *Kendrick*, Mr. *Cranburne*, Mr. *Keys*, and my self.

Cranburne. Was *Kendrick* there when I was there?

Capt. *Pendergrafs*. Yes, I am sure of it; I will do you all the Justice in the World that I can.

Sir B. *Shower*. You say, Sir, he did agree upon the 14th to this Design; pray what Words did he use?

Capt. *Pendergrafs*. He did agree, that we should attack the King the next Day.

Sir B. *Shower*. Pray, Sir, if you can recollect your self; what did the Prisoner say, or whether you took him to agree by being silent?

Capt. *Pendergrafs*. He said, he hop'd we should execute our Business the next Day.

L. C. J. What Day was that?

Capt. *Pendergrafs*. That was the 14th of *February*, and the same Night I gave Account of the Matter to my Lord *Portland*.

Mr. *Phipps*. Did he agree to be one in the Execution of the Design.

Capt. *Pendergrafs*. Yes, he did; he discoursed the Matter to me himself.

Mr. *At. Gen.* My Lord, we have done with our Evidence.

L. C. J. Well, then what say you to it for the Prisoner?

Sir B. *Shower*. My Lord, what we have to say on behalf of the Prisoner in this Respect is this: Here are but three Witnesses produced, and as to one of them, *De la Rue*, there is no Evidence that he gives your Lordship and the Jury, that affects this Matter, but only that there was a List given by Captain *Porter*, and carried by the Prisoner to Mr. *Charnock*, and so brought back again. But he does not recollect, nor swear to any Message that was sent from *Porter* by the Prisoner to Mr. *Charnock*: Now, my Lord, the bare Carrying of a Note of Names will be no Evidence of Treason. Mr. *De la Rue* does not swear to any Privy of the Prisoner, what the List was for, nor to the Delivery of the List, which is the Overt-Act in the Indictment; nor upon what Account this List was written, or sent, or brought back again, or any Word that proceeded from Captain *Porter* to him upon giving the List, or any Word when it was brought back again. So that as to *De la Rue's* Testimony, we must submit it to the Memories and Recollection of your Lordship and the Jury; we think he only proves a Plot in general, of which there is no peradventure, every Body is satisfied, that there was such a horrible Conspiracy: Those that have been condemned and executed for it, have own'd it, and so it can never be doubted, but he does not say any Thing to affect the Prisoner at the Bar; for as to the Drinking of Healths, and being present when those Healths were drunk,

tho' it be an Evidence of Disaffection to the Government, or too much good Manners and Complaisance to the Company a Man is in; yet that Disaffection, or civil Temper, or Complaisance, we hope are no Evidences of Treason. It is plain the Prisoner did depend very much upon Captain Porter; he was in Truth his Servant to go of his Errands, and expected an Office from him, God knows when; but it does not appear by any particular Action, that he did any Thing that can be Treason, upon Mr. *De la Rue's* Evidence. Then as to what Mr. *Pendergrafs* says, I must confess his Evidence comes Home: For he says there was a Design of the Assassination, and some Agreement of the Prisoner to it; but I must beg your Lordship's Favour to observe, upon Mr. *Pendergrafs's* Evidence, if that stand alone, it will be but one Witness, and then we are safe by the Purview of this Act of Parliament.

L. C. J. Ay, and by the Law, before the making of that Act.

Sir B. *Showers*. Then, as to Captain Porter, I must beg leave to say, If our Witnesses are come that were absent at the other Tryal, and they prove what is in my Instructions, it will be very much questionable, whether there be any Credibility due to his Testimony: Then if you take off his Testimony, there is only the Evidence of Mr. *Pendergrafs*; and if he be to be believed, to which I have nothing to say at present, in the Case of a Man's Life, upon an Indictment of Treason, where the Law requires two credible Witnesses, his single Testimony is not sufficient to convict the Prisoner. We beg Leave to call our Witnesses, and then we shall leave it to your Lordship, and the Jury.

Mr. *Phipps*. As to the particular Overt-Act laid in the Indictment, the carrying about the List, only Mr. *De la Rue* speaks to it, and Sir *Bartolomew Showers* has given it an Answer, and I shall not repeat it.

L. C. J. Look ye, for that, if any one Overt-Act is prov'd by two Witnesses, it's well enough.

Mr. *Sol. Gen.* Besides, they mistake, my Lord, extremely; for Captain Porter, and Mr. *Pendergrafs*, speak both of them to that Particular, as to the List.

Sir B. *Showers*. We do not deny it; the Question is, Whether you have two credible Witnesses?

Cranburne. Pray, Mr. *Pendergrafs*, do you remember what Captain Porter said to you, and I, when we came down to the *Blue-Posts*, leaning upon the Rail?

Capt. *Pendergrafs*. Indeed, Sir, I do not.

Cranburne. I would have you recollect your self; as we stood against the Rails in *Spring-Garden*, when we came down from the *Blue-Posts*, after the Design miscarry'd, Mr. Porter said, Mr. *Charnock*, and they, might thank themselves if it were discovered; For, says he, *I never communicated a Word of this Thing to any of my Party.*

Capt. *Pendergrafs*. Indeed I don't remember a Word of it, Sir.

Mr. *Phipps*. My Lord, we have one Peace of Evidence to offer against the Testimony of Captain Porter: He says, That he sent *Cranburne* with *Gunn* from the Cock-pit to see for Hackney-Horses, and that *Cranburne* came to him to the *Sum-Tavern*, and there they had some Discourse about executing the Design the next Day; and being ask'd who was by, when he communicated the

Design to *Cranburne*, and particularly, Whether Mr. *Gunn* was by? He says he came in afterwards, but was not there at the Time of the Communication about the Design. Now we shall prove that *Gunn* came in with the Prisoner, and was with him all the Time, and there was no such Discourse happen'd.

Sir B. *Showers*. Call *Jeffery Gunn*, and *Mary Gerrard*. [They appeared.]

Your Lordship will observe, what Captain Porter swore, That he went in to the Room to *Cranburne*, and *Gunn* was not there: Now, if we falsifie him in that Particular, we shall submit to your Lordship how far he is to be believed in the rest.

Mr. *At. Gen.* Pray, Sir *Bartolomew*, ask your Witnesses what you will, but make no Descants upon their Evidence till you have heard them.

Then the two Witnesses were sworn.

L. C. J. Well, look ye, you are both upon your Oaths, Consider what you say, speak the Truth, and tell all that you know, and nothing but the Truth. Which do you begin with?

Mr. *Phipps*. *Jeffery Gunn*: Pray, Mr. *Gunn*, did you go to the *Sum-Tavern* at any Time with Mr. *Cranburne*?

Gunn. Yes, I did.

Mr. *Phipps*. What Day of the Month was it?

Gunn. I cannot positively tell the Day, it was of a *Friday*.

Sir B. *Showers*. Was it of a *Friday*, in *February*, or *January*?

Gunn. It was in *February*.

Mr. *Phipps*. Was it before the Plot broke out?

Gunn. Yes, It was.

Mr. *Phipps*. How long was it before the Plot broke out?

Gunn. I cannot tell that, truly.

Mr. *Phipps*. Whence did you go?

Gunn. I was at the Cock-Pit, and I went from thence to the *Sum-Tavern*.

Sir B. *Showers*. Whom did you meet there?

Gunn. I saw Captain Porter there.

Sir B. *Showers*. What Room were you in?

Gunn. We went into a Room next the Street.

Sir B. *Showers*. Who was there with you?

Gunn. There was Mr. *Cranburne*, and I, and Mr. *Keys*.

Sir B. *Showers*. How long was it before Mr. Porter came in to you?

Gunn. He came in about Half a Quarter of an Hour after I was there.

Sir B. *Showers*. Were you there from the Beginning till Mr. *Cranburne* went away.

Gunn. Mr. *Cranburne*, and I, went from the Cock-Pit together.

Sir B. *Showers*. How long did you stay there?

Gunn. I was there about an Hour and a half.

Sir B. *Showers*. Were you out of the Room at all in that Time?

Gunn. Yes, I was out of the Room once.

Sir B. *Showers*. How long were you out of the Room?

Gunn. I went Home to my Lodging.

Sir B. *Showers*. Were you ever with Mr. *Cranburne* at the *Sum-Tavern* at any Time besides this?

Gunn. Never in my Life.

Sir B. *Showers*. Whom did you leave with him when you went out?

Gunn. Capt. Porter, and Mr. *Keys*, as I remember.

Sir B. Shower. Were you there before Captain Porter came to him?

Gunn. I was with Mr. Cranburne, and Captain Porter came in about a Quarter of an Hour after; we came from the Cock-Pit together.

Sir B. Shower. Pray recollect your self, and tell us upon your Oath, were you there when Capt. Porter came in?

Gunn. Yes, I think I was there when Capt. Porter came in.

Sir B. Shower. Did you go and leave him there?

Gunn. We went all out together. I was there about an Hour and half.

L. C. J. Nay, but you said you were absent some Time.

Gunn. I went Home, and came back again.

Sir B. Shower. When you went Home, did you leave Mr. Cranburne behind you?

Gunn. Yes, I think so.

Mr. Phipps. Did you leave Captain Porter with him?

Gunn. I think Capt. Porter was with him then.

Mr. Phipps. But upon your Oath, was you in Company with Mr. Cranburne at the Sun-Tavern, when Capt. Porter came first in?

Gunn. Capt. Porter went in and out several Times.

Sir B. Shower. Did you see Capt. Porter before you went to your own House?

Gunn. Yes sure.

Mr. Phipps. Then it cannot be true what Mr. Porter says, that Gunn did not come in till afterwards.

Mr. At. Gen. Now Mr. Gunn I would ask you a Question or two first, Were you there all the while that Mr. Cranburne was there, or did you go Home?

Gunn. I went Home.

Mr. At. Gen. Did you come back again?

Gunn. Yes, I went Home and eat some Victuals.

Mr. At. Gen. How long were you absent?

Gunn. I came back in half a quarter of an Hour.

Mr. At. Gen. How far is it to your House?

Gunn. 'Tis not above 100 Yards.

Sir B. Shower. Did Mr. Porter come in to you before you went Home, when you first came in with Cranburne.

Gunn. He came in after we were in the Room.

Mr. Phipps. Capt. Porter said, when he came into the Room Gunn was not there.

L. C. J. He did not say positively, but as he remember'd; now I would ask you a Question or two.

Sir B. Shower. Pray my Lord, our Inference from this Evidence is this: Capt. Porter says, that upon Friday the 21st of February he was with Cranburne at the Sun-Tavern, and out of one Room into another he came to Mr. Cranburne, and talk'd with him of this Design, and after that Gunn came in to the Room, after the Communication was over: Now this Man swears he went from the Cock-Pit with Mr. Cranburne, he was with him in the Room at first when Capt. Porter came; some Time afterwards he went to his own House, and left Captain Porter with Mr. Cranburne, and came back again, and they came away together: Now we say, these two are inconsistent; for Capt. Porter swears that Gunn was not there till after the Communication was over.

L. C. J. As he remembers.

Mr. Phipps. Nay, I think he was positive he came in afterwards.

L. C. J. As I remember he was not positive, but call Capt. Porter again.

Mr. Phipps. When you came back from your House, who were in the Room?

Gunn. The same Company as I left, as far as I remember.

Mr. Mountague. Was Capt. Porter in the Room when you came back?

Gunn. Indeed I can't directly tell, I believe he was.

L. C. J. Pray observe what your Witness says: He says, Capt. Porter came in and out, and was there several Times before he went away.

Gunn. Yes, my Lord, he was so.

L. C. J. And you were absent some Time, but were you there some Time before Porter came in?

Gunn. Yes, I believe I was.

Then Capt. Porter came in.

Mr. At. Gen. Look ye, Capt. Porter, you see that Man there?

Capt. Porter. Yes.

Mr. At. Gen. Pray give an Account of what you know of that Man's coming in to you at the Sun-Tavern.

Capt. Porter. I came several Times out of Sir George Barclay's Room into theirs, and to the best of my Remembrance, Mr. Cranburne was there before Gunn came in.

Sir B. Shower. Do you remember whether the first Time that you went out of Sir George Barclay's Room to speak with Mr. Cranburne, Mr. Gunn was there?

Capt. Porter. To the best of my Remembrance he was not; to the best of my Remembrance, Mr. Gunn, I saw Mr. Cranburne in the Room before you was there.

Sir B. Shower. Did not you order Gunn to come with him to the Sun-Tavern?

Capt. Porter. Yes, Sir I did.

Sir B. Shower. Can't you tell whether they came together?

Capt. Porter. I was not in the Room when they came in first, but to the best of my Remembrance he was not there when I came in the first Time.

L. C. J. Now, Gunn, you hear what Capt. Porter says, before you went away to your own House did Mr. Porter come into the Room to you?

Gunn. Indeed my Lord I am not positive, I think he did.

Mr. At. Gen. Neither of them is positive, and it is a Circumstance not very material; for it seems he was absent, and then the Discourse might be.

L. C. J. No, it is not material, but you see upon a strict Examination what it comes to?

Sir B. Shower. They are agreed upon it I perceive, to be positive on neither Side.

Mr. Phipps. Mr. Cranburne, pray ask Mrs. Gerrard what you have a mind.

Cranburne. Pray what do you know of Capt. Porter's going out in Disguise, and wearing false Hair and Vizards, and going upon the Highway, and such things?

Gerrard. I know not what Mr. Cranburne means: (at which the People laugh'd.)

Sir B. Shower. It is no laughing Matter, when a Man is upon his Life.

L. C. J. No, no, let him have fair Play; Answer the Question.

Cranburne. Do you know any thing of your Master's going abroad in Disguises?

Gerrard. I do not know any thing of my Master's going upon the High-way.

L. C. J. Did he go out with Vizards, or any such Things?

Gerrard. I never saw him wear a Vizard or false Beard in my Life, but he had once a Patch on when he was forced to keep out of the way, upon the Account of the Dog-Tavern Business in *Drury-Lane*.

Mr. Phipps. See if *Mr. Edward Bouchier* is here. (He was call'd, but did not appear.)

Sir B. Shower. Call *Mrs. Burton*, (which was done, but she did not appear.)

Mr. Phipps. Is *William Hardyman* here? (He was call'd, but did not appear.)

Sir B. Shower. Then call *Simon Dawson*, and we have done. (which was done.)

Cryer. They are all call'd, but they do not appear.

Sir B. Shower. My Lord, we must submit it to your Lordship's Directions upon the Evidence that has been given, as to the Credibility of these Witnesses, and whether what *Capt. Porter* says, and what *Gunn* says be consistent; so that you can be satisfied there are Two Lawful Credible Witnesses to prove any Overt-Act.

L. C. J. Yes sure, but I would have you debate it, if you believe there be any thing in it.

Sir B. Shower. I submit it to your Lordship's Directions.

L. C. J. The Question is, Whether I should give any Directions at all or no, or whether there be any Occasion for it?

Cranburne. I declare this openly before this Honourable Court, and so many Noblemen as are here, that *Mr. Porter* never made me acquainted with this Design, till what he swore here.

L. C. J. I can't tell, 'tis sworn by two Witnesses.

Cranburne. I do declare, tho' *Capt. Pendergrafs* says he does not remember it, that *Capt. Porter* did declare in *Spring-Garden* the 22d, when he came out of the *Blue-Posts* by the Rails, if this Design miscarry, says he, *Mr. Charnock*, may thank himself; for I never communicated this Secret to any of my Friends.

L. C. J. But hark ye, do you consider what you say, if this Design miscarry: Pray what Design was that?

Cranburne. He never named any thing but the Design, he did not say what it was.

L. C. J. But why were you employ'd to carry a Lift from *Capt. Porter* to *Mr. Charnock*, and to bring a Lift back again from him to *Capt. Porter*?

Cranburne. I did carry the Note, but there was nothing mention'd what the Lift was for.

L. C. J. Then you were there on *Friday* the 14th, and there the Design was propos'd to Assassinate the King the next Day, and you engag'd in it.

Cranburne. Not a Word of it true, my Lord.

L. C. J. Aye but *Mr. Pendergrafs* swears it, and that you were hearty in the Matter, and hop'd you should do your Business the next Day.

Cranburne. I can't help it if he does swear it.

L. C. J. Then you were at the Meeting at the *Sm-Tavern* the 21st.

Cranburne. My Lord you hear what *Gunn* says.

L. C. J. As to that they are neither of them positive, but you did there promise and undertake the Matter, that *Capt. Porter* is positive in, that

it was agreed by you all to do it the 22d; and *Mr. Pendergrafs* says, when you were disappointed the 15th, you all agreed to pursue the same Design the *Saturday* following.

Cranburne. My Lord, I did not dine at the *Blue-Posts* that Day.

L. C. J. But you were there; I think indeed *Mr. Pendergrafs* says you came in after Dinner, and had some Steakes.

Cranburne. I never heard directly nor indirectly of this Design, till what I heard them swear here.

L. C. J. Gentlemen of the Jury, you do understand for what Crime this Prisoner at the Bar is Indicted: It is for High-Treason, in Designing and Compassing the Death of the King, which was to be effected by an Assassination, in the most barbarous and wicked Manner, that any Attempt of that Nature can possibly be made, being to surprise the King, and murder him in his Coach.

The Question Gentlemen is, whether this Prisoner be Guilty of this Crime or no; there have been three Witnesses produced that have given Evidence against him, *Capt. Porter*, *Mr. De la Rue*, and *Mr. Pendergrafs*; and they do all tell you, that there was such a Design on foot to Assassinate the King, as he came from Hunting at *Richmond*, after he came on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*. There were diverse Persons engaged in this Design, which *Sir George Barclay* was come from *France* to promote and manage: *Capt. Porter*, as it does appear upon his Evidence, was a Person that was principally engag'd, and at that Time was hearty in the Prosecution of it.

As to *Mr. Cranburne*, *Capt. Porter* tells you he was a Man that he had had a long Acquaintance with, and had employ'd him and design'd to employ him as an Officer under him, in case a Revolution happened, which it seems about that Time, and some time before it, was expected. *Captain Porter* was to have been a Captain, and I think he design'd to promote *Cranburne* to be his Quartermaster; and he sent him to buy Arms; and Preparations were made for that Business; but that is not the Thing that we are now upon, the Matter that now properly falls under our Consideration, is this; The Coming over of *Sir George Barclay*, the latter End of *January*, or the Beginning of *February* last, upon which, as it seems, *Mr. Porter* was engaged; and having an Interest in this *Cranburne*, and there being Horses to be furnish'd to attack the King and his Guards about *Turnham-Green*, this Man, *Cranburne*, was a Person that was engag'd to be one of the Horse-men that were to make the Attack, and he tells you that he did employ him to provide Horses and Swords, and to prepare the Pistols, and that he did engage in it, and particularly that the Design was to be executed on *Saturday* the 15th of *February*, and that he was then ready to go with *Capt. Porter*; but on that *Saturday* the King did not go abroad, whereby the Design was disappointed for that Time: Afterwards there was a Meeting at the *Sm-Tavern* in the *Strand*, where he met with *Sir George Barclay* and others of them, and there comes to that Tavern *Mr. Cranburne* and others, and they were in another Room, and *Capt. Porter* says he came to them, and did discourse about pursuing the Design the very next Day, which was agreed, and *Cranburne* was ready to go the next Day.

Then

Then he tells you further, that the next Day being *Saturday* the 22d, the second Time that this Assassination was to have been Executed, upon the Desire of Mr. *Charnock*, who was a Person also that was engag'd in this Design, Captain *Porter* writes a List of the Men he could bring, and sent it by *Cranburne* to *Charnock*; *Cranburne* carries the List to Mr. *Charnock*, and brings it back again with an Addition of the Names of Mr. *Charnock's* Men underneath.

Mr. *De la Rue* is called, and he swears to that very Circumstance, that Mr. *Cranburne* was sent by Capt. *Porter* with a List to Mr. *Charnock*, and brought it back again from Mr. *Charnock*, with an Addition of other Names.

Then Mr. *Pendergrafs* tells you, that he was with this Mr. *Cranburne*, the Prisoner at the Bar, the fourteenth of *February*, and there was a Discourse of going in pursuance of this Design the next Day, and the Prisoner agreed to it, which he is positive in: He tells you, that when they were disappointed the 15th, being at the *Blue-Posts*, they then agreed to pursue it the next *Saturday*; *Cranburne* was one of them that agreed.

Capt. *Porter* and *De la Rue* informs you that Healths were drank to the late King, and the late Queen, and the Prince of *Wales*, as they called him, and then at length, as the concluding Health, Capt. *Porter*, or some of them in the Company, having an Orange in his Hand, squeeze'd it, and drank a Health to the squeezing of the Rotten Orange, which was pledg'd by all, and particularly by Mr. *Cranburne*, as is prov'd by both Capt. *Porter* and *De la Rue*.

So that now Gentlemen I must leave it to you, whether this is not Evidence sufficient to prove this Man Guilty of the Treason whereof he is Indicted, that is, of Designing and Intending the Assassination of the King, and being engaged as a Party to execute this Design, whenever there was an Opportunity.

The Council insist upon it, on the Behalf of the Prisoner, that what Capt. *Porter* says is not Evidence: In the first Place they urge that he is not a Man of Credit, for they have mentioned that he used to be disguis'd, and wear a Vizard Mask, and go abroad under odd Circumstances, and therefore his Reputation they hope is not good enough to make him a credible Witness against the Prisoner: Now the Prisoner's Witness being produced, says he never knew him go in Disguise, or wear a Vizard Mask, but once he wore a Patch, because he was under some ill Circumstances about a Riot in *Drury-Lane*; every Body understands what the Meaning of that was, his drinking of Healths at a riotous Assembly, upon the 11th of *June*, and he being under some Prosecution for that, occasioned him to wear that Disguise, but it was not done to hinder any Person, or do any Mischiefe.

But then say they he is mistaken in his Evidence, of the Meeting at the *Sun-Tavern* the 21st of *February*, the Day before the last, that this Design was to have been executed, for whereas he says, that *Gunn* was not there when he came to them, yet *Gunn* was in the Company at that Time, and whereas he swears positively that they discours'd of going upon the same Design to Assassinate the King the next Day, as was agreed the *Saturday* before; *Gunn* heard no such Discourse. *Gunn* is called, and he tells you he did come to the *Sun-Tavern* at that time, with

Cranburne and Capt. *Porter*, he came into the Room, and he heard no such Discourse. They did open it indeed that *Gunn* had been there all the while, and if so, then if there had been such a Discourse he must have heard it. *Gunn* has been Examined, and does tell you he was not there all the while, but went out and was absent for some Time, about half a quarter of an Hour.

They have made a Question whether Captain *Porter* came in when *Gunn* was there, he says truly he thinks that Capt. *Porter* did come into the Room while he was there, before he went out, but he cannot tell certainly, he was there some Time, while he was there. Then Captain *Porter* was called again, and Capt. *Porter* does say he knows *Gunn* was there, but whether he was there at that Time he came in, he cannot say positively; but *Gunn* says Capt. *Porter* was going in and out several times, as *Porter* says himself; and *Gunn* was absent for some part of the Time. So that I cannot see any sort of Contradiction between the Evidence that *Porter* gives, and the Evidence that *Gunn* gives; the one is uncertain, and so is the other as to that Circumstance.

But Gentlemen, they would infer, that if there was any such Discourse while *Gunn* was there, it must be of necessity that *Gunn* must have heard it; but it is not necessary the Discourse should be when *Gunn* was there: Capt. *Porter* swears positively that there was such a Discourse of going the next Day to pursue the Design, and he says he thinks *Gunn* was not present at that Time when the Discourse was, and *Gunn* says he was absent some part of the Time.

And so I must leave it to you; upon the whole Matter, if Mr. *Cranburne* the Prisoner at the Bar, did consent and agree to act in this bloody and wicked Design, then you are to find him Guilty; if you are not satisfied of that upon the Evidence you have heard, or you think there is any Inconsistency, or Incoherence in the Testimony on the one side, and the other; and that there is good Reason to disbelieve the Evidence against the Prisoner, then you are to acquit him. You have heard your Evidence, and you had best consider of it.

Cl. of the Crown. Who keeps the Jury?
Cryer. There is an Officer Sworn.

Then the Jury withdrew to consider of their Verdict, and about a Quarter of an Hour after Returned.

Cl. of Ar. Gentlemen, answer to your Names,
John Caine.

Mr. *Caine.* Here. *(And so of the Rest.)*

Cl. of Ar. Are you all agreed of your Verdict?
Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. Foreman.

Cl. of Ar. *Charles Cranburne*, hold up thy Hand, *(which he did.)* Look upon the Prisoner; how say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed, or at any Time since?

Foreman. None to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that *Charles Cranburne* is guilty of the High-Treason whereof

he stands indicted, but that he had no Goods, Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Jury. Yes.

Mr. *Caine.* My Lord, the Jury humbly desires they may be discharged from their Attendance to morrow.

L. C. J. We cannot do it, unless the Jury be full without them; if you come early, we shall dispatch you presently.

Then the Prisoner was taken from the Bar, and the Court adjourned till Seven a-Clock the next Morning.

CLV. *The Trial of ROBERT LOWICK, for High-Treason, April 22, 1696. 8. Will. III.*

THIS Day the Justice of Oyer and Terminer holden for the County of *Middlesex*, met, and the Court was resum'd by Proclamation in usual Form. Clerk of the Arraignments. Keeper of *Newgate*, set *Robert Lowick* to the Bar, (which was done.) You the Prisoner at the Bar, *Robert Lowick*, those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them, as they come to the Book to be Sworn, and before they be Sworn.

Mr. *Mompesson.* If your Lordship pleases to favour me with one Word for the Prisoner at the Bar, I shall not trouble your Lordship with any Thing that was urged by the Gentlemen that were of Council Yesterday, but I shall rely upon something that has not yet been spoken to. My Lord, they have not laid any Time or Place where the Consent or Agreement was, for the forty Men that were to set upon the King and his Guards: There is a Time laid before where they met and Discourfed of the Ways and Means how to assassinate and kill the King; but when it comes to the *Assenserunt, Conserunt & Agreeverunt*, with submission, this being another Act, there ought to be another Time and Place laid, and for that I shall cite your Lordship two or three Cases; for Men may meet and propose, and discourse, and consult of such Things, though they be very ill Things, and yet that may not be Treason. It's the Agreement that is the Treason, and so 'twas held in Captain *Blague's* Case about taking the *Tower*. They may meet at one Time and Place, and at another Time and Place they may agree, in *Dyer*, 68 B. and 69 Pl. 28. A Man was indicted for Murder, That he at such a Place in and upon the Person that was murdered *insultum fecit, & ipsum*, the Person that was murdered, *cum quodam cultello*, of such a Price, *percussit*; and he does not shew the Place where he struck him, nor had the Indictment the Words, *ad tunc & ibidem*, and therefore the Court held it void: So it is likewise ruled in *Goodrick's* Case, *Hell.* 35 & 119. and therefore in Indictments for Murder, since they generally set forth not only the Time and Place of the Assault, but likewise of the Blow; so likewise in Things of a more inferior Nature, as Rescues returned by the Sheriff, that the *Capius* was served, but does not shew where the Rescue was; or though he shews where the Arrest was, and an & coupled the Rescue to it, yet

it was adjudged an ill Return, *Dyer* 69. Pl. 29. 10 *Edw.* 4. 15 *Fitz. Ret. Vice.* 32 *Bro. Ret. Det. Bre.* 97. and Error 193. *Palm.* 564. and in *Noy* 114. there are these Words, *Note*, It was moved in discharge of Rescue, the Return was, that they, *viz. A. B.* aforesaid, the Bailiffs, *ad tunc & ibidem vulneraverunt, &c.* And the aforesaid *George, &c. Rescuserunt* without *ad tunc & ibidem*, referred only to the *Vulneraverunt*, and not to the *Rescuserunt*, and therefore the Return was adjudged insufficient; for my Lord, although in Conveyances, a Clause or Word in the Beginning or End may refer to the Whole, yet, in Indictments, every Sentence must be certain, plain, and express, and have its own Time and Place: Therefore, in *Noy's Rep.* 122. *Raymond* was indicted for stopping a Cross-Way leading from a certain Ville called *Stoake*, into a Ville called *Melton*, in the County of *Dorset*, and the Indictment was quash'd, because in the County of *Dorset* shall refer only to *Melton*, and not to both: So an Indictment of forceable Entry into a Messuage *existens Liberum Tenementum* of *J. S.* is not good for want of the Words *ad tunc*, though the Participle *existens* does strongly imply that it was his House at that Time, 3 *Cro.* 754. *Het.* 73. *Noy* 131. *Palm.* 426, *Bridg.* 68. 2 *Cro.* 214, & 610. *Sid.* 102. *Lat.* 109. &c. And my Lord *Coke* tells us in *Calvin's Case* 5. B. that Indictments of Treason, of all others, are the most curiously and certainly indited and penn'd; and all those that I have seen and observed, have contained more Certainty than the Indictment now before your Lordship: In *Reginald Tucker's* Case, the Indictment was, That he and *Thomas Place* *apud Bridgwater*, in *Com. Somersett. prædict.* *Compasaverunt*, to kill and depose the King, &c. and to bring their treasonable Purposes to effect, they the said *Reginald Tucker* and *Thomas Place* the same Day and Year, at *Bridgwater* aforesaid, in the County aforesaid, against the King, with a great Multitude of People, array'd in a warlike Manner, *viz.* with Swords, &c. *se ipsos illicite & proditorie insinul ad tunc & ibidem congregaverunt & assemblerunt & guerram publicam contra dictum Dominum Regem apud Bridgwater prædict.* in *Com. prædict. dicto vicesimo Die Junii Anno primo supra dicto proditorie paraverunt ordinarunt & levaverunt.* So in the Indictment of *Gate*, as it is set forth at large in a Plea in Bar of *Dower*, brought by his Wife, he with Force and Arms, *apud Villam de Ware, &c.* assembled with a great many Persons, & *Bellum crudele contra dictam Dominam Reginam apud Ware, prædict. ad tunc falso & proditorie publicavit*

cavit & levarit, ac infuper ad tunc & ibidem falso & proditorie, proclaimed the Duke of Northumberland, to be Lieutenant-General of their Forces; & *etiam falso & proditorie apud Ware prædict.* *ad tunc*, proclaim'd the Lady Jane Dudley Queen. This is in *Bendlowe's Reports*, publish'd by Sergeant *Rowe*, fol. 55. *placito* 91. So in the Earl of *Leicester's Case*, *Plowd. Com.* 385. the Indictment is laid much after the same Manner, and many other Indictments, which at present I am unwilling to trouble your Lordship with; and this being one of a new Form and of the first Impression, I hope your Lordship will hold it insufficient. And, my Lord, when they go farther, and say, *Et quilibet, eorum proditorie super se suscepit esse unum*, there is no Place or Time alledged where that was done, which of Necessity should be mentioned: For it is a constant Rule in our Books, that what is issuable, ought to have a Place where it may be tried. Now, this is issuable; and the most material Thing in the Indictment is, for compassing the King's Death. The Overt-Acts are, That *Christopher Knightley* the Prisoner, and two others, did consult to kill the King; and afterwards did agree how to do it, *viz.* by forty Horsemen *Quorum*, these shou'd be four, and every one of them did agree to be one; then comes the other Overt-Act of providing Arms for them. Now suppose they should not prove the last, *viz.* the providing Arms; then, my Lord, they must resort to one of the other Overt-Acts, that these four did consult and agree to kill the King; or that these four did agree, the Manner how to do it, as is laid in the Indictment; and it is plain they must fail of Proof of either of these; for by the not prosecuting any one of the Name of *Christopher Knightley*, but preferring a new Indictment against one *Alexander Knightley*, it appears that *Christopher Knightley* was not there; and the Proving these three others making a Consult and Agreement, is not a Proof of the same Overt-Act, that is laid in the Indictment, as it ought to be by the late Act; unless they can prove that a Consult of Three is a Consult of Four: And if it be answered, that it is alledged, that *Quilibet eorum super se suscepit*, then will that come to be issuable, and the most material Part of the Indictment; and consequently a Place ought to have been laid where it should be tried; this, my Lord, is a distinct Sentence of it self, it is in a *Parentesis*, and though you take it away, the Sense of what remains is perfect and intire; and consequently this Sentence is or should be intire of it self, and therefore ought certainly to be express'd. Besides, if your Lordship pleases, it is not positively laid, what these Persons severally undertook to be, there is indeed mention made before of Forty Horsemen, agreed upon to set upon the King, then comes the *Parentesis*, *Quorum iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranborne forent Quatuor, & quilibet eorum proditorie super se suscepit esse unum*: It is perhaps express'd fully enough by the Word *Quorum*, that it was agreed these shou'd be four of the forty Horsemen; but there wants the Repetition of the Word *Quorum*, to express what they severally engaged to be; and the Word *&* cannot join and connect the Sentences: For *forent* and *suscepit* differ not only in Number but also in Mood and Tense, and the Sense is not necessarily coherent; for it might be true, that the Majority of the Company might agree, these shou'd be four, and yet they themselves

might not severally engage therein, and one or some of them might undertake it, and yet the Company not agree to it; and it cannot be mended by Intendment. There was *Vaux's Case*, in the 4 *Rep.* 44. he was indicted for Murder, for persuading a Man to take *Cantharides*; it was laid, That he *persuadebat eundem Nicholaum recipere & bibere quendam potum mixtum cum quodam veneno vocat. Cantharides*; and the Indictment says, *Quod prædictus Nicholaus nesciens prædictum potum: cum Veneno prædicto fore intoxicatum, sed fidem adhibens Distæ persuasioni Willielmi Receipt & Bibit*; but does not say, *venenum prædictum*, but yet it adds, *Per quod prædictus Nicholaus immediate post receptionem veneni prædicti*, languish'd and dy'd; here, one would think, was a sufficient Implication, that he took and drank the Poison; but it was rul'd, that none of these Words were sufficient to maintain the Indictment; for the Matter of the Indictment ought to be plain, express, and certain, and shall not be maintained by Argument or Implication, and therefore for Want of those Words the Indictment was held insufficient, and the Man again Indicted for that Offence, and there seems much more Incertainty in this Indictment, and therefore I humbly pray your Lordship that it may be quash'd.

Sir *B. Shower*. My Lord, we think the Objection is fully put, and therefore we desire to have their Answer to it.

Sir *Thomas Trever*. Mr. *At. Gen.* We think my Lord, this Objection will receive a very plain Answer. The Indictment sets forth, That at such a Place the Prisoner at the Bar did imagine and compass the Death of the King: There is a particular Place where the Imagining was, and that they, to accomplish that Treason, in compassing and imagining the Death of the King, did, among others *postea eisdem die & anno apud parochiam prædictam*, meet and consult, &c. so there's the same Place set forth again, wherein they did meet and consult of the Ways and Means, and Time and Place, when, where, and how to assassinate the King: And immediately it follows, *& consenserunt & agreeverunt*, &c. that forty Men, whereof they were to be four, and every one of them undertook to be one, should do so and so. Now, my Lord, say they, It is not said that the Agreement that there should be forty Men to do it, was at the same Time and Place where they did meet and consult about the Ways and Means: But, my Lord, with submission, it is very plain, that the Agreement for forty Men, and the particular Agreement for them to be of the Number, is but the Effect of the Consultation that is mention'd just before: For it is said, they consulted how they shou'd do it, and they agreed to do it in this Manner; the particular Manner is set forth immediately after that, it is said they did consult of the Manner; so that, my Lord, it is part of the former Sentence; a Particularizing of what they did agree upon at that Consultation; but it is no distinct Overt-Act: If it had been a distinct Overt-Act, then the Cases that have been cited by the Council, do shew, that there should be a particular Time and Place mentioned for every Overt-Act; but this is only a Part of that Overt-Act that was mentioned generally before: This tells you particularly what the Means were they did agree upon, and the Sentence is not compleat till you have gone over this; so that, my Lord, with submission, it had been very improper when they agreed at such a Time and Place, of the Means

and Ways how it shou'd be effected, then to set forth that it was at the same Time and Place where they did consult of the Ways and Means, that cannot be proper; for it is not laid at first, that there was any particular Way proposed, but only in general, they consulted of the Ways and Means; therefore, my Lord, all this that Mr. *Mompesson* has said, will not be pertinent to this Case, it is impossible to have been otherwise; it is but a Part of the Sentence; and it is not compleat till you have gone over the several Particulars: As to the Case of a *Rescous*, that is, the Offence upon which the Matter is to be grounded; the *Verberavit* and *Vulneravit* are not the Rescuing; but where there is not one Sentence compleat, till you come to the End of these Words, there it must be all taken together; so it is here, they consulted of the Way, and agreed this to be the Way, which they set forth in particular: It is join'd to the former Part of the Sentence, and the whole is not compleat without it.

Sir John Hawley. Mr. *Sol. Gen.* With submission, my Lord, it cannot be otherwise, nor can they make it Sense otherwise.

Sir John Holt. L. C. 7. They say you might and should have put in, *ad tunc & ibidem.*

Mr. *Sol. Gen.* With submission, my Lord, I say it cannot be repeated again: Indeed if you wou'd make it like the Case, as Mr. *Mompesson* wou'd have it, that forty Men did agree to it, and forty Men did it, it were necessary to name Time and Place, as it is in the Case of Murder: That he did agree to murder him, and afterwards knock'd him on the Head, there you shall lay Time and Place were he agreed, and where he did the Act, for there is an Act done; but in this Case there is no Act done, but only an Agreement that forty shou'd do it, whereof these four were to be part of the Number. Now, they cry, you do not say what these four were to be for. Yes, we do: The Forty were to do such an Act, and these were to be four of that forty, and every one of them undertook to be one, so that it cannot be express'd otherwise than it is; for what they say of the Indictment's being not in the same Form that other Indictments are, that will be no Argument at all; for it does not follow, that there must be one express'd Form of Indictment; of Right there are divers Forms of Indictments, and all of them good, because Indictments are to be framed according to the particular Case, and they cannot put me an Instance of such a particular Case as this. As to that of the Mistake of the Name of *Knigtley*, that unquestionably can be no Objection at all: For how does it appear to the Court, that this is against the same Person that was before indicted by the Name of *Christopher*? there may be another *Christopher* for ought they know: But I will suppose, that the Coniult was proved not, as it is laid, that there were to be four; but only that they were to be three of them, it would be well enough against the Prisoner at the Bar, if he be proved to be one.

Mr. *Conyers.* First, we have here laid a Time and Place for the Treason alledged in the Indictment, and also for the two Overt-Acts, how, when, and where it was to be done, and the Providing of Arms for it; and for this Particular of the forty Men, that they would have us put the *ad tunc & ibidem* to that, is but Part of the Overt-Act, which was before alledged; for the first Overt-Act men-

tioned, is the Meeting and Consulting, and there we lay both Time and Place; that on such a Day, and at such a Place, they did meet and consult of the Way and Manner how to do such an Act: And then we continue on the Sentence, by particularizing how it was to be effected; that they did agree there shou'd be forty Horsemen to do it, whereof they were to be four: This is but a Part of the Overt-Act, which is the Consulting and Agreeing upon the Ways and Means; this particular Means agreed upon, being but the Result and Effect of the Consultation before: So that we conceive there is no Want of Time or Place, upon which to take Issue in this Case.

Mr. *Cowper.* My Lord, I think, with submission, there is nothing in their Objection, and I take it to have received a full Answer already: Yet I would ask one Thing of the Gentlemen of the other Side, had the Sentence run without the Words *de iis modis & mediis, &c.* which follow after the Word *consultavit*, and before the Words *& aggregavit*; in this Manner, That they did then and there traiterously treat, propose, consult, and agree, that forty Horsemen, or thereabouts, with Guns, and so forth. If then there had been any Colour to think it necessary, that it should be laid in this Manner, That they did then and there traiterously treat, and then and there traiterously propose, and then and there traiterously consult, and did then and there traiterously agree: And if not, then I wou'd desire them to tell me why *then and there* is more necessary to one Verb *did agree*, than it is to all the Rest, in Sense and common Speaking. The only Use of a Conjunction copulative, is to derive the Force of some Words, in a Sentence foregoing, down to a Sentence following, to avoid Repetition: And here, though after the Consultation be put many Words that relate to that Matter, by Way of Parenthesis; yet the *ad tunc & ibidem* still does refer to all the Verbs following, being joined by the Conjunction copulative; it does not vary the Case at all, the putting in that Parenthesis; it is notwithstanding but as one Sentence: And the Supposing that the Parenthesis stood out, makes it very plain, there can be no Colour to say there wanted a Repetition of the *ad tunc & ibidem* to every Verb.

Sir B. Shower. With submission to your Lordship's Judgment, there is no Answer made to this Objection. I do agree, if there had been several Verbs, and no other Words had intervened, that an *&* wou'd have coupled all together, and you need not have repeated *ad tunc & ibidem* to every one: But here is a Fact after the Verbs, that makes one compleat intire Sentence; and if this of the forty Men were left out, it had been a good Sentence, that they did propose and treat how, where, and when; that's a Sentence of it self, the Consulting and the Treating of the Ways and Means; But then they say, and they did agree and assent that forty should do it: Now there is no Necessity for the Interpreting of these Words, That they should consult and agree at the same Place and Time; there is no necessity to conjoin this Agreement for the forty Men with the Consultation; they might propose and consult at one Time and Place, and not agree, and afterwards agree at another Time and Place: It is not a Specification, or, as they call it, a specifick Account of the Consultation, nor a necessary Effect of it, so as to make it necessary to join them together; they might meet and consult at one Time and Place,

Place, and at another Time and Place they might agree that forty should do it; and therefore when you say at one Time and Place they did consult and propose, and afterwards they did agree; it is not necessarily imply'd, that it must be at the same Time and Place; and when it is not necessarily implied, we think it necessary in Indictments, for Certainty-sake, to have *ad tunc* & *ibidem* inserted again.

Mr. *Mompesson*. My Lord, Mr. Solicitor says, That as to other Precedents, that does not make it necessary that this shou'd be like them; and that it is no Argument that it ought to be so here. My Lord *Coke*, in *Calvin's Case* tells us, That by Precedents the Law is known, and that Indictments of Treason are of all Things the most curiously penn'd; and it is common to infer the Law is so, because usually it is so in the Precedents of Indictments. Mr. Solicitor says likewise, That there may be a *Christopher Knightley* besides an *Alexander*; but I cannot take that for an Answer to the Exception I urge, which is the Want of *ad tunc* & *ibidem* at the *Quorum*, and the *Quilibet*; for the *Quilibet* may come to be in Question as the most material Part of the Indictment, because the Agreement of the Four upon the Meeting of the Four is alledg'd as an Overt-Act. Now, with submission, they must prove the Assembly of the whole Four, or they do not prove the Overt-Act expressly laid: Then as to the *Quilibet suscepti*, which is the most material Part, it has no Time nor Place.

Mr. *Att. Gen.* No sure: We do not need to prove all four, for it is a distinct Offence in each; and if any one undertook, it is well enough against him: and for the Time and Place, we tell you, it is Part of the former Sentence, and makes but an intire One.

Mr. *Mompesson*. As for the Residue of the Verbs, if they had been omitted, it had been good Sense; but this is a perfect intire Sentence of itself, when it tells you what they consulted and treated of, as in the Case of the *Rescue* that I put; if it had stop'd there, it had been a good Sentence without the *Vulneraverunt*.

Mr. *Att. Gen.* The *Rescous* is the Offence in that Case, the other is distinct: But here, in this Case, nothing can be plainer than that all is one Act, as we have laid it, That at such a Time and Place they did consult and treat of the Ways and Means; but then there is no Agreement mentioned till after we have said they did consult of the Ways and Means, and did agree that this should be the Way: This is certainly one entire Sentence that shews what the Agreement was upon the Consultation as the Result of it.

Mr. *Cowper*. As to what Sir *Bartholomew Shower* says, That we ought to repeat the *ad tunc* & *ibidem*, unless the Sense of the Words implies a Necessity that the Consultation and the Agreement should be at one Time and Place. My Lord, there can be nothing in that, for it does not arise from the Necessity of the Thing one Way or t'other; but we take it as an intire Sentence, and that the whole Matter is sufficiently connected and laid to one Time and Place, though it might be divided, it must be taken, as alledged, to be one intire Fact, or else it recurs to the same Objection, that *ad tunc* & *ibidem* must as well be put to every Verb; for 'tis possible they might propose at one Time and Place, and consult at another, and debate at another, as well as agree at another: So that no-

thing is to be argued from the Necessity of the Thing more in one Case than the other; for one Man might propose it in one Place, and the Rest might then shake their Heads at it, and then they might again meet and consult at another Place, and afterwards agree at a Third: But when it is said *then and there* they did meet, consult, and agree, it cannot be understood but that the Agreement was at the same Time and Place with the Meeting and Consult.

Sir *B. Shower*. But this can be no Answer that Mr. *Cowper* gives now, for proposing, and consulting, and treating, and debating, are all of the same Signification, for one Man's proposing to another; and the others proposing to him, is consulting, treating, and debating; but now consulting and agreeing are different Things.

Mr. *Cowper*. So is proposing and consulting: One may propose, but there must be at least Two to consult: There is that nice Difference between them.

Sir *B. Shower*. Every one must agree for himself, and that must be certainly laid with Time and Place, let the Proposal and Consultation be what it will.

L. C. J. Mr. *Mompesson* puts that Case in *Dyer* upon an Indictment of Murder, That on such a Day, and at such a Place, the Party made an Assault upon the Persons slain, & *percussit*; but does not say, *Et ad tunc* & *ibidem percussit*, and for not alledging that the Indictment was held nought.

Mr. *Att. Gen.* My Lord, That is a different Case from this, because *insultum fecit*, and the *percussit*, are different Crimes; there is a great Difference between an Assault and a Stroke: But here it is, That they did propose and consult of the Ways and Means, and agreed upon this particular Way; that is the same Thing; it is not an intire Sentence till you come to the End of it, then it is compleat when you shew what was the Effect of the Consultation; what they were agreed upon, and not till then.

Mr. *Mompesson*. A Man's holding up his Hand is an Assault, but he must actually Strike, to be guilty of Murder: So a Man may debate, and yet not agree: It is the Agreement that is the Treason.

L. C. J. Read the Indictment.

Cl. of Arr. **D**ECIMO die Februarii anno Regni dicti Domini Regis nunc septimo, & diversis aliis diebus & vicibus, tam antea quam postea, apud Parochiam Sancti Pauli Covent-Garden, prædictæ, in Comitatu prædictæ falsè, malitiosè, diabolicè, proditoriè, compassaverunt, imaginati & machinati fuerunt, excogitaverunt, designaverunt & intencabant dictum Dominum Regem nunc occidere, interficere, & murdrare, & stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regnum Angliæ passere, & causare & ad easdem nefandissimas, nequissimas & diabolicas proditones & proditorias compassationes, machinationes, & proposita sua prædicta perimplend' perficiend' & ad effectum redigend' ipsi iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne, & quam plurimi alii falsi proditores (Furatos) prædictis ignoti postea scilicet eodem decimo die Februarii anno prædicto apud Parochiam prædictam in Com' prædicto, ac diversis aliis diebus & vicibus, tam antea quam postea, ibidem & alibi in eodem com' falsè, malitiosè, advrsate, clandestinè, proditoriè, ac vi & armis conveniebant, proposuer' tractaver' consultaver'

sultaver' consenser' & aggreaver' ad ipsum Dominum Regem nunc ex insidiis & dolo percutiend', Anglice to assassinate, interficiend' & murdrand' & ad execrabilem, horrendam & detestabilem Assassination' Anglicè Assassination, & Interfectionem ill' citius exequend' & perpetrand' postea, scilicet eisdem die & anno ac diversis aliis diebus & vicibus apud paroch' pred' in Com' prædicto proditoriè tractaver' proposuer' & consultaver' de viis, modis & mediis ac tempore & loco ubi, quando, qualiter & quomodo dictum Dominum Regem sic ex insidiis facilius interficerent, & consenser' aggreaverunt & assenser' quod quadragint' homines Equestres aut eo circiter (quor' iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent quator, & quilibet eor' proditoriè super se suscepti esse videntur) cum Bombardis, sclopetis & sclopetis, pulvere bombardico, & globulis plumbeis onerat' & cum gladiis, ensibus & aliis Armis armat' insidiati forent & essent in sulsessu, Anglicè in Ambush, ad eundem Dominum Regem in Rbeda sua, Anglicè his Coach, existens quando foris iret invadend' Quodque quidem & competens numerus de hominibus illis sic armat' in satellites, Anglicè the Guards, ipsius Domini Regis eum tunc attendend' & secum existens aggressi forent & eos expugnarent & devincerent, dum alii eorundem hominum sic armat' ipsum Dominum Regem percuterent, interficerent, occiderent & murdrarent.

Mr. *Mompesson*. The Consult is like the Assault, and the Agreement is like the Stroke.

L. C. J. *Treby*. It is a nice Case as you would have it, but I think it is very natural as the King's Council put it at first; they lay the Consultation of the Ways and Means how it should be done, and then they conclude that thus it shall be done: All which makes but one intire Thing.

L. C. J. They say they met that Day at St. Paul Covent-Garden, that's in the Beginning, and did consult how to kill the King; and they consented and agreed among themselves, that it should be done in this Manner: Does not this refer to both Time and Place in the Beginning? It is a continuing on of the same Sentence, and makes all but one and the same Act; it is the Result of the Consultation at that Time and Place.

Sir B. *Showers*. But, my Lord, it might be at another Place: They might consult at one Place, and conclude at another.

Mr. *Conyers*. But it is laid to be at the same Place, for no other Place does appear, and it is one continued Sentence.

L. C. J. *Treby*. You would make the Repetition so frequent and reiterated, that it would become absurd.

Mr. *At. Gen.* Indeed I do not know what these Gentlemen would have.

Sir B. *Showers*. We would have this Indictment as all others are, the Precedents are as we say, and we hope this shall pursue 'em, or else be quash'd.

L. C. J. Look ye here, Sir *Bartholomew Showers*; Suppose this Part should not be right, that will not vitiate the whole Indictment.

Mr. *Mompesson*. But your Lordship won't suffer them to give Evidence of that Part that is vitious.

L. C. J. Yes, yes; it comes within the first Words of the Time and Place laid; they may give Evidence of it, because this is but a setting forth for the Manner agreed upon for the Execution of the Design that was before consulted and treated of; it is comprehended in the former Words; and if they had omitted this out of the

Indictment, the Indictment had been never the worse; there had been a sufficient Overt-Act alledged to prove the Compassing and Imagining the Death of the King; for if People at such a Place and Time meet, and propose the Way and Means how to effect it, do you think the Indictment would not be good enough without laying the particular Means agreed upon? Certainly it had been well enough if this had been omitted. Do you think they cannot give in Evidence this as a Proof of the Overt-Act? Certainly they may.

Sir B. *Showers*. The Question will be, my Lord, then upon the whole, Whether the Conclusion of the Indictment, *contra legiantia sua Debitum*, shall be taken distributively to every Fact, and if so, then there ought to be Time and Place alledg'd to every Fact.

L. C. J. Suppose you lay several Overt-Acts, and prove but one, yet he is to be found guilty of the High-Treason, which is the Imagination, and Compassing the Death of the King, which is the Crime laid in the Indictment; then suppose this was left out of the Indictment, they might give it in Evidence, as a Proof of the Overt-Act, that is well laid for Time and Place; and therefore though it be expres'd, and not so fully and particularly laid, we cannot quash the Indictment for it, because the Indictment would have been good, though that had been omitted.

L. C. J. *Treby*. That is certainly true, it is no Cause for quashing the Indictment.

Mr. *Soll. Gen.* The Indictments against the Regicides were for Compassing the Death of the King, and they gave in Evidence that he was put to Death, though they charg'd in the Indictment only the Compassing and Imagining the Death of the King.

L. C. J. Ay sure, that is an Overt-Act with a Witness, the Indictment was not laid for Murdering the King, but for Compassing his Death, which is the Treason according to the Act of Parliament of 25th, Ed. the 3d, and as an Overt-Act they gave the Cutting off his Head in Evidence.

Mr. *Att. Gen.* The Indictment says, they compass'd and imagined the King's Death, and they agreed to do it in this manner; if this be not all one intire Sentence I know not what is.

L. C. J. As to your Case, Mr. *Mompesson*, which you quote out of *Dyer*, it is possible a Man may make an Assault at one Time, and at another Time make an Assault and give a Stroke, but this is all one Act, it does but specify what was generally consulted of and proposed.

L. C. J. *Treby*. Pray, do you think a Man may demur upon a common Action of Battery, where 'tis said first, at such a Time and Place, *Insultum fecit & verberavit, vulneravit*, because there is not a Place set to every Word.

Mr. *Mompesson*. Indictments ought to be very curiously penn'd, and what is good in an Action will not be good in an Indictment, with Submission.

L. C. J. *Treby*. But suppose you show'd it for Cause upon special Demurr.

Mr. *Mompesson*. My Lord, I cannot tell what it would amount unto.

L. C. J. You cannot quash the Indictment at this Time, that is not possible, because the Indictment is good as to the rest, supposing this was not so well as it might be.

Mr. *Mompesson*. Then, my Lord, I am in your Lordship's Judgment, whether they shall be admitted to give in Evidence this particular Thing.

L. C. J. They may certainly give in Evidence, the Agreement to have Forty Men to kill the King, as a Proof of the Consultation, Agreement and Consent to kill the King; and the Consenting to have Forty Horsemen is an Evidence of their treating, proposing and consulting to kill the King. Then for your Objection of *Quilibet suscipit* to be one, that is well enough, it is all still but one Sentence.

Sir B. Shower. One of which is it? for they have not laid in the Indictment what it is, whether it be one of the Four, or one of the Forty.

L. C. J. Whether it be one of the Four, or the Forty, is not material, for cannot one be found guilty and the rest acquitted? the one is not charged with the Act of the other, but they are several Offences, and each must answer for himself. In all Indictments, Offences are several. Suppose an Indictment of Conspiracy, and it is laid in the Indictment that Four did conspire, can't you prove that two conspired? no Question you may. It is not certainly necessary that every one should be proved to have conspired. Suppose it were alleged that Four did beat a Man, and does not say *Quilibet eorum* beat him, you may give in Evidence that one did beat him.

Sir B. Shower. No Question of that in Case of a Battery, but in the Case of a Conspiracy there must be more than one.

L. C. J. Nay, I will ask you even in an Action of Conspiracy, where the very Gift of the Action is Conspiring together, cannot two be found guilty and the rest acquitted? In Riots there must be Three or more. It may be you'll lay Ten, but it is sufficient, I hope, if you prove it upon any Three of them.

Mr. Att. Gen. The Difference is betwixt Contracts and Crimes, for Contracts they are joyn't, but Crimes they are in their own Nature several.

Mr. Soll. Gen. Besides, my Lord, though they be out of Time, yet this is not to the Abatement of the Indictment; but to the Evidence; how do they know, but we will give it in Evidence that *Christopher Knightley* was one.

L. C. J. Treby. Mr. Mompesson moves it as a Caveat against your giving it in Evidence.

Sir B. Shower. If in an Outlawry against diverse, they leave out these Words, *Nec eorum aliquis comperuit*, that is every Day held to be nought, and for that Reason we say, the *Quilibet eorum suscipit* is necessary too, and without being laid cannot be given in Evidence, and if it be laid, it ought to have Time and Place.

L. C. J. Treby. The Default of Appearance must be a several Thing, and when he lays it joyn'tly *non comperuerunt*, it may be true that all did not appear, if any one made Default; but when you charge Men with a Fact done, though in the plural Number, yet it is a distinct separate Charge upon every one.

Cl. of Arr. Robert Lowick, those Men that thou shalt hear call'd, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

George Ford.

Lowick. I do not except against him.

Cl. of Arr. Hold the Book to Mr. Ford.

Cryer. Look upon the Prisoner, you shall well and truly try, and true Deliverance make, be-

tween our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence: So help you God.

Cl. of Arr. Thomas Trench.

Lowick. I have nothing to say against him. (He was sworn.)

Cl. of Arr. John Wolfe.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. James Bodington.

Lowick. I challenge him.

Cl. of Arr. John Raymond.

Lowick. I say nothing against him. (He was sworn.)

Cl. of Arr. George Hawes.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Thomas Glover.

Lowick. I challenge him.

Cl. of Arr. Matthew Bateman.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. James Partherith.

Lowick. I challenge him.

Cl. of Arr. Joseph Blisset.

Lowick. I challenge him.

Cl. of Arr. Alexander Forth.

Lowick. I challenge him.

Cl. of Arr. Francis Chapman.

Lowick. I challenge him.

Cl. of Arr. Nicholas Roberts.

Lowick. I challenge him.

Cl. of Arr. Thomas Playstead.

Lowick. I challenge him.

Cl. of Arr. John Hall.

Lowick. I challenge him.

Cl. of Arr. William Partridge.

Lowick. I challenge him.

Cl. of Arr. Peter Levigne.

Lowick. I challenge him.

Cl. of Arr. Thomas Moody.

Lowick. I challenge him.

Cl. of Arr. Thomas Ramage.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Edward Townesend.

Lowick. I challenge him.

Cl. of Arr. William Gunson.

Lowick. I challenge him.

Cl. of Arr. John Wyborne, he did not appear.

William Strode.

Lowick. I challenge him.

Cl. of Arr. William Wild.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. William Pitts.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. William Smith.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Moses Cook.

Lowick. I challenge him.

Cl. of Arr. Benjamin Boltby.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Elias Fletcher.

Lowick. I have nothing to say against him. (He was sworn.)

Cl. of Arr. Cryer countez. George Ford.

Cryer. One, &c.

Cl. of Arr. *Elias Fletcher.*

Cryer. Twelve Good Men and true, stand together and hear your Evidence.

L. C. J. Now the rest of the Jury that have appeared are discharged.

Cl. of Arr. *Cryer,* make Proclamation.

Cryer. Oyez, If any one can inform my Lords the King's Justices of Oyer and Terminer, the King's Serjeant, or the King's Attorney General, before this Inquest be taken of the High-Treason, whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance.

The Names of the Twelve sworn are these ;

<i>George Ford, Esq;</i>	}	<i>Thomas Ramage, Gent.</i>
<i>Thomas French, Esq;</i>		<i>William Wild, Gent.</i>
<i>John Wolfe, Esq;</i>		<i>William Pitts, Gent.</i>
<i>John Raymond, Esq;</i>		<i>William Smith, Gent.</i>
<i>George Hawes, Esq;</i>		<i>Benj. Boltby, Gent. &</i>
<i>Matthew Bateman, Esq;</i>		<i>Elias Fletcher, Gent.</i>

Cl. of Arr. *Robert Lowick,* hold up thy Hand; which he did. You that are sworn, look upon the Prisoner and hearken to his Cause. He stands indicted by the Name of *Robert Lowick,* late of the Parish of *St. Paul Covent-Garden,* in the County of *Middlesex,* Gentleman; for that he, together with *Christopher Knightley,* late of the same Parish and County, Gentleman; *Ambrose Rookwood,* late of the same Parish and County, Gentleman; and *Charles Cranburne,* late of the same Parish and County, Yeoman; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and seduced by the Instigation of the Devil, as false Traytors against the most Serene, most Illustrious, most Mild and most Excellent Prince, our Sovereign Lord, WILLIAM the III. by the Grace of God, of *England, Scotland, France, and Ireland,* King, Defender of the Faith, &c. their Supreme, True and Rightful, Lawful and Undoubted Lord; the Cordial Love and True, and Due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King, that now is, towards him our said Lord the King, should, and of right, ought to bear, withdrawing and utterly to extinguish, Intending and Contriving, and with all their Strength Purposing, Designing and Conspiring the Government of this Kingdom of *England,* under him our said Lord the King that now is, our right, duly, happily, and very well established, altogether to subvert, change, and alter; as also the same our Lord the King to Death and final Destruction to put, and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England,* into intollerable and most miserable Slavery to *Lewis the French King,* to subjugate and intral, the 10th Day of *February,* in the Seventh Year of the Reign of our Sovereign Lord the King that now is, and diverse other Days and Times, as well before, as after, at the Parish of *St. Paul's Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, and contrive, purpose, design, intend, our said Lord the King that now is, to kill, slay, and murder; and

miserable Slaughter among the faithful Subjects of our said Lord the King throughout this whole Kingdom of *England,* to make, and cause, and the same their most wicked, impious, and devilish Treasons, and traiterous Compassings, Contrivances, and Purposes aforesaid, to fulfil, perfect, and bring to effect, they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne,* and very many other false Traitors to the Jurors unknown; afterwards, to wit the same tenth Day of *February,* in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and diverse other Days and Times, as well before as after; there, and elsewhere, in the same County, falsely, maliciously, advisedly, secretly, and traiterously; and with Force and Arms did meet together, propose, treat, consult, consent, and agree, him our said Sovereign Lord the King, that now is, by lying in Wait and Wild, to assassinate, kill, and murder, and that execrable, horrid, and detestable Assassination and Killing, the sooner to execute and perpetrate; afterwards, to wit, the same Day and Year, and divers other Days and Times, at the Parish aforesaid, in the County aforesaid; traiterously did treat, propose, and consult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what manner, our said Lord the King, so by lying in wait, the more easily they might kill; and did consent, agree, and assent, that Forty Horsemen, or thereabouts; of whom the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne,* would be four; and every one of them traiterously took upon himself to be one, with Guns, Muskets, and Pistols, laden with Gun-powder, and Leaden Bullets; and, with Swords, Rapiers, and other Arms, armed, should lie in Wait, and be in Ambush, the same our Lord the King in his Coach being; when he should go abroad to set upon, and that a certain and competent Number of those Men so armed should set upon the Guards of him our said Lord the King then attending on him, and being with him, and should fight with them, and overcome them, whilst others of the same Men so arm'd, him, our said Lord the King, to assassinate, kill, slay, and murder: And they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne,* their Treasons, and all their Traiterous Intentions, Designs, and Contrivances aforesaid, to execute, perpetrate, fulfil, and bring to Effect afterwards, to wit, the aforesaid 10th Day of *February,* in the Seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Rapiers, and Swords, and other Weapons; Ammunition, and Warlike Things, and military Instruments, falsely, maliciously, secretly, and traiterously did obtain, buy, gather together, and procure; and did cause to be bought, obtain'd, gather'd together, and procured with that Intent, them, in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King, that now is, as aforesaid, to use, employ, and bestow; and the same Premises the more safely, and certainly to execute, do, and perpetrate, he the aforesaid *Christopher Knightley,* with one *Edward King,* lately of High-Treason, in Contriving and Conspiring the Death of our said Lord the King that now is duly convicted and attainted, by the Consent and Assent of divers of the Traitors and Conspirators

tors aforesaid, the said tenth Day of *February*, in the seventh Year aforesaid, traitorously did go and come to the Place propos'd, where such intended Assassination, Killing, and Murder, of our said Lord the King, by lying in Wait, should be done, perpetrated and committed, to view, see, and observe, the Conveniency and Fitnes of the same Place, for such lying in wait, Assassination and Killing, there to be done, perpetrated and committed; and that Place being so viewed and observed afterwards, to wit, the same Day and Year, his Observations thereof to several of the said Traitors and Conspirators, did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid, and the aforesaid *Charles Cranburne*, the same Day and Year there in order, the same execrable, horrid, and detestable Assassination, and killing of our said Lord the King, by the Traitors and Conspirators aforesaid, the more readily and boldly to execute, perpetrate, and commit, advisedly, knowingly, and traitorously, did bear and carry among divers of those Traitors and Conspirators forwards and backwards, from some to others of them, a List of the Names of diverse Men of those who were design'd and appointed, our said Lord the King, so as aforesaid, by lying in Wait to kill and murder, against the Duty of the Allegiance of them the said *Christopher Knightley*, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*; and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, as also against the Form of the Statute in such Case made and provided: Upon this Indictment he has been arraigned, and thereunto hath pleaded not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are: Your Charge is to inquire, whether he be guilty of the High-Treason whereof he stands indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since, to your Knowledge. If you find him not guilty, you are to inquire whether he fled for it, if you find he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, and that he did not fly for it, you are to say so, and no more; and hear your Evidence.

Mr. *Mountague*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment of High-Treason against *Robert Lowick*, Prisoner at the Bar, and the Indictment does charge him with compassing and imagining the Death of the King, and endeavouring to subvert the Government, and inflave this Kingdom of *England*, and bring it under *French* Tyranny and Slavery, and the Indictment sets forth that *Robert Lowick*, the Prisoner at the Bar, the Tenth of *February*, met several false Traitors, and there consulted and treated how to assassinate his Majesty; and agreed, that forty Horsemen to get together, some to attack the Guards, while others were to assassinate the King in his Coach; and the Indictment charges him likewise with getting together Horses and Arms for this Purpose, to this he hath pleaded not guilty. We will call our Evidence, and prove the Fact against him, and we do not doubt but you will do your Duty.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen that are sworn, this is an Indictment of High-Treason, in conspiring and compassing

the Death and Destruction of the King, the Nature of our Evidence against the Prisoner at the Bar is this.

You will hear, Gentlemen, by the Witnesses, that about *Christmas* last a Conspiracy and Design was set on foot to assassinate the King, and accordingly to accomplish it, there were several Persons sent over from *France* by the late King *James*, who were Part of his Guards, and particularly *Sir George Barclay* was to be the Head of them; he was a Lieutenant of the Guards there, and he was sent over in *January* last, and there were a great many Troopers sent over, who were to be under his Direction, particularly *Mr. Harris*, who will give you an Account, that he was sent over by Order of King *James*, and he was told particularly King *James* had a Service for him to do in *England*, and he hop'd it might be an Opportunity to advance him. He was to observe the Orders of *Sir George Barclay*, and by what Token he should know him; he was to meet him in *Cowvent-Garden*, and he was told he might find him there twice a-Week in the Square, about six a-Clock, after it was dark; and that he might know him, he told him, he would have his white Handkerchief hanging out of his Pocket; accordingly *Mr. Harris* came over, and *Mr. Hare* came with him, and they came and did meet with *Sir George Barclay*, and they, together with *Sir George Barclay*, and several others here in *England*, *Mr. Porter*, *Mr. Charnock*, and *Sir William Perkins*, did enter into Consultation how to effect it: There were several Meetings about it, and you will find the Prisoner at the Bar was at several Meetings to that Purpose, and they did undertake, among them, to provide so many Men as might make about the Number of Forty, which they thought sufficient for the Execution of this Design.

Gentlemen, you will hear that the Prisoner at the Bar did treat with several Persons to be engaged in it; particularly, about the 5th of *February*, he sent to one *Bertram*, and ask'd him if he would be engaged in a Design for King *James's* Service that was quickly to be executed, without asking of Questions, and afterwards, I think, he undertook he would: So about the 14th of *February* he met him again, and that was the Day before the first Time they intended to attack the King, and then being so near the Time when it was to be executed, he thought it proper to acquaint him with the Thing he had engag'd him in; and he did acquaint him, That the next Morning they were to be ready to attack the King and his Guards, and bid him be sure to get his Boots and other Things ready for that purpose, and he gave him a Guinea in order to it. *Bertram*, it seems, on the 15th of *February* did not come, and the King it seems did not go abroad that Day, so they were disappointed at that Time; but the *Sunday* after *Bertram* met him, and *Mr. Lowick* complained that he had not come upon the *Saturday* according as he had undertaken; and he told him it would have been the same Thing, he would have disappointed them if the King had been in the Field.

Gentlemen, you shall find, That as he thus engaged *Mr. Bertram*, so he was to provide several others; and did declare, That at his own Charge he had got two or three, he complain'd of it as a Hardship put upon him, That whereas *Mr. Harris* had 6 s. a-Day Subsistence, and was only to take care of himself, he, *Mr. Lowick*, had at his own Charges engaged and provided several.

Y y y y

You

You will find, Gentlemen, that Mr. *Rookwood*, who was tried Yesterday, had several Meetings about it, with Mr. *Lowick* and Mr. *Harris*; they did think it to be a barbarous Thing: But however, they were resolved to obey Orders, and the Prisoner in particular said he wou'd obey Orders, tho' he thought it a very wicked Thing.

Gentlemen, you will find by the Evidence how the Matter was carried on; the Prisoner was to be engaged in it, and did not only imbarque himself in Person, but engaged others, and did treat with them about it. We shall call our Witnesses, who will give you a full Account of it, and then we shall leave it with you, who we question not will do Justice. First call *George Harris*; who appeared and was sworn.

Mr. *Sol. Gen.* Pray will you give an Account to my Lord and the Jury, what you know of the intended Assassination, and what Part the Prisoner at the Bar had in it.

Mr. *Conyers.* Begin from the First, and tell your whole Knowledge as you did Yesterday.

Mr. *Harris.* On the 14th of *January*, New Stile, I was ordered to wait on King *James* at Dinner; after Dinner was over, I was called in, where was Col. *Parker* and Mr. *Hare* at the same Time, and King *James* told me he was very sensible of the good Service I had done him; and now he had an Opportunity of doing something for me: I was to go into *England*, and there to be subsisted, and I was to follow the Orders of Sir *George Barclay*; the King told me I should find Sir *George Barclay* in *Covent-Garden*, with a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thursdays* between the Hours of six and seven in the Evening, and that was the Sign I was to know him by, and he ordered me to go to Mr. *Caroll*, that is Secretary to the late Queen, and Col. *Parker* went along with me, and he ordered me ten *Levidores*, and Mr. *Hare* as much, which Mr. *Caroll* gave us; and if that were not sufficient, or if we were Wind-bound at *Calis*, we had Orders to apply to the President of *Calis* to be furnish'd with what we wanted: accordingly we went, and the Wind not serving when we come to *Calis*, we were forced to stay there, and our Charges were paid to our Landlady by the President of *Calis*, according to the Order we received at St. *Germain's*; when the Wind served fair we went on Board, and came to *Runney-marsh*, to one Mr. *Hunt's* House, and from thence he furnish'd us with a Couple of Horses, and we came the Sandy-way to one Mr. *Tucker's*, and from thence to Mr. *Cross's*, and from thence to *Graves-end*, and from thence to *London*: We came up in the Night-tide, and being late when we came to Town, *Sunday-night*, we lay at an Inn at the lower-end of *Gracious-street*; the next Day we went to look for Sir *George Barclay*, but not finding him in *Covent-Garden*, according to what King *James* told us, I admired at it; but one Mr. *Birkenhead* meeting my Comrade the next Day, said, Sir *George Barclay* desired to see us, and appointed us to meet him, which we did that Night, where Sir *George Barclay* ask'd us how the King and Queen, Prince and Princess did; he told us at that Time he had no Money for us, but in a few Days we shou'd have Money; and accordingly he sent us Money. We had five Guineas, but it was at twice; two Guineas at one Time and three at another, and this was for a Month's subsistence at five Shillings a Day, Guineas going then at thirty Shillings. And afterwards when

Major *Holmes* delivered the Horse, upon *Saturday* the 15th, we had another Guinea, that made up what we had to be six Shillings a Day when we had Horses, and five Shillings a Day when we had none: And as for Mr. *Lowick*, the first *Saturday* which was designed for the Assassination, I happened to be at Mr. *Counter's* Lodgings in *Holborn*, a Confectioner's; and there I see Mr. *Lowick* come in.

Mr. *Conyers.* Who lodg'd there, pray Sir?

Harris. Sir *George Barclay* and Mr. *Counter* had Lodgings there; and Mr. *Lowick* came in there, but I cannot say he stay'd there any Time, I think he went out presently afterwards. The next Week I met Mr. *Lowick* in *Red-lyon Fields* and discoursed with him there about this Matter, and I told him what a barbarous and inhumane Thing it was that we should be the Murderers of the Prince of *Orange*, and that it would render us odious to the World, and that we should be a continual Reproach to our selves; he did agree it was so: But in conclusion Mr. *Lowick* said he would obey Orders, and he said Sir *George Barclay* he was sure wou'd not do it without Orders. That Day when we were walking out, we met Sir *George Barclay* and Major *Holmes* riding in the High-way up towards *Islington*, and we spoke to him, for Mr. *Lowick* told me the Thing was discovered, and his Name was given up, and other Gentlemens, and I think another; and so he told me that one *Harrison* told him of it, and forewarn'd him that Night from lying in his Lodging; and he told him that he believed it wou'd not be safe for the Rest to lie in their Lodgings, or to that effect.

Mr. *At. Gen.* When he said he wou'd obey Orders, What was the Discourse about.

Harris. We were talking of murdering the Prince of *Orange*: And not only that, but I do believe that Mr. *Lowick* is so sensible that what I say is true, and he is a Man of so much Conscience and Honour, that he will not contradict any Thing that I affirm or have said here. On *Saturday* the Two and Twentieth we dined at the *Castle*, a Tavern or a Cook's Shop, at the End of *Red-lyon Street*. I was much in a Sweat, and he ask'd me what made me so? I told him I had been getting Captain *Rookwood's* Party ready; and I told him (laughing) that Captain *Rookwood* said I should be his *Aid du Camp*, and so I was getting the Men together: Says he to me, you may very well do it, for you have six Shillings a Day, and I have nothing. Mr. *Lowick*, you know what I say to be true; I know not why you lift up your Hands; but you did tell me I might very well do it, having six Shillings a Day, and you had nothing, and yet brought a Couple of Men at your own Charge, and that their Horses could not be discharged unless you went. These were his Words, my Lord, or to this effect.

Mr. *Att. Gen.* What do you mean by being discharged?

Harris. I mean this, that I believe he paid for them; and they were waiting at a House till he came.

Mr. *Conyers.* Why were they to be discharged that Day?

Harris. The Reason why they were to be discharged that Day, was, because Captain *Rookwood* had told him before, that the Prince of *Orange* did not go out that Day; and therefore we went together to walk towards *Islington*.

L. C. J. What Day was that?

Harris.

Harris. The second *Saturday* that it was to have been executed. I was not a Spy upon any Man's Actions: I cannot tell what they did any more than I tell you: I do not wrong you any Way in the World, Sir, I am sure on it.

L. C. J. When was it that you spoke with Mr. *Lowick* about murdering the King?

Harris. It was *Monday, Tuesday, Wednesday, or Thursday*, I cannot be exact to the Day, but it was one of these Days, after the first *Saturday*; I cannot be positive what the Day was.

L. C. J. Well, it was between the two Days?

Harris. Yes, it was.

L. C. J. How did you know of that Design of murdering the King?

Harris. I was inform'd of it by Captain *Rookwood* the first *Saturday*, and I met Mr. *Lowick* and had this Discourse about it: and afterwards they inform'd me that Mr. *la Rue* did not lie at his Lodgings, and the Thing was discovered, and they believed that *Rue* had discovered it: And I desire you'll call Mr. *la Rue* as to this Matter; for I believe he will own it.

Mr. Sol. Gen. How came you to trust him with such a Discourse?

Harris. Because we met there at *Counter's* Lodgings, and we had several times Discourses of it; there was Major *Bernard* and Capt. *Rookwood* besides, and I always declared against it as a barbarous and inhuman Thing, not to be answer'd before God or Man, and that we should be odious to all the World if the Thing were effected, as I believ'd it would not be. I wou'd never thew my Head after such a Thing.

Mr. Sol. Gen. Do you remember who began the Discourse of this Matter?

Harris. I cannot tell that. I can't come to every Particular.

Sir B. Shower. You said just now, you apprehended Mr. *Lowick* to be a Man of Conscience and Honour; Pray what were his Sentiments about it?

Harris. His Sentiment was, That he would obey Sir *George Barclay's* Orders; and he was sure Sir *George Barclay* would not do it without Orders.

Sir B. Shower. Did not he declare it to be a barbarous Design?

Harris. I can't remember every particular Thing that he said; for I am not a Spy upon any Man's Actions.

Lowick. When you were talking of that Design that you speak of, pray did I consent to any such Thing?

Harris. I tell you how far you consented; you said you wou'd obey Sir *George Barclay's* Orders, and you was sure he would not do it without Orders.

Mr. Mompesson. Did you see any of Sir *George Barclay's* Orders?

Harris. No; I did not, I was to follow his Orders; but what Orders he had I cannot tell.

Mr. Sol. Gen. What did Sir *George Barclay* tell you you were to do?

Harris. Sir *George Barclay* declared, on the first *Saturday*, that we were his Janizaries, and talk'd of attacking and bringing away the Garter: I cannot say this Gentleman was by then; and afterwards Sir *George Barclay* went out and returned, and came in again into the Room, and declared that we were Men of Honour, and that we were to attack the Prince of *Orange*.

Mr. Mompesson. Did Sir *George Barclay* give the Prisoner at the Bar any Orders?

Harris. I don't tell you he did.

Mr. Mompesson. You say you met Sir *George Barclay* and Major *Holmes* upon the Road going to *Islington*: How do you know the Prisoner was there?

Harris. Why, was not I with him? I am very sorry to come upon this Account; but you know it is Truth all that I say; and I am sure you are sensible I do you no Wrong: He met Sir *George Barclay* and Major *Holmes*, and he went down and said something to Sir *George Barclay* in the Highway; what it was I don't know; but I stood, and Captain *Rookwood* and Mr. *Bernard* said something to him, which you very well know.

Mr. At. Gen. What was it?

Harris. I can't tell, Sir.

Mr. At. Gen. We do not desire you to tell what you can't tell: Is this all you know?

Harris. It is all at present that I recollect.

Mr. Sol. Gen. Then pray swear Mr. *Bertram* (which was done.)

Mr. Couyers. Pray will you give an Account to my Lord and the Jury what you know of this intended Assassination, and how far the Prisoner was concerned in it.

Bertram. My Lord, about the Beginning of *February* last, Major *Lowick* came to me, and ask'd me if I wou'd espouse a Thing with him that might be for my Advantage; I told him that I thought I might espouse any Thing that he thought fit to engage in.

Mr. Mompesson. Whom did you tell of?

Bertram. Major *Lowick*: And he told me it was well, and desired me to ask no more Questions: I did not; but it went on to the 14th of *February*, when he desired me to be at his Lodgings at twelve a-Clock. I was so about that Time, but he was not within, and I stay'd till he came in, and he took me up into his Chamber, and told me he believed they should ride out in some little Time; and he told me he believed the King was to be seiz'd in his Coach, and he gave me a Guinea to buy me Necessaries.

L. C. J. What Necessaries?

Bertram. I can't say he nam'd any.

Mr. At. Gen. But for what Purpose were those Necessaries?

Bertram. I don't know that he named any Thing, indeed.

Mr. At. Gen. Well; did he tell you when you were to be ready?

Bertram. If you please to give me leave, I'll tell you: He desired me not to be out of the Way; and the next Morning I was to meet him at the Purl-House in *Hart-street*. I did not meet him; and the next Time I saw him, I am not positive whether it was the next Day after the Fifteenth when I was to meet him at *Hart-street*, but did not so; but the next Time I saw him, he ask'd me why I did not meet him according to his Appointment? I told him, I had some Reason for it; and he answer'd me again, That he believed, if the King had been in the Field, I would have done the same; but I have not seen him since, till I saw him at the Bar.

Mr. At. Gen. Had you no Discourse of Horses that you were to provide?

Bertram. I do not remember any particular Thing more than I have told you.

Mr. *At. Gen.* Did he not tell you what the Design was you were to go about?

Bertram. He did not tell me of any other Design than as I tell you, for he believed I knew of it; I thought so at least: The first time I knew of it was from Mr. *Charuock*.

L. C. J. What did he tell you was the Design that you should ingage in for your Advantage upon Friday the 14th, when he gave you the Guinea?

Bertram. He told me, he believed they should ride out very suddenly, and that the King was to be seized in his Coach.

L. C. J. Did he tell you when the King was to be seized?

Bertram. No, he did not tell me when, but this was the 14th, the next Morning I was to meet him at *Hart-freet*, but did not.

Mr. *Sol. Gen.* Who did he tell you the King was to be seiz'd by?

Bertram. He did not nominate any one else, for he obliged me not to ask him Questions, nor I did not.

Mr. *Sol. Gen.* Did he name himself to be concerned?

Bertram. He named himself so far, as that he believed he should ride out very suddenly.

Mr. *Sol. Gen.* Was it the next Morning, or the next Day?

Bertram. I cannot say that he named any particular Time.

Mr. *At. Gen.* Will they ask him any Questions?

Sir *B. Shower.* No, I think we shall not.

Mr. *Mountague.* Pray, Mr. *Bertram*, will you answer me one Question, What did he say to you when he check'd you for not coming according to his Appointment?

Bertram. I took it as a Kind of a Check: He told me, that if the King had been in the Field, he believed I would have done the same.

Sir *B. Shower.* There is one Thing we must a little examine this Gentleman to: Were not you under a Necessity before that Time that he gave you the Guinea? Pray what Condition were you in?

Bertram. Under Necessity, Sir! I was never very plentiful of Money of late.

Sir *B. Shower.* Did he never give you a Guinea or two before in Charity, and out of Compassion to your Necessities?

Bertram. He has given me Money several Times before; and I believe if I would have ask'd him for any Money, he would have given it me.

Mr. *At. Gen.* Was this Money given you for Charity, or for any other, and what Purpose?

Bertram. I did not ask him for any Thing, but he gave it me, and said, There's a Guinea to buy you Necessaries.

Mr. *At. Gen.* What was the Discourse before that?

Bertram. I told you, he said, he believed they were to ride out very suddenly, and he believed the King was to be seized in his Coach, and he desired me not to be out of the Way.

Mr. *Cowper.* And when he gave you the Guinea to buy you Necessaries, was it immediately after this Discourse?

Bertram. Sir, it was at the same Time.

Lowick. Did not I give your Wife a Guinea two Months before this?

Bertram. Yes, Sir; I acknowledge I was informed you did, I was not in Town then.

Lowick. Pray let the Court know that.

L. C. J. Did he tell you the King was to be seized in his Coach, before he told you they were to ride out very suddenly?

Bertram. No, afterwards; and then he gave me the Guinea.

Sir *B. Shower.* His words are not coupled together, they have no Relation to one another.

L. C. J. No; but he told him they were to ride out very suddenly, and the King was to be seized in his Coach, and gave him a Guinea to buy him Necessaries at the same Time.

L. C. J. Treby. There's no doubt he was ingaged in the Design with those other Persons.

Mr. *Conyers.* And afterwards he rebuked him because he had not met him; and he said, it would have been the same Thing, if the King had been in the Field.

Mr. *Mountague.* What Day in the Week was it that you failed him?

Bertram. It was on a *Saturday*.

Juryman. Pray, my Lord, we desired to know, who he did understand by the King that was to be seized.

L. C. J. What did he call the King?

Bertram. He said nothing but the King.

L. C. J. Who did you understand by that?

Bertram. I leave it to the Court, I am not to interpret Things.

L. C. J. Treby. Did he name the Prince of *Orange*, or King *James*? Did you think King *James* was to be seized?

Bertram. My Lord, I tell you what he said, I am not to interpret his Words.

Mr. *Att. Gen.* Do you believe he meant King *James*, or this King, that was to be seized?

Bertram. I believed it might be the King here.

L. C. J. Take the Words as they are; he ask'd him before, Whether he would ingage in a Design that might be for his Advantage? On Friday the 14th of *February* he meets him at his Lodging, and tells him, he was to ride out suddenly, and that the King was to be seized in his Coach, and appointed him to meet him the next Morning, and gave him a Guinea to buy him Necessaries.

Mr. *Mompesson.* Pray, has not Mr. *Lowick* given you Clothes, Linnen and other Things at any other Time?

Bertram. Sir, you have been always ready to serve me, I must acknowledge, and you have been very kind to me.

Lowick. If you please to give an Account of my Character, whether ever I was guilty of any bloody Thing.

Bertram. No, Sir.

Sir *B. Shower.* How long have you known Mr. *Lowick*?

Bertram. I believe I have known him this 20 Years.

Sir *B. Shower.* What Behaviour has he been of?

Bertram. He has always had very good Behaviour, and the best; he has had the best Character of all Mankind.

Sir *B. Shower.* Did you ever know him inclined to do a rash Action?

Bertram. Never in my Life.

Sir *B. Shower.* Did you ever know him do a malicious Action?

Bertram. No, but he had always the Character of a good Man, and was always ready to serve any Man in his Necessities, and to do Good; he has that general Character abroad.

L. C. J. Where does he live ?

Bertram. He lived last at *Brownlow-street*, but he has no Wife nor Family, and so has no fix'd Being.

L. C. J. What was his Way of Living ?

Bertram. He was bred a Soldier, and has been abroad.

L. C. J. Where ?

Bertram. In *Ireland*.

L. C. J. In whose Service ?

Bertram. In the Service of King *James*.

Lowick. He knows particularly, that once I was upon a Party and saved five Officers from being killed in cold Blood.

L. C. J. What Countryman is he ?

Bertram. *Torkshire*.

Mr. Mompesson. Was he accounted of a cruel or a bloody Nature ?

Bertram. No, of a quite contrary.

Juryman. My Lord. I desire to know for what Cause he gave him or his Wife a Guinea.

Bertram. I know not what that Guinea was for that he gave me the fourteenth of *February*, any otherwife than as I have told you.

Mr. Mompesson. What was the Guinea given to your Wife for ?

Bertram. For that Guinea given to my Wife, it was out of his own Kindness and Goodness to my Family and me.

Mr. At. Gen. What was the other Guinea for ? You are upon your Oath.

Bertram. Indeed, Sir, I cannot tell ; he gave it me to buy me Necessaries.

Mr. At. Gen. Was there nothing else mentioned what Necessaries those were to be ?

Bertram. No, Sir ; upon my Oath there was not any particular mentioned.

Mr. At. Gen. What made him so kind to you, pray ?

Bertram. We were both born in a Town, and I believe we are near related.

Sir B. Shower. You say you are Towns-People, and have been long acquainted, and you knew him in *Ireland*, pray did you ever know that he saved any People's Lives ?

Bertram. I was not in that Action my self, but all that were in it gave that Relation, that he was very favourable, and did save Peoples Lives, particularly one Captain *Harlow*, and brought him and other Prisoners, and I remember the Thing ; it was about a Fortnight before the Business of the *Boyne*, upon a *Sunday* Morning, that they took those Prisoners, and he did persuade several Parties that he commanded, to decline killing, as much as they could : I was not in this Action, but this I heard of all that were in it, and from the Prisoner.

Mr. Sol. Gen. When he gave you that Guinea, did not he speak any Thing of a Horse that was to be provided for you ?

Bertram. Not a Word : I never did see a Horse upon that Account, nor was I Master of a Horse, nor was I told I should have a Horse in any respect whatsoever.

Juryman. How could you ride out, as you say they were to do, without a Horse, or without knowing any Thing of a Horse to be provided for you ?

Bertram. I did not know of a Horse.

L. C. J. But he said you were to ride out speedily.

Bertram. No : he said in general, we should ride out suddenly.

Mr. At. Gen. Who was there besides your self ?

Bertram. No Body.

Mr. At. Gen. Then that we must mean you and him. And how were you to ride out without a Horse ? Pray mind what you swear ?

Bertram. I was to meet him the next Morning, but did not.

Mr. At. Gen. Pray what cou'd you understand by that, that you were to ride out suddenly, and had no Horse ?

Bertram. That was understood, that if I did ride out, I must have a Horse.

Mr. At. Gen. Who should you have it from ? had you a Horse of your own ?

Bertram. No, I had not.

Mr. At. Gen. Did you intend to hire a Horse ?

Bertram. No, I did not.

Mr. At. Gen. Did not you ask where you were to have a Horse ?

Bertram. No, I did not ask nor inquire, nor was it promis'd me I should have a Horse.

Mr. At. Gen. Did he tell you where you were to ride ?

Bertram. The next Morning I was to meet him.

Mr. At. Gen. For what ? to ride out was it ?

Bertram. I can't really tell whether it was upon that Account or not.

Mr. At. Gen. Whether did he tell you where he was to ride ?

Bertram. Indeed he did not.

Juryman. It is very strange that you did not ask him where he was to go, nor ask him for a Horse.

Bertram. I was so senseless, that I neither did ask him about a Horse, nor ever knew of any that was to be provided for me.

Juryman. Did you understand what was meant by the Riding out suddenly ?

Bertram. I did take it to be about the Business, the Seizing of the King.

Juryman. Did he compare it to attacking him in the Field ?

Bertram. No, he did not ; but he said he believed the King would be seized in his Coach ; he made no Comparisons.

Mr. Mountague. Pray Mr. *Bertram*, why did you not meet him ? What Reasons had you for not doing it ?

Bertram. I thought it not requisite to meet him.

Mr. Mountague. What, had you no Mind to the Thing ?

Bertram. No, I had not ; because I thought the Thing very unlawful.

Mr. At. Gen. Pray what was that Thing you speak of, that you thought was unlawful ?

Bertram. I thought it was about seizing and killing the King.

L. C. J. Pray mind ; there is no Body desires you should speak more than the Truth ; but on the other side, being upon your Oath, you are to speak the whole Truth ; for if you conceal any Part of the Truth, though you have a Kindness for your Countryman *Mr. Lowick*, who has been kind to you, you will forswear your self, for you make a different Representation of the Matter, and make it appear quite otherwife than it is ; pray do not strain one Title, but let us have all the Truth.

Bertram. I don't believe I strain one Bit.

Mr. Mountague. Then tell my Lord why you did not meet him.

Bertram.

Bertram. I did believe it was about seizing and killing the King, and I did think it to be illegal.

Mr. Mountague. Why did you think it was about that?

Bertram. Because Mr. *Charnock* had told me of it before.

Mr. At. Gen. How did you know that was what *Lowick* spoke to you about?

Bertram. I did suppose it to be the same, because he desired me at first to ask no Questions, no more did I; but I took it always to be the same Thing.

Mr. At. Gen. What did he say to you?

Bertram. He told me he had a Business to propose to me, if I would engage in, that would be for my Advantage, but I must ask no Questions; talk'd of Riding out suddenly, and that the King was to be seized in his Coach, and having heard of it from *Charnock*, I thought it was the same Business.

Mr. At. Gen. Then my Lord, we have one Witness more, call Captain *Fisher*, (*He did not appear.*) If he does not appear, we shall let them go on, and when he comes in, we can examine him afterwards.

L. C. J. Is he a material Witness?

Mr. Sol. Gen. We do apprehend he is a very material Witness.

L. C. J. If you think him a material Witness, it will not be proper for them to enter upon their Defence, till they have heard the whole Accusation.

The Court said for Mr. Fisher's coming for near an Hour, and at last he came in and was sworn.

L. C. J. Who is this?

Mr. At. Gen. This is one Captain *Fisher*.

Mr. Sol. Gen. Pray Captain *Fisher*, do you know Mr. *Lowick*, the Prisoner at the Bar?

Capt. Fisher. I have not talk'd with Mr. *Lowick* since the 8th of *February*, and then he talk'd that he would be ready to serve his Master to the uttermost of his Power.

L. C. J. What Master?

Capt. Fisher. King *James*.

Mr. At. Gen. What particular Service?

Capt. Fisher. He named no particular Service, but only that he would be ready to serve his Master to the uttermost of his Power.

Mr. At. Gen. Where was this?

Capt. Fisher. At the *Cock* in *Bow-street*.

Mr. At. Gen. Who was in Company?

Capt. Fisher. There was Mr. *Harrison*.

Mr. At. Gen. Pray give an Account of what you know of this barbarous bloody Design.

Capt. Fisher. I believe there was a Design to seize the Prince of *Orange*.

Mr. At. Gen. What do you know of it? you say you believe it.

Capt. Fisher. I believe it by my Knowledge, because I was concerned in it.

Mr. At. Gen. By whom was that Design carried on?

Capt. Fisher. By Sir *George Barclay* and Mr. *Harrison*.

L. C. J. What was the Design?

Capt. Fisher. We were to fall upon the Prince of *Orange*.

L. C. J. You called him so, the Prince of *Orange*?

Capt. Fisher. Yes, my Lord.

Mr. At. Gen. Well, tell us what happened.

Capt. Fisher. It was to have been done the 15th of *February*, and we met accordingly the 14th, but the King not going Abroad, it was put off.

L. C. J. Who met on the 14th?

Capt. Fisher. I met only Mr. *Harrison* and Sir *George Barclay*, then it was put off till the 22d; upon the 21st, we met at the *Three-Tuns* in *Holborne*, and from thence we came to the *Sun-Tavern* in the *Strand*, and there was no Body but Mr. *Harrison* and I together, and Sir *George Barclay* came to us; I believe there were about 14 or 16 in the House; there Sir *George Barclay* told me, Mr. *Lowick* was to meet me and two more at an Inn by St. *Giles's* Pound, and that we were to go together to seize the Prince of *Orange* the 22d.

L. C. J. Did you meet him?

Capt. Fisher. I did not meet him, it being put off by the King's not going abroad.

L. C. J. This does not affect Mr. *Lowick* at all.

Mr. At. Gen. It does not, we acknowledge, but at that time which you speak of, the 8th of *February*, had you any Knowledge of the Assassination.

Capt. Fisher. There was no Assassination at that Time, at least it was not then declared.

Mr. At. Gen. What was your Discourse about then?

Capt. Fisher. There was Notice of the King's preparing to come for *England*.

Mr. At. Gen. You say Mr. *Harrison* was there.

Capt. Fisher. Yes, and talk'd very little about the Matter, but only that there were Preparations for the King's coming.

Mr. At. Gen. What did *Lowick* say to you?

Capt. Fisher. I have told you all that Mr. *Lowick* said to me.

Mr. At. Gen. Repeat it again.

Capt. Fisher. He said he would be ready to serve his Master, to the uttermost of his Power.

Mr. Cowper. Had you no Discourse about an Act of Parliament.

Capt. Fisher. Mr. *Lowick* said it was not convenient to talk with more than one at any time, for there was an Act of Parliament on Foot, that under two Witnesses nothing should affect a Man's Life in Treason.

Mr. At. Gen. The Act of Parliament was then a making.

L. C. J. When Mr. *Lowick* said he would serve his Master, what Discourse had you about it?

Capt. Fisher. Mr. *Lowick* said not a Word within, but at the Door he said he would serve his Master to his Power.

Mr. At. Gen. What was that, that they would not talk with above one at a time?

Capt. Fisher. Nothing that was thought treasonable Practices should be discoursed of before above one at a time, so I understood it.

Mr. Sol. Gen. Then my Lord we have done.

Sir B. Shower. May it please your Lordship, and you Gentlemen of the Jury; I am of Council in this Case for the Prisoner at the Bar, and we do hope here is not Evidence sufficient to convict him of High-Treason, the Question is not whether there was a Plot or a Conspiracy to Assassinate the King, or to prepare for an Invasion, but

but all that you are to consider, Gentlemen, is, whether the Evidence against Mr. *Lowick*, be sufficient to convince you, that he did design to Seize and Assassinate the King; there are three Witnesses produced, but we think this last Witness, *Fisher*, his Testimony does not hurt him in the least. We know your Lordship will declare and direct the Jury, that the Evidence in a Case of Treason ought to be plain, not only with respect to the Fact, that it was done; but also of such Facts as are the Evidences of a Man's Intentions, and those are not to be construed by Strains and Intendments, or Implications; unless they be such as Evidently, Naturally, and to common Understanding express the Intention, it cannot be good Evidence in Treason: Now we say that Captain *Fisher* has said nothing at all that will affect the Prisoner, for all that he says is, that the Eighth of *February* he said he was ready to serve his Master to the utmost of his Power, and any Words as well as these may be construed to make a Man guilty of Treasonable Intentions; for it might be a Recollection of Favours Received, or it might be a grateful Intent to serve him upon particular Occasions, but that is no Evidence upon this Indictment. Suppose it was to serve him upon the supposed intended Invasion, yet with Submission, that is not Evidence of the Overt-Act laid here; here is no Overt-Act mentioned of preparing Arms, or Encouraging Men, or Seducing the King's Subjects in order to the better restoring of the late King *James*, or the expected Landing of the *French*, or the like. All that's laid to the Prisoner's Charge, is the Compassing the King's Death, and a Design to Assassinate him in his Coach, and in order to the Assassination, he was to buy Arms and Horfes; now all that he says is quite of another Nature, of a quite different Strain, and has no Tendency to this Matter, and nothing he says that *Lowick* should say, but is applicable the other Way, and tends more naturally to the Invasion, than to the Assassination. Your Lordship observes there was some notice taken of what Mr. *Lowick* should say, concerning the Act of Parliament, that he would not talk with above one at a time; how far when Life is concerned such loose Discourse ought to be enforced before a Jury I must leave to your Lordship; though a Man may be innocent, yet he may be cautious, and the more innocent, perhaps the more cautious; but that is applicable to the Invasion too, and has no Relation to the Treason in this Indictment more than any other. It shows he was more wary than others were, but it is not applicable to the Fact that he now stands charged with. Then the whole of the Evidence depends upon the Testimony of Mr. *Harris* and Mr. *Bertram*, and we think they are not two Witnesses to one Thing, and what they say must be strained, and intended, and presumed, to make Evidence of Treason; for what Mr. *Harris* says about the Discourses between him and the late King *James*, about receiving Orders from Sir *George Barclay*, and his Passage over from *France*, and the several Stages he and Mr. *Hare* travell'd, and the Discourses between Sir *George Barclay* and him; Your Lordship will acquaint the Jury that is no Evidence to affect Mr. *Lowick*, nor what *Berkenhead* and *Hare* agreed upon does any way affect Mr. *Lowick*, for those Things may be all true and yet Mr. *Lowick* innocent of what he

stands charged with in this Indictment; he says, that upon the first *Saturday* he saw Mr. *Lowick* at the Confectioner's, but he cannot say he staid there at all, there was not a Word spoken by Mr. *Lowick* that he remembers then, but what he says that seems to touch, and the only Thing that touches Mr. *Lowick*, in all this Evidence is, that upon *Monday, Tuesday, Wednesday* or *Thursday*, it is a pretty large time, between the Fifteenth and the Twenty Second, he was talking with Mr. *Lowick* about the Barbarity of this Business, and that *Lowick* after all, said he would obey Orders; now with Submission, my Lord, to make that to have Relation to the Assassination must be by a forc'd strain'd Intendment, he does not declare what the Orders were, nay, he does not affirm there were any Orders for the Assassination, but only that he would obey Orders; here's no Order by Writing, no Order by Parole that Mr. *Lowick* declared he would obey; as to what *Lowick* declared about his Intention of Riding out and Seizing the King in his Coach; that cannot be intended the Order that he was to obey to Assassinate the King, that Order does not appear, there are no Footsteps of it in all the Evidence, so that there is nothing in that Testimony that will hurt Mr. *Lowick*: Then upon the Two and Twentieth when they dined together, Mr. *Harris* says, that there was a Discourse of two Men, but it does not appear, nor does the Witness give any account what those two Men were to be for; 'tis true two Men he was to get discharged, but that is not Evidence that these Men were to make a Part of those Forty, neither the Words before nor the Words after can have that Construction; nay it does not appear it was for any Purpose at all, now in the Case of Life, where a Man stands at the Bar, we hope such an Evidence shall not be construed to make a Proof of a Treasonable Intention, that these were to Assassinate the King, or to make Part of the Forty that were to do it, when it does not appear they were there, nor who they were, nor any sort of Notice taken or given upon what Account they were Provided. And then as to Mr. *Bertram's* Evidence, it is palpable that his Evidence and whatsoever he says cannot amount to make one Witness to prove an Overt-Act within this Statute, and that there must be two Witnesses the Law requires; what does Mr. *Bertram* say to prove any Man guilty of Treason, but only by Intendment, Thought or Suspicion? It is true, Mr. *Bertram's* Evidence would be good enough to commit a Man upon Suspicion of Treason, but to Convict him it cannot be; he says that in the Beginning of *February* he spoke to him, and told him he would employ him in a Business that would be for his Advantage, but he must ask no Questions; this is very dark, for the Meaning of it does not appear what was intended by it; it might be one Thing as well as another, it might be to employ him in his Family, or it might be to send him of a Journey, or it might be the taking of a Farm, but to apply that as an Evidence of a Charge of High-Treason, that we think is very hard, and we hope your Lordship will think so too; but then he comes and tells you further of a Discourse upon the Fourteenth, of his riding out suddenly, and that the King was to be seized in his Coach, and he does not say that he was to seize him, nor that he would be concerned in,

it, nor that he knew of it, nor did declare at what time it was to be done, nor any thing certain whether it was a Prophecy, or a Dream, or a Story that he related again, or what it was; there is no Connection between the Riding out suddenly and the other Words of seizing the King in his Coach; then he says he gave him a Guinea to buy him Necessaries, the Man acknowledges Mr. *Lowick* several times had given him in Charity-Money, Cloaths and other Things, and gave his Wife a Guinea as you observe, in Charity, but he gave him this Guinea on purpose to buy him Necessaries, and it is hard that a Man's Charity to a Countryman, to a Townsman, to an ancient Acquaintance of Twenty Years standing, to a Person that he had been familiar with formerly, and known to have lived well, should be mis-interpreted and strain'd, to make it a giving him Money as Subsistence, and a Reward for the doing such a Mischievous Bloody Act; We say his Charity to this Man formerly is inconsistent with the Supposition that he could be privy to such a barbarous Design now, and we hope the Jury will consider the Character that that very Man has given to my Client, for the same Witness gives you an Account of his Behaviour all along, that he was not given to Rash and Barbarous Actions, nor guilty of any malicious Thing, nay, that he prevented Mischiefs, and the killing of People in cold Blood. We must leave it to the Jury's Consideration, and your Lordship's Direction. All these things that they say may be true, and *Lowick* be not guilty, and the acquitting of Mr. *Lowick* will be no Reflection upon the Witnesses, nor any Discredit to the Testimony that has been given of this Conspiracy; but we hope 'tis doing Justice to this Man, the Witnesses not coming up to the Proof of what is laid in the Indictment. We must beg your Lordship's Patience a little longer, and call some Witnesses to give you an Account how long they have known Mr. *Lowick*, and what is real Character is; they will tell you he is a peaceable good Man, and shew you that his Temper and Inclination was rather to a sober quiet Life than to lead him to such Action, and that they cannot think him likely to be tempted to be concerned in such a Design; and then we must leave it to the Jury. Call Mrs. *Torke*.

Lowick. I believe there is no Body here that knows me but will give me that Character.

Mrs. Yorke came in and was sworn.

Sir *B. Shower*. Pray Mrs. *Torke* how long have you known Mr. *Lowick*.

Torke. About a Dozen or Fourteen Years.

Sir *B. Shower*. What sort of Disposition is he of?

Torke. He is a Civil Honest Man as ever I saw in my Life, or ever knew of; and I never heard otherwise from any one that knew him.

Sir *B. Shower*. What was he in his Actions, was he Malicious, or good Natur'd?

Torke. As good a natured Man as ever I saw.

Mr. *Mompesson*. Has he the Reputation of a Cruel Bloody Minded Man?

Torke. Quite the contrary. He lodged in my House half a Year, it is not quite a Year ago since he lay at my House. He was the most obliging Man that ever lay in my House. He

was so civil to all the Lodgers, that they admired him for his Goodness, and made them in love with him.

L. C. J. How came he to lodge at your House?

Torke. He came from his other Landlady, they could not agree, his other Landlady was a Sort of a Shrew, and therefore he did not care for staying there; and I desired his Company because I knew him to be so obliging and civil a Man.

L. C. J. Where is your House?

Torke. In *Bloomsbury*.

L. C. J. What is his Way of Living, is he a Man of an Estate?

Torke. I cannot tell, I did not inquire into that.

L. C. J. Had he no Employment to get his Living by?

Torke. I do not know any thing of that, I never inquired into it; he paid me very honestly for my Lodging, and he is a very good Man for any thing I know.

Sir *B. Shower*. Then call Mrs. *Mosely*.

She came in and was sworn.

L. C. J. Well, what do you ask this Gentlewoman.

Sir *B. Shower*. Pray Mrs. *Mosely* will you tell my Lord and the Jury: Do you know Mr. *Lowick*.

Mosely. Yes, Sir, I do.

Sir *B. Shower*. How long have you known him?

Mosely. Near twenty Years.

Sir *B. Shower*. Pray give an Account upon your Knowledge what Disposition and Temper he is of, whether he is Rash, Malicious, Bloody, and Ill-natured.

Mosely. He is a peaceable, virtuous, honest Man, and a Man that I never heard or saw that Creature that could speak any ill Thing of him in my Life; nor I never heard him speak any Thing maliciously of any Creature in my Life to do them a Prejudice: So far from that, that he is a Man has a Character, perhaps, above any Man that I could speak or hear of in my Life. I speak it even above my own Relations, they may have some Passions; but I never see that Gentleman in a Passion in my Life. He has lain in my House several times, and he has had Company come to him, but never any that was Scandalous one Way or other. I never saw him scuffled; nor ever heard him Swear, nor any one accuse him of any of those Things.

Mr. *Mompesson*. Call Dr. *William Mew*. He did not appear.

Sir *B. Shower*. The Prisoner has something to say for himself my Lord, but we must submit to your Lordship's Consideration, and the Juries, whether there be any Evidence but what is dark and favours of Suspicion only; suspicious it is, but whether there be any Evidence that is plain and direct as the Law requires in Cases of High-Treason, we must leave it to your Consideration, for we apprehend there is none.

Lowick. My Lord, as to this Business, the Thing that I stand accused of, the Assassination, I know nothing in the World of it, nor never did, directly or indirectly; and if I am convicted, and could to save my Life be the Death of the poorest

est Child in the World, I would not save my Life to do it.

L. C. 7. Look you, I would put you to make Answer to some Things; your were at Sir *George Barclay's*, at the Confectioner's in *Holbourn*; and it is sworn he came over upon such a Design. Then you were with Mr. *Harris* at *Red-Lyon Fields*, and there he was speaking to you of the Horridness of the Design that was to be executed upon the King's Person the *Saturday* before, and he told you he did mistake it; and thereupon you answered that you would obey Orders, and that Sir *George Barclay* had Orders for it, otherwise he would not do it.

Lowick. Sir *George Barclay* never spoke one Word of it to me.

L. C. 7. Every Body knows now upon what Design he came over from *France*, and when Mr. *Harris* showed Dissatisfaction with the Thing, you made that Answer to his Discourse.

Lowick. He never said one Syllable to me of it. I trust to your Lordship's Judgment, and the Jury's Mercy.

L. C. 7. And then I would have you answer to another Thing, when you dined together on the *Saturday* the two and twentieth, what were those two Men that could not be discharged without you?

Lowick. My Lord, I know nothing in the World of two Men.

L. C. 7. You went to discharge them, for the King did not go abroad that Day.

Lowick. I know nothing of it.

L. C. 7. He swears this, and that's as to him; but then as to *Bertram*, what Design was that, that you were to engage *Bertram* in for his Advantage, and he was to ask no Questions?

Lowick. My Lord, he is a poor Man, and my Countryman, and I have at all Times, from time to time, for this seven Years, helped to subsist him and his Family, that he will not deny, and I have several Times given him both Cloaths and Money.

L. C. 7. Then I would ask you again, When he came to your Lodging on *Friday* the 14th of *February*, and you told him the King was to be seized in his Coach, and said that we were to ride out very suddenly, and you appointed him to meet the next Morning; and because he did not meet you blamed him, and said, It would have been the same Thing, if the King had been in the Field. Look you, I would have you give Answer to this if you can

Lowick. I remember nothing in the World of it, not a Word I assure you, and to the best of my Remembrance, I did not see him in two Days after.

Mr. *Att. Gen.* My Lord, I must beg leave to answer to the Objection that the Council for the Prisoner have made, that there are not two Witnesses to prove the Overt-Act laid in the Indictment, and so the Law is not satisfied In Answer to that, I desire your Lordship's Favour to observe how the Evidence is, and then we shall see whether there are not plainly two positive Witnesses of the Overt-Act, by agreeing to assassinate the King. The first Witness is Mr. *Harris*, your Lordship observes that Mr. *Harris* gives an Account that Mr. *Lowick* was at Sir *George Barclay's* Lodgings the first Day that it was to have been executed; and that afterwards between the fifteenth and the two and twentieth,

those being the first and second Days that this was to be done, when he and *Rookwood*, and the Prisoner *Lowick*, were walking together in *Red-Lyon-Fields*; and there had some Discourse about the intended Assassination, and the Barbarity and Bloodiness of it, and Mr. *Harris* and Mr. *Rookwood* were averse to it. Mr. *Lowick* said he would obey Orders, and he was sure Sir *George Barclay* would not do it unless he had direct Orders for it, that was twice repeated by him, as *Harris* swears: And afterwards Mr. *Harris* tells you, that the two and twentieth he dined with Mr. *Lowick*, and Mr. *Lowick* observed that Mr. *Harris* came in, in a great Sweat, and asked him how it happened, he said he had been about to get ready *Rookwood's* Party that were to seize the King, for he was to have one Party. Says Mr. *Lowick* to him, you need not grudge to do it, you have six Shillings a Day, I have nothing; and yet I, at my own Charge, am to provide two. This is as positive Evidence as well can be of his being privy to the Design; and his engaging People at his own Charge, shows a great deal of Forwardness and Zeal in the Prisoner to the Business. My Lord, I think this is positive and plain Evidence, and not only made out by Inferences and Constructions, as Sir *B. Shower* says, but plain positive Proof. The first Day he was with several of them, and when they discoursed of the Thing afterwards, he declared he would obey Orders; and what could those Orders be but for what they were Discouraging of, and nothing was discoursed of but this Design they were engaged in, and this was to justify the Thing, and take off the Apprehension of the Barbarity of it: This is *Harris's* Testimony. The next Witness is *Bertram*, and he tells you that the fifth of *February* the Prisoner sent for him, and when he came to him, he asked if he would engage in a Business that might be for his Advantage, and ask no Questions; so at that Time he did not acquaint him what the Thing was, but that shows it was a Thing that was to be kept secret at that Time, in regard he did not think fit to acquaint him at the first Instance. But the fourteenth of *February*, when he met him again, the Day before the first Time that it was to be put in Execution; *Bertram* swears he told him that they were to ride out the next Morning, that must be *Lowick* and *Bertram*, for there was no Body else there; and that the Prince of *Orange* was to be seized in his Coach. Was it possible the Prisoner could be ignorant of it? When he engaged him to go upon a Design without asking Questions; sent for him the Day before, acquainted him they were to ride out the next Morning, and that the King was to be seized in his Coach, and bid him be ready against next Morning, and gave him a Guinea at that Time; the Witness says it was for Necessaries, but he does not pretend that it was for Charity, as formerly. And that must be for Necessaries for that Purpose that they were then discoursing of, when he desired him to be ready the next Day, and gives him Money to buy him Necessaries: What can that be, but Necessaries for what he was to be ready for? And then he did not come the next Day, and he tells you why, because he thought it a very wicked and unlawful Thing, and so he disappointed him; and the next Time *Lowick* chid him, and told him he would have served him so if the King had been in the Field. This is plain, though I believe *Bertram* does speak as tenderly as he can, being his Friend and old

Acquaintance, and is willing to say as little as he can of him; so that I believe no Body thinks but what *Bertram* says against the Prisoner is true, and what he swears is plain and positive. To show that *Lowick* did engage in the Design, he acquainted him with it the fourteenth, by telling him the King was to be seized, and they were to ride out, and he was to be ready the next Day.

L. C. J. He does not say they were to ride out the next Day.

Sir B. Shower. No, the Words were, We are to ride out suddenly.

Mr. At. Gen. I think he did say they were to ride out the next Morning.

L. C. J. No, Call him in again.

Mr. Cowper. The Words were, We shall ride out suddenly, and bid him meet him next Morning; and afterwards chid him for not meeting accordingly, and told him it had been the same Thing if the King had been in the Field.

L. C. J. If you cannot agree upon the Evidence, you must call in the Witnesses.

Mr. Mountague. My Lord, we are agreed upon the Evidence, it was suddenly.

L. C. J. Well then, there is no Occasion, have you done on both Sides.

Council. Yes, my Lord, we submit it to your Lordship.

L. C. J. Gentlemen of the Jury, this Prisoner at the Bar, *Robert Lowick*, is Indicted of High-Treason, for Compassing and Imagining the Death and Destruction of the King by an Assassination; you have heard what Evidence has been given upon this Indictment. And in the first Place, It is proved to you that there was a Design to assassinate the King; which was to be carried on under the Conduct and Management of *Sir George Barclay*. The Question that you are now to consider of, is whether the Prisoner at the Bar was concerned or engaged in the Prosecution of that Design. There have been two Witnesses produced, who have given their Evidence, and have been very strictly examined, and Observations have been made upon the Testimony they have given.

The first Witness is *Mr. Harris*, and he gives you some Account of the Original of this Design. He tells you how he was at *St. Germain's*, and introduced to the late King *James*, who did express a great Kindness for him, and told him that he had an Opportunity of doing something for him that would be for his Advantage: And that he and one *Hare*, who was present at that Time, should go into *England*, (for it seems they were both together introduced by Colonel *Parker*) and should be subsisted in *England*, and thereupon Directions were given them what Course they were to take; which was to go to *Calice*, and to each of them ten *Lewidores* were given for their Charges, and they were acquainted that if it happened that they should lie there so long for Want of a Wind to bring them over hither that their Money was spent, Provision should be made for their Supply there. They had farther Directions, that when they came into *England* they should apply themselves to *Sir George Barclay*, and follow his Orders, with Instructions how to find him; being told that *Sir George Barclay* would be walking in *Covent-Garden* every *Monday*, and every *Thursday* Night, about the Hours of six or seven a-Clock, and that they should know him by a white Handkerchief that was to hang out of his Pocket.

Mr. Harris further tells you, That they did come to *Calice* in Order to embark for *England*, and there they happened to stay a considerable Time, even so long that their Money would not defray their Expences there, and they found it true as it was promised them; for the President of *Calice* paid the Reckoning for them at the Place where they lodged; and afterwards they came into *England*, and landed in *Kent*, and came to *Rochester*, and from thence to *London*. About the latter End of *January*, *Old Stile* (for it should seem it was the 14th *New Stile*, which is the 4th, *Old Stile*, they were at *St. Germain's*) he tells you that he did go the first *Monday*, after their Arrival, into *Covent-Garden*, to look after *Sir George Barclay*, but then mist him. But afterwards his Companion, *Mr. Hare*, met with one *Berkenhead*, and complaining that they had not met with *Sir George Barclay* according to the Directions they had abroad: Whereupon, by the Means of *Berkenhead*, they were brought to the Speech of *Sir George Barclay*, who gave them Reception, and owned that he had Authority to subsist them; but said he had not then Money, but shortly should, and when he had, they should be sure to receive their Subsistence. He tells you, that after this, *Sir George Barclay* gave them Subsistence Money, Paying them at the Rate of five Shillings a Day when they had no Horses, and when they had, six Shillings a Day: So they put themselves altogether under his Command and Conduct. He has given you an Account what Discourse he had with *Mr. Rookwood*, from whom he discover'd what the Design was in which he was to be engaged. And the Design to assassinate the King was first intended to be put in Execution on *Saturday* the 15th of *February*, at which Day *Mr. Harris* and others, being at *Sir George Barclay's* Lodgings; *Sir George* said they were his *Janisaries*, and afterwards carest them, and said they were Men of Honour, and told them that they were to attack the Prince of *Orange* and his Guards; but it seems the King not going abroad that Day, they lost that Opportunity.

Truly, Then *Mr. Harris* began to be a little troubled, and concerned, when he understood the Meaning of his being under *Sir George Barclay's* Conduct. And he says that after that first *Saturday* the 15th, and before the next *Saturday* the 22d, he met with *Lowick*, *Rookwood*, and *Bernarde*, and he was complaining of his being engaged in such a Design as this was. He called it then the Murder of the Prince of *Orange*, and said it was a barbarous Thing, and he did not like it, nor *Rookwood* neither; but as for *Mr. Lowick*, whether he disliked it, or no, I know not, but he made Answer to him, I will obey Orders: Says he, *Sir George Barclay* has Orders for it, or otherwise he would not do it.

Then you are told further, that after this, on *Saturday* the 22d, *Mr. Harris* dined with *Lowick* at a Cook's at the End of *Red-Lyon-Street*, and being there together, *Harris* being in a Sweat, and was asked the Reason by *Lowick*, he said he had been giving of Orders for the getting some Men together that were to go under *Rookwood*, and *Lowick* told him he might very well do it, for he had Pay 6s. a Day; but says he, I am to subsist two Men, and have nothing at all. *Mr. Harris* wished him to go to *Sir George Barclay*, and complain of it to him, but he said he would not; but it seems, it being then understood by them that the

King

King did not go abroad that Day, *Lowick* said he must go and discharge the two Men, and went about it. This is the Sum and Substance of Mr. *Harris's* Evidence against Mr. *Lowick*.

The next Witness is *Bertram*, and he tells you that sometime before the fifteenth of *February*, which was, as I told you, the very first Day that they did design to assassinate the King, Mr. *Lowick* sent for him, and told him, that he would put him upon a Business that should be for his Advantage, if he would undertake it without asking any Questions; this was sometime before, but the certain Day *Bertram* does not remember; but he tells you farther, that on *Friday* the fourteenth of *February*, he was with *Lowick* at his Lodgings, and he said unto him, that the King, he did believe, was to be seized in his Coach, and we are to ride out suddenly; and then he gave him a Guinea to buy him Necessaries, and withal, bid him meet him at the *Purle-House* in *Hart-street* next Morning; and *Bertram* tells you, he had understood what this Design was, for he had it before from *Charnock*, and did forbear to go the next Morning, because he did dislike it. After this Mr. *Lowick* met him and chid him for disappointing of him, in not meeting him as he directed, for says he, it would have been the same Thing if the King had been in the Field. This is the Sum and Substance of the Evidence that *Bertram* has given against him.

Now *Bertram* being cross-examined on the behalf of the Prisoner, says he hath known him a great while, and that he is a Man of a peaceable and fair Disposition, very charitable, and that he has given him Money before, and particularly a Guinea to his Wife in his Absence.

Indeed I might have mentioned the Evidence of *Fisher* to you, but that is but circumstantial, and does not come Home to the Case, but being given it may be mention'd, and that is, about the Eighth of *February*, *Fisher* had some Discourse with *Lowick*, and it seems there was Notice taken of the intended Invasion, and *Lowick* said he would serve his Master faithfully; and that the Witness thought was meant of the late King; and he said at another Time, that he would not discourse with above one at a Time, because of the late Act of Parliament that was then a passing, relating to High Treason, that required two Witnesses. Now, I say, this is not any Proof against the Prisoner, but it is a Circumstance that may shew his Inclination to the late King.

The Council for the Prisoner have insisted upon the Insufficiency of the Evidence that has been given on behalf of the King, and have said, that the late Act of Parliament requires two Witnesses, which is true, but not two Witnesses to any one Overt-Act; but if there be two Witnesses, one to one and another to another Overt-Act, that is sufficient; but they say that it is not so in this Case.

In the first Place, they object against the Evidence that is given by *Harris*, they say it is short, that must be left to your Consideration; whether the Evidence that is given by *Harris*, concerning Mr. *Lowick*, does prove to your Satisfaction, that he consented and agreed to the Assassination of the King, you are to weigh the Evidence, when it is sworn that when *Harris*, *Rookwood*, and the Prisoner were walking in *Red Lyon Fields*, and talking of this horrid Design, and *Harris* complained that it was a barbarous Thing to murder the Prince of *Orange*, as they call'd him, you

must consider what Answer *Lowick* did make about obeying of Orders; then his subsisting of Men at his own Charge without Pay, and complaining of his having no Pay, and his discharging them the last Day that the Assassination was intended, that I must leave to you, whether or no this is not an Evidence, if you believe the Witnesses to satisfy you that he was engaged in this Design.

Then Gentlemen, he has also been desired to give an Answer to this Question, and to tell upon what Design he was to employ *Bertram* that should be for his Advantage; but he was to ask no Questions, and afterwards whether he did tell him the King was to be seized in his Coach, and they were to ride out suddenly and bid him meet him the next Morning, and when he did not meet him, he said, It would have been the same Thing if the King had been in the Field. If this be an Evidence of Mr. *Lowick's* engaging in and agreeing and consenting to the Design, then here will be another Witness against the Prisoner besides *Harris*.

Gentlemen, you are to judge of this Matter and of the Evidence. It is true, we are not to put in the Case of a Man's Life, any forced and violent Constructions upon any Words or Discourses; but if the Evidence be plain and clear, tho' he did not say in express Words, that he did design to assassinate or kill the King; yet, if upon the whole Discourse that pass between them it appears plainly, clearly, and satisfactorily to you that he did consent and agree to this Design, or was engaged in it, here's another Witness, I say, to prove him guilty, besides *Harris*; you are to consider the whole Evidence, the subject Matter of Discourse, and if you are satisfied, I say, that he was engaged in such a Design by the Proof of *Bertram*, as well as of *Harris*, then there are two Witnesses, which is as much as the Law requires.

But, indeed, the Council have called several Witnesses to prove that the Prisoner has lived very peaceably and quietly; one Woman says, She has known him twelve Years, and that he lodged at her House, and that he was a Man of great Temper and Candour, and not disorderly, but had a general good Esteem and Character: And then there is another, Mrs. *Moseley*, that proves the like, and says, She has known him these twenty Years, and she says no Man has a better Character: And Mr. *Bertram* hath said, that he was not of a rash or bloody Temper.

Now, Gentlemen, I must leave it to you, upon the Evidence that you have heard, there are these Witnesses that have been produced, and there are these Circumstances that appear in the Case; if you are satisfied upon this Evidence that has been given, that the Prisoner Mr. *Lowick*, did consent to and engage himself in that Design of Assassinating the King, then you are to find him guilty; if you are not satisfied, you are to find him not guilty; you have heard your Evidence, and had best consider of it.

Then an Officer was sworn to keep the Fury, who withdrew, and staid out about half an Hour, and then returned.

Cl. of Arr. Gentlemen of the Jury, answer to your Names, George Ford.

Mr. Ford. Here. (And so of the rest.)

Cl. of Arr. Are you all agreed of your Verdict?
Z z z z z
Jury.

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Foreman.

Cl. of Arr. Robert Lowick, hold up thy Hand, (*which he did.*) Look upon the Prisoner; how say you, Is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed, or at any Time since?

Foreman. None, to our Knowledge, we do not find any.

Cl. of Arr. Then hearken to your Verdict, as the Court hath recorded it. You say that *Robert Lowick* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, Chattels, Lands or Tenements, at the Time of the High-Treason committed, or at any Time since to your Knowledge, and so you say all.

Jury. Yes.

L. C. J. Discharge the Jury.

Cl. of Arr. Gentlemen of the Jury, the Court discharges you, and thanks you for your Service.

L. C. J. Mr. Attorney, Will you have the Prisoners set to the Bar?

Mr. Att. Yes, if your Lordship please.

Then the Keeper of Newgate brought Rookwood and Cranburne, and all three were set to the Bar.

Mr. Att. Gen. If your Lordship please to give Judgment against the Prisoners that are convicted.

L. C. J. Ask them what they have to say for themselves in Arrest of Judgment.

Cl. of Arr. Robert Lowick, hold up thy Hand; you stand convicted of High-Treason, in Conspiring the Death of the King by Assassination, what can you say for your self why the Court should not give Judgment against you, to die according to Law.

[*Then the Keeper bid him kneel.*]

L. C. J. No, no, he need not kneel; if you have any Thing to say, *Mr. Lowick*, we will hear you.

Lowick. I throw my self upon the King's Mercy.

Cl. of Arr. Ambrose Rookwood, hold up thy Hand, (*which he did.*) you stand convicted of the same High-Treason, for Conspiring the Death of the King by Assassination, what can you say for your self why the Court should not give you Judgment to die according to Law.

Rookwood. All that can be said has been said already, and so I shall say no more.

Cl. of Arr. Charles Cranburne, hold up thy Hand, thou standest convicted of High-Treason, in Conspiring the Death of the King by Assassination, what canst thou say for thy self, why the Court should not give the Judgment to die according to Law?

Cranburne. I have nothing to say but what I have said already.

Cl. of Arr. Then Cryer make Proclamation.

Cryer. O, yes, all Manner of Persons are commanded to keep Silence while Judgment is in giving, upon Pain of Imprisonment.

L. C. J. You the Prisoners at the Bar, *Robert Lowick, Ambrose Rookwood,* and *Charles Cranburne,* you have been indicted, and upon full and clear Evidence have been convicted of High-Treason; a Treason that was advanc'd to the highest Degree both of Malice and Mischief against the King and Kingdom; you design'd to assassinate the King with an Intent to subvert the State, and by the introducing of a foreign Power to destroy the antient Liberty and Constitution of *England.*

Our *French* and Popish Enemies, by whom you were employed in this bloody Enterprize, did very well know, that the Wisdom and Courage of his present Majesty has rescued this Kingdom from that Slavery and Oppression which they often threaten'd to bring upon us; they knew that under his Government we have been protected in the Enjoyment of our Religion, Laws and Liberty for several Years, and that his Majesty is the Head of the Protestant Interest, and the Protector and Preserver of the Liberty of *Europe,* and that upon the Preservation of his Life, and the Safety of his Person, the Good and Happiness of Multitudes of People do depend, which the *French* King's Pride and Ambition has been ready to take hold of any Opportunity to enslave and oppress.

Your being engaged in such a horrid Design against so precious a Life, and to be the bloody Instruments to give that dismal Stroke, which would have brought Misery and Desolation upon so many Men, renders you worthy to undergo a greater and more severe Punishment than by the Law of *England* can be inflicted; but that there is no greater provided for such Criminals, is to be imputed to the antient Honesty and Integrity of *English* Men, who, when they fram'd this Constitution of Government, never imagin'd *England* should produce such degenerate Wretches, as would endeavour by Plots and Contrivances to betray their Country to a foreign Yoak, and subject themselves and their Fellow Subjects to the slavish Dominion of Strangers.

Your Crime being so great, it is now high Time for you seriously to reflect upon it; and tho' you deserve to suffer the greatest of Punishments, yet I have that Compassion for your Persons, that I wish heartily you would make Use of that Opportunity which is now put into your Hands, to repent. And since you are adjudg'd by the Law unworthy to live here, that you will make Preparation to appear at another Tribunal, where you must have another Trial, and, without an hearty and sincere Repentance, receive a more severe Sentence. I hope this Calamity, and the Judgment that is to fall upon you, will be an Admonition to you to take better Advice in the last part of your Time which is left you, than you have done in the whole Course of your Lives, and that you will be wiser than to follow the Direction of those Guides whose Principles and Doctrines have so far perverted and corrupted you, as to engage you in such a bloody Design. I shall leave you to make that Preparation for another World, which is proper for Men in your Condition, and pronounce the Judgment of the Court, which the Law hath appointed and the Court does award;

That

That all of you be conveyed from hence to the Prison from whence you came, and from thence every one of you is to be drawn upon a Hurdle to the Place of Execution, where you are to be hang'd by your Necks, and to be cut down while you are alive, your Privy Members are to be cut off, and your Bowels are to be cut out of your Bodies and burnt in your View, your Heads are to be cut off, and your Bodies to be divided into four Parts, and your Heads and Quarters are to be disposed where his Majesty shall appoint. And I pray God to have Mercy on all your Souls.

Cranburne. I humbly desire the Liberty of my Wife and Relations to come to me, and such Divines as I shall desire may have free Recourse to me.

L. C. J. You shall have that Liberty that is allowed to all Persons in your Condition.

Rookwood. I must beg the same Favour, to have some few Friends and Relations come to see me without a Keeper.

L. C. J. Holt. You shall have a Warrant for your Friends to come to you.

Rookwood. I beg your Lordship that you would please to specify it in the Warrant, because they would not grant it hitherto without a Keeper being by.

L. C. J. You mean, you would have your Brother permitted to come to you.

Rookwood. Yes, and some few Relations.

L. C. J. What is usually done in such Cases, let it be done.

Lowick. My Lord, I desire the same Thing, that my Sister may come to me, and that the little Time I have I may be in private with my Friends.

Mr. Att. Gen. If your Lordship please, they may give the Names of those they would have admitted to them, and then the Keeper will attend your Lordship for your Direction.

L. C. J. That the Keeper must take care of, lest they allow such a Liberty as may endanger an Escape; for their being alone may prove a dangerous Thing.

Mr. Att. Gen. It is reasonable they should tell who they are, before they be admitted.

L. C. J. You allow them, I suppose, to have private Discourse in the same Room, if a Keeper be by.

Cranburne. No, My Lord, we never had.

Mr. Att. Gen. Such as your Lordship thinks proper to be admitted to them may have Discourse with them in private, if the Keeper be in the Room, but no others but such as your Lordship shall allow; for we know what has been the Effect of a Liberty of Access to some Prisoners.

L. C. J. Let us have a Note of those Names that you would have come to you, and we will give Directions that shall be proper in it.

Cl. of Arr. Sheriff of Middlesex, you must take them into your Custody till Execution is done.

Then the Keeper took away the Prisoners.

On Wednesday, April 29. Ambrose Rookwood, Robert Lowick, and Charles Cranburne, were drawn to Tyburn, where the two former deliver'd the following Papers to the Sheriffs.

Major Lowick's Paper.

IN the Name of the Holy Trinity, Father, Son, and Holy Ghost, Amen. In the first Place, I die in the Religion I was baptiz'd, viz. Roman Catholick, and humbly beg the Prayers of all good People for a happy

Resurrection, and of all Catholicks for the Good of my Soul.

As for being engag'd in this for which I die, it was never so positive that I had a Horse from the Beginning to the very Last, nor never see any a slow d me, or the two Men I was to provide, as was sworn against me at my Trial; nor had I any on that Account; nor was I at any of their Meetings when they settled any such thing. And as for any Order or Commission from King James, I never see any since I came last into England, which is now about five Years; and I am confident none that knows King James will believe he would give any such Order.

Indeed, I must confess, I believe King James was a coming to assert his own Right; and I should, if on Shore, have done any thing in my Power to have assisted him; and, in order to that, I should have been very glad to have had a Horse, but never had any.

And as for being concern'd in any bloody Affair, I never was in my Life, but have done my Endeavour to prevent, as much as I could, on all Occasions; and if the killing the most miserable Creature in the World, or greatest Enemy, would now save my Life, restore the King, and make me one of the greatest Men in England, I first would chuse to die, because against the Law of God.

If any who are now Sufferers on this Account, think I have been too forward, and a Promoter to this Design, I do now declare it was never my Inclination to do any rash thing. However, I beg their Pardons, and of all the World I have offended, either in Thought, Word, or any Action whatsoever, and do freely forgive my Enemies, and hope, thro' the Mercy of my Saviour Jesus Christ, to have Remission of all my Sins. Good God preserve the King, Queen, Prince, and Princess, and all that royal Blood of Stuarts; and may England never want one of that direct Line to govern them, and make them once more happy. I have had the Honour to serve my royal Master in several Commissions, and the last as Major, and strove ever to serve him to the best of my Power, and ever to be just to those whom I had the Honour to command. Lord Jesus into thy Hands I recommend my Spirit! O Jesus, receive my Soul!

ROBERT LOWICK.

Brigadier Rookwood's Paper.

HAVING committed the Justice of my Cause, and recommended my Soul to God, on whose Mercies, thro' the Merits of Jesus Christ, I wholly cast myself, I had once resolv'd to die in Silence; but second Thoughts of my Duty to others, chiefly to my true and liege Sovereign King James, moved me to leave this behind me.

I do therefore, with all Truth and Sincerity, declare and avow, that I never knew, saw, or heard of any Order or Commission from King James for the assassinating the Prince of Orange, and attacking his Guards; but I am certainly inform'd that he, the best of Kings, had often rejected Proposals of that Nature, when made unto him.

Nor do I think he knew the least of the particular Design of the attacking the Guards at his Landing, so much talk'd of, in which I was engaged as a Soldier, by my immediate Commander, much against my Judgment; but his Soldier I was, and as such I was to obey and act according to Command.

These twelve Years I have served my true King and Master, King James, and freely now lay down my Life in his Cause. I ever abhor'd Treachery, even to an Enemy; if it be a Guilt to have comply'd with what I thought, and still think, to have been my Duty, I am guilty. No other Guilt do I own.

As I beg all to forgive me, so I forgive all from my Heart, even the Prince of Orange, who, as a Soldier, ought to have consider'd my Case before he sign'd the Warrant for my Death. I pray God may open his Eyes, and render him sensible of the much Blood, from all Parts, crying out against him, so to prevent an heavier Execution hanging over his Head, than what he inflicts on me.

AMBROSE ROOKWOOD.

After which they were executed as Traitors, according to their Sentence.

CLVI. *The Trial of PETER COOK, at the Old-Baily, for High-Treason, May 9, 1696.* 8 Will. III.

Saturday May 9, 1696.



HIS Day being appointed for the Trial of Mr. *Peter Cook*, upon an Indictment of High-Treason found against him by the Grand Jury for the City of *London*, upon the Commission of Gaol-Delivery of *Newgate*, holden for the said City, upon which Indictment he had been Arraigned, and upon pleading not guilty, Issue had been joined, and the Court having been adjourned unto this Day for the Trial by publick Proclamation in usual manner, the Court was resumed, and the Names of the Men returned to serve on the Jury, having been called over according to the Pannel, and the Defaulters recorded; the Court proceeded as follows.

Cl. of Arr. Set *Peter Cook*, the Prisoner to the Bar: (*which was done.*) You the Prisoner at the Bar, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and You, upon Trial of your Life and Death; if therefore you will Challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Cook. Sir, I desire you would not name them too fast, for my Eyes are very bad.

Cl. of Arr. *John Ewer*.

Cook. Who must I apply my self to, Sir? I desire to know whether he is a Freeholder in *London*?

Cl. of Arr. I know nothing to the contrary, Sir, he is returned as such by the Sheriff; you had best ask him himself, he can best tell.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Ewer*. Yes, Sir, I am a Freeholder.

Cook. Sir, I challenge you.

Cl. of Arr. *Henry Sherbrook*.

Cook. Sir, are you a Freeholder in *London*?

Mr. *Sherbrook*. Yes, Sir, I am.

Cook. I challenge you. — No, Sir, I beg your Pardon, I do not challenge you.

Cl. of Arr. Then hold Mr. *Sherbrook* the Book: (*Which was done.*) Look upon the Prisoner: You shall well and truly try and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, according to your Evidence, So help you God.

Cl. of Arr. *Joseph Billers*.

Cook. Are you a Freeholder, Sir, in *London*?

Mr. *Billers*. Yes, I am. [Challeng'd.]

Cl. of Arr. *John Brand*.

Cook. Fray, Sir, don't go too fast; Are you a Freeholder in *London*, Sir?

Mr. *Brand*. I am no Freeholder in *London*.

L. C. J. *Treby*. What say you, Mr. Attorney?

* Sir *Thomas Trevor*. * Mr. At. Gen. My Lord, I would not have any Body that is not a Freeholder serve; so he was set by.

Cl. of Arr. *William Hull*.

Mr. *Hull*. My Lord, I am no Freeholder in *London*.

L. C. J. *Treby*. Why, what Estate have you?

Mr. *Hull*. What I have, is in Leafes.

L. C. J. *Treby*. What, Leafes for Years, or Leafes for Lives?

Mr. *Hull*. Leafes for Years, Sir.

L. C. J. *Treby*. Then he cannot serve upon the Jury.

Cl. of Arr. *Edward Leeds*.

Cook. Hold, Sir, let me see; are you a Freeholder in *London*, Sir?

Mr. *Leeds*. Yes, Sir.

[Challeng'd.]

Cl. of Arr. *Thomas Clark*.

Cook. Hold, Sir, I pray let me look upon my Paper. I challenge him.

A *Stander-by*. He does not appear.

Cl. of Arr. *Nathan Green*.

Cook. Where is he, Sir? Are you a Freeholder?

Mr. *Green*. Yes, I am, Sir.

[Challeng'd.]

Cl. of Arr. *Thomas Emes*.

Cook. Are you a Freeholder, Sir?

Mr. *Emes*. Yes, I am.

Cook. Where you one of Sir *John Friend's* Jury?

Mr. *Emes*. Yes, I was.

Cook. Then I challenge you for Cause, and I give you my Reason.

Mr. *Serj. Darnall*. I pray, let us hear your Reason; give your Reason for your Challenge.

Cook. It is for being of Sir *John Friend's* Jury.

Mr. *Serj. Darnall*. Then you challenge him for Cause.

Cook. Yes, that he was of Sir *John Friend's* Jury.

L. C. J. *Treby*. Well, Brother *Darnall*, how is that a Cause of Challenge? You are the Prisoner's Counsel, let us hear what you say to it.

Mr. *Serj. Darnall*. My Lord, what we have to say to it, is this; Here are some Persons returned upon this Pannel, that were formerly Jurors in a Cause that was try'd for the same Species of Treason that this Gentleman, the Prisoner, is charged with in this Indictment; and I think the Witnesses at that Trial did mention in their Evidence my Client, as being present at those very Consults, about which they gave their Evidence; these Gentlemen gave Credit to those Witnesses, and found the Verdict against the Person then accused. We humbly submit it to you Lordship and the Court, whether we may not for this Cause challenge this Person as not indifferent, it being for the same Cause and Consult, that the other was try'd for.

Mr. *Att. Gen*. Sure Mr. Serjeant is not in earnest in this Objection.

Mr. *Serj. Darnall*. My Client thinks it a very good Objection, that he is not indifferent, and I desire he should be satisfied in it.

Mr. *Att. Gen*. If he thinks so, he may except against him, but if he insist upon it as a Cause of Challenge, we desire you would put the Case, and my Lords the Judges determine it.

Mr. *Serj. Darnall*. I have told you what the Case is.

L. C. J. *Treby*. But you hear the King's Counsel insist upon it, to have you make it out in Point of Law.

Mr. *Serj. Darnall*. My Lord, I have stated the Case as my Client desired, and we submit it to you.

L. C. J. *Treby*. Well, there is nothing in it.

Mr. *Serj. Darnall*. Then my Client, if he will not have him serve, must challenge him peremptorily; which he did.

Cl. of Arr. *Francis Byer*.

Cook.

Cook. Sir, Are you a Freeholder ?
 Mr. Byer. Yes, I am. [Challeng'd.]
 Cl. of Arr. *James Denew.*
 Mr. Denew. I am no Freeholder.
 Cl. of Arr. *Henry Hunter.*
 Cook. Hold, hold, my Lord, I challenge him as being one of Sir *John Friend's* Jury.
 Mr. Baker. Nay, that was not allow'd in Mr. *Emes's* Cafe ; but you challenged him peremptorily, and so you must now, if you have a Mind to it.
 Cook. I challenge him.
 Cl. of Arr. *John Hall.*
 Cook. Are you a Freeholder in *London*, Sir ?
 Mr. Hall. Yes, I am, Sir. [Challeng'd.]
 Cl. of Arr. *John Cullum.*
 Cook. Sir, Are you a Freeholder in *London* ?
 Mr. Cullum. Yes, Sir. [Challeng'd.]
 Cl. of Arr. *John Cox.*
 Mr. Cox. My Lord, I am no Freeholder in *London* ?
 Cl. of Arr. *John Hedges.*
 Cook. Hold, I pray, Sir, let me look upon my Paper ; Sir, Are you a Freeholder in *London* ?
 Mr. Hedges. Yes, Sir, I am. [Challeng'd.]
 Cl. of Arr. *Thomas James.*
 Mr. James. My Lord, my Name is not *Thomas*.
 Mr. Sber. *Buckingham* He is returned, it seems, by a wrong Name ; we did not know it.
 Mr. Serj. *Darnall*. Then you cannot swear him.
 Cl. of Arr. *Thomas Poole.*
 Cook. Are you a Freeholder in *London*, Sir ?
 Mr. Poole. Yes, Sir.
 Cook. I challenge him, as being of Sir *John Friend's* Jury.
 Mr. Att. Gen. That has been over-ruled already.
 Cook. I challenge him.
 Cl. of Arr. *Peter Parker.*
 Cook. Are you a Freeholder in *London* ?
 Mr. Parker. Yes, Sir, I am.
 Cook. I challenge you, Sir, as being one of Sir *John Friend's* Jury.
 Mr. Baker. Nay, you can't offer it again.
 Cook. I challenge him.
 Cl. of Arr. *George Grove.*
 Cook. Where is he ? Are you a Freeholder in *London*, Sir ?
 Mr. Grove. Yes, Sir. [Challeng'd.]
 Cl. of Arr. *Nathaniel Wyersdell.*
 Cook. Are you a Freeholder in *London* ?
 Mr. Wyersdell. Yes, Sir, I am. [Challeng'd.]
 Cl. of Arr. *Samuel Blewit.*
 Cook. Hold, pray, are you a Freeholder, Sir ?
 Mr. Blewit. Yes, I am. [Challeng'd.]
 Cl. of Arr. *John Wolfe.* [Challeng'd.]
 Cl. of Arr. *Joseph Wolfe.* He did not appear, and was said to be no Freeholder.
 Cl. of Arr. *William Smith.*
 Cook. Are you a Freeholder, Sir ?
 Mr. Smith. Yes, I am. [Challeng'd.]
 Cl. of Arr. *Edward Fenwick.*
 Cook. Are you a Freeholder, Sir ?
 Mr. Fenwick. Yes, Sir, I am.
 Cook. I do not challenge him.
 Cl. of Arr. Then swear Mr. *Fenwick*. (Which was done.)
 Cl. of Arr. *Benjamin Hooper.*
 Cook. Stay, Sir, pray stay a little, where is he ?
 Cl. of Arr. There he is, Sir.
 Cook. Which is the Gentleman ? Are you a Freeholder in *London*, Sir ?

Mr. Hooper. Yes, Sir.
 Cook. I challenge you.
 Mr. Hooper. I thank you, Sir.
 Cl. of Arr. *Nathaniel Long.*
 Cook. Are you a Freeholder, Sir ?
 Mr. Long. Yes, Sir.
 Cook. I challenge him, as being one of Sir *John Friend's* Jury.
 Cl. of Arr. The Court has adjudged that no Cause of Challenge, therefore I take no notice of it, but as to a peremptory Challenge.
 Cl. of Arr. *Richard Chiswell.*
 Cook. Are you a Freeholder in *London*, Sir ?
 Mr. Chiswell. Yes, Sir. [Challeng'd.]
 Cl. of Arr. *John Child.*
 Cook. Hold, pray, a Moment ; I have not crost these last in my Paper, but I challenge this Man, being of Sir *John Friend's* Jury.
 Mr. Baker. You have had that answered over and over again, as no Objection ; it is nothing but a peremptory Challenge.
 Cl. of Arr. *William Walker.*
 Mr. Walker. I was one of Sir *John Friend's* Jury.
 Cook. I challenge him for the same Reason.
 Mr. Att. Gen. But that is no Reason at all.
 Cook. Then I challenge him.
 Cl. of Arr. *John Wells.*
 Cook. Sir, are you a Freeholder ?
 Mr. Wells. Yes, Sir, I am. [Challeng'd.]
 Cl. of Arr. *John Hibbert.*
 Cook. Which is he, Sir ?
 Cl. of Arr. He stands upon your left Hand ; the Man in the Black Peruke.
 Cook. Are you a Freeholder, Sir ?
 Mr. Hibbert. Yes, I am, Sir. [Challeng'd.]
 Cl. of Arr. *Daniel Wray.*
 Cook. Stay, Sir, are you Mr. *Wray* ?
 Mr. Wray. Yes, Sir, my Name is *Wray*.
 Cook. Are you a Freeholder in *London*, Sir ?
 Mr. Wray. Yes, Sir.
 Cook. I challenge you.
 Mr. Wray. I thank you, Sir.
 Cl. of Arr. *John Pettit.*
 Cook. Which is he ?
 Mr. Pettit. I am the Man, Sir.
 Cook. Are you a Freeholder in *London*, Sir ?
 Mr. Pettit. Yes, Sir. [Challeng'd.]
 Cl. of Arr. *John Sherbrook.*
 Cook. I challenge him, as being one of Sir *John Friend's* Jury.
 Mr. Baker. But you have heard that denied to be an Exception over and over.
 Cook. I challenge him.
 Cl. of Arr. *Stephen Blackwell.*
 Cook. Are you a Freeholder, Sir ?
 Mr. Blackwell. Yes, I am. [Challeng'd.]
 Cl. of Arr. *William Hatch.*
 Cook. Pray give me time to mark them ; pray, who is this Man you now call ?
 Cl. of Arr. *William Hatch.*
 Cook. Sir, are you a Freeholder ?
 Mr. Hatch. Yes, I am. [Challeng'd.]
 Cl. of Arr. *Henry Beadle.*
 Cook. Are you a Freeholder, Sir ?
 Mr. Beadle. Yes, I am.
 Cook. I do not except against him. (Was sworn.)
 Cl. of Arr. *John Stredwick.*
 Mr. Stredwick. My Lord, as I apprehend, I am no Freeholder.
 L. C. *J. Treby*. Why do you apprehend so ?
 Mr. Stredwick. It is my Wife's Estate, not mine.

Cl. of Arr. Then your Wife has a Freehold, it seems.

Mr. Stredwick. Yes, she has.

L. C. J. Treby. That is Freehold enough; for you have an Estate for your Wife's Life.

Mr. Baker. And after that too, for it is not given over to any Body else, and she won't give it from him.

Cook. Sir, are you a Freeholder in London or no?

Mr. Stredwick. I apprehend, Sir, I am not.

Mr. Baker. He says he has an Estate for his Wife's Life.

Cl. of Arr. Then he is a Freeholder, what do you say to him?

Cook. Are you positive you are a Freeholder in London upon your Word?

Mr. Stredwick. I think not.

Mr. Baker. Why your Wife's Estate is your's for your Life.

Cook. My Lord Chief Justice, if your Lordship pleasés, here is a Man that says positively he thinks he is no Freeholder, I desire your Lordship's Judgment, whether he be a Freeholder or not?

L. C. J. Treby. Why, let him put his Case, if he make a Doubt of it.

Mr. Stredwick. I am not possést of an Estate my self.

L. C. J. Treby. But is not your Wife an Inheri-
trix?

Mr. Stredwick. Yes, my Lord, she is.

L. C. J. Treby. Then you are seizéd of a Freehold in her Right; and *Mr. Cook*, your own Counsel will tell you and satisfy you, that that is a Freehold sufficient for this Service.

Mr. Baker. His Wife's Father settled it upon her and her Heirs.

L. C. J. Treby. No question, it is a sufficient Freehold if the Wife be living.

Mr. Baker. Yes, she is.

Cook. I challenge him.

Cl. of Arr. William Prince.

Cook. I challenge him, as being one of Sir *John Friend's* Jury.

Mr. Prince. I thank you, Sir.

Cl. of Arr. John Simmons.

Mr. Att. Gen. We challenge him for the King.

Cl. of Arr. Robert White.

Cook. Are you a Freeholder, Sir?

Mr. White. Yes, I think so.

Cook. Pray tell me whether you are, or not.

Mr. White. Indeed I think so, Sir. [*Challeng'd.*]

Cl. of Arr. Edward Brewster.

Cook. Where is *Mr. Brewster*? Are you a Freeholder, Sir, in London?

Mr. Brewster. Yes, Sir.

Cook. I challenge him. Pray Sir, I desire to know how many I have challenged.

Mr. Baker. You have challeng'd Thirty Three.

Cook. How many besides those that are of Sir *John Friend's* Jury?

Mr. Baker. You have but two more to challenge, Sir.

Mr. Serj. Darnall. I thought you had heard the Opinion of the Court, *Mr. Cook*, that it will not hold as a Cause of Challenge that he was of Sir *John Friend's* Jury; therefore those are all reckonéd among the peremptory Challenges, and you can challenge but two more in all.

L. C. J. Treby. Not without Cause, but as many more as you can have good Cause against.

Cl. of Arr. John Reynolds.

Cook. I except not against him. (*Was sworn.*)

Cl. of Arr. Joseph Brookbank.

Cook. I have nothing to say to him. (*He was sworn.*)

Cl. of Arr. Adam Bellamy.

Mr. Bellamy. My Lord, I am no Freeholder.

L. C. J. Treby. Why, what Estate have you?

Mr. Baker. He has Estate enough, I know, for Value.

Mr. Bellamy. I have only a Lease.

L. C. J. Treby. A Lease for Years?

Mr. Bellamy. Yes, my Lord.

Cl. of Arr. David Grill.

Mr. Grill. I am no Freeholder, my Lord.

Cl. of Arr. William Rawlins.

Cook. I accept of him. (*He was sworn.*)

Cl. of Arr. Samuel Roycroft.

Cook. Are you a Freeholder, Sir?

Mr. Roycroft. Yes, Sir. [*Challeng'd.*]

Cl. of Arr. Thomas Parker.

Cook. How many have I to challenge, do you say?

Cl. of Arr. But one, Sir; what say you to *Mr. Parker*?

Cook. I do not except against him. (*He was sworn.*)

Cl. of Arr. James Robinson.

Cook. I have nothing to say to him. (*He was sworn.*)

Cl. of Arr. Joseph Morewood. [*Challeng'd.*]

Mr. Baker. You have challenged all your Number now.

Cl. of Arr. My Lord, we have gone through the Pannel, we must now call the Defaulters again. *Thomas Clark.*

Mr. Clark. Here.

Sir B. Shower. Was he here when he was call'd over?

Mr. Att. Gen. That's nothing, he is here now.

Sir B. Shower. But if there be a Default of the Jury, and the King's Counsel have challenged any one, they ought to shew their Cause; therefore we desire that they may shew their Cause why they challeng'd *Mr. Simmons*.

L. C. J. Treby. The King has Power to challenge without shewing Cause till the Pannel be gone through; but if there be a Default of Jurors when the King challenges, the King's Counsel must shew Cause.

Sir B. Shower. Here is a Default of Jurors, my Lord.

L. C. J. Treby. No body is recorded absolutely a Defaulter, if he comes in time enough to be sworn.

Cl. of Arr. Swear *Mr. Clark.* (Which was done.)

L. C. J. Treby. When there is an apparent Default of Jurors, then they must shew their Cause; but here his Appearance, it seems, was recorded, and so he was no Defaulter; and you might have challenged him for Cause still.

Cl. of Arr. James Dry.

Mr. Dry. My Name is not *James*.

Serj. Darnall. Then you cannot swear him: Here are Three mistaken in their Names.

L. C. J. Treby. That is in the Copy in your Brief, Brother, it may be.

Serj. Darnall. No, my Lord, the Officers admit it.

Mr. Att. Gen. My Lord, we desire those Gentlemen, that say they are no Freeholders, may be sworn to that Matter. (Which was accordingly done.) And several of them that had staid, did deny the having of any Freehold upon Oath, and some were gone away.

L. C. J. *Treby*. Pray take care to estreat the Issues, and return greater Issues the next time.

Mr. J. *Rokeby*. Truly the Court must put some great Penalty upon them for trifling with the Court in respect of their Duty that they owe to the King and Country, in regard of their Estates.

Cl. of Arr. Pray, let the Officers be called who summoned this Jury, Mr. *Sheriff*.

(Which was done.) And they examined concerning their summoning those who made Default, and the Issues of those who were recorded as Defaulters were ordered to be estreated.

Then the Court not being able to proceed for want of a Jury, they ordered another Pannel to be ready against *Wednesday* next, to which time, at Seven in the Morning, the Court was by Proclamation adjourned.

*Die Mercurii Decimo Tertio Maii,
Anno Dom. 1696.*

The Court being met according to the Adjournment, the Pannel was called over, and the Defaulters Recorded, and several excused for Absence upon Sickness, and being out of Town before the Summons. Then Mr. Serjeant Darnall desired before the Jury was called, to move something against the Pannel: And made his Motion thus,

Mr. *Serj. Darnall*. IF your Lordship pleases, I have somewhat to offer to you before you go upon this new Pannel, and I confess, I think it is my Duty to the Court, as well as to the Prisoner, to state the Case as it is, and submit it upon the Reason of Law, and the Authorities that I shall offer, whether the Proceedings upon this new Pannel will not be erroneous? My Lord, the Question is, Whether as this Case is, the Prisoner has had a Copy of the Pannel of his Jury by which he is to be tried, according as the late Law requires? he had a Copy of the former Pannel, and upon that Pannel Nine were sworn, and their Names all entered upon Record, and made Parcel of the Record. Therefore now the Question is, whether he can be tried upon a new Pannel? We are in a Case that rarely happens; and in a Case of Life and Death, I know your Lordship will be careful not to vary from the ancient Practice, or to make a new Precedent, because of the Consequences. It must be agreed in this Case, that the old Pannel upon which the Prisoner took his Challenges, and of which Nine were sworn, is Parcel of the Record. Now, my Lord, to add a new Pannel, upon which Twelve more shall be sworn, and all this appear upon Record, and the Prisoner tried upon the last Pannel, will not this be Error? I offer this before the Jury be called and sworn, because we desire to be fairly tried; and we design to rest upon the Fact in this Case. If it should appear, That he is tried upon a Pannel that is unduly made and returned, that will be of Evil Consequence one way or other. And can this be duly made, if another appear upon Record before it? And can any Body say it is quash'd or abated? Or can it be so? My Lord, in *Stamford's Pleas of the Crown*, p. 155. it is said, *If any of*

the Pannel die after the Return, and before their Appearance, so that there are not enough left to make the Jury, yet the Pannel shall not be quash'd, nor is it abated, but it is Cause to grant a Tales. And certainly, my Lord, it is a stronger Case, when by reason of Challenges, which the Law gives the Prisoner Liberty to make, there are not enough left, that there shall not be a new Pannel, but that a *Tales* shall be granted; for if a new Pannel might be made, it cannot appear who were challenged, or who were admitted. And if your Lordship pleases to consider the Intention of the Law in giving the Prisoner Power to challenge, is, that he may have an indifferent Jury; but that would be prevented by such a Practice as this; for when it has been discovered upon the old Pannel whom the Prisoner chose, and whom he challenged upon the new Pannel, the Persons challenged may be set first, and those, that were chosen may be omitted, or so postponed, that none of them whom he thought equal to try him, can serve upon the Jury. And truly, my Lord, if I am rightly informed, that is the Case upon this new Pannel, some of those that were admitted and sworn are left out, and most of them, I think, are put last in the Pannel whom the thought equal Men to try him, and all those whom he challenged peremptorily, are the first Men in the Pannel. This, my Lord, is the Case before you, and if this be admitted, the Use and End of Challenges, which are in benefit and favour of Life wou'd be defeated. And for Authorities in this Case, besides the Reason and Ground of the Law, many cannot be expected, because it is a Fact that rarely happens. I find none of the ancient Practicers ever knew it, but I find that a *Tales* ought to be granted, so it is said in several Books, as in *Stamford*, 155, 156. when ever upon the Principal Pannel, all the Jury does not appear, or so many of them do not, that there are not enough left to make a Jury, which is our very Case; then in such Case the Pannel shall not be quash'd or abated; but a *Tales* granted, so is 14 H. 7. 7. there the Question was, Whether there should be a greater Number returned upon the *Tales* than were in the Principal Pannel, and there the Difference was insisted upon, and agreed, That where it is between Party and Party, where Life is not concerned, it shall not, but where Life is concerned, and the Prisoner has Power to challenge 35 peremptorily, there the Judge may award as many upon the *Tales* as he pleases, that there may be enough to remain after the Challenges; so that if this old Pannel be not abated, and cou'd not be quash'd, and a *Tales* might be granted to consist of any Number, I conceive the Prisoner cannot be tried upon this new Pannel, but it will be Erroneous; and I humbly submit to your Lordships, whether you will proceed upon it.

Sir *B. Shower*. If your Lordship pleases to spare me a Word of the same Side, with Submission, We think there ought to have been a *Habeas Corpora*, with a *Tales*, such as had been before Sworn, being to be part of the Jury now; and that is the proper Way to bring the Prisoner to his Trial in this Case; the King's Council cannot expect we should produce many Precedents, for I believe this is the Second of the Kind that

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ever happened, at least, within Memory, That a Trial in Treason was put off *pro defectu Juratorum*, though I have a Precedent that I think is express in the Case; but we insist in the first Place, That a *Tales* does lie at Common-Law, in the Case of Life; and so the Book that Mr. *Serjeant* cited in *Stamford*, is express; and then we say, that the Answer which we expect, that we are now before Justices of Gaol-Delivery, is not sufficient, because the Justices of Gaol-Delivery, though they do not usually award Process by way of Writ, but before their coming, they command the Sheriff to have his County ready there, and so in Fact, it is a Parol Precept; yet when it is returned, then it is entered upon Record, either *Præceptum est Vice Comiti quod venire faceret*; or, *Ideo veniat Jurata*; and the Jury are entered upon Record: So that take it to be before Justices of Gaol-Delivery, yet the Sheriff having returned a Pannel, and that being upon the File, as appears before your Eyes, in Obedience to your Command, and that Copy of the Pannel being delivered to us two Days before *Saturday* last, we humbly submit it to your Lordship, whether by Force of the Common-Law, and of the late Act of Parliament, we ought not to be tried by that Pannel; we insist upon it, that the Act intends, and expressly designed, that not only the Prisoner should have a Copy of the Pannel that the Sheriff returned at any time after, but that he should be tried by the Pannel that we had a Copy of at first; for it is not said a Copy, *toties quoties* the Court shall think fit to award a Precept for a new Pannel, but the Words of the Act are a Copy of the Jury duly returned by the Sheriff; now this we had, and your Lordship knows it is not a returned Pannel till it be in Court, and then it becomes part of the Record: My Lord, I do agree the Justices in some Cases have quash'd and set aside Pannels and Juries, and ordered new ones, and I confess there was an extraordinary Case in the Time of King *Charles* the Second, which was upon the Indictment against *Whitebread*, where after the Jury Charged, and Evidence given, the Jury was discharged, and a new Pannel made the next Sessions, upon which Mr. *Whitebread* was Tried and Convicted; how just or regular that was, I will not insist upon now, but I am sure there were great Complaints of that Practice, and few Precedents can be shewn of the like: But besides, the Parties themselves waved it there, no Objection being taken against it; but we insist upon it in this Case, that this being upon Record, is part of the Record, and so appears to the Court: If the Record indeed were to be made up upon a Writ of Error, perhaps it wou'd be no Error, because it may be they wou'd leave it out; but here it appears there was a Pannel of Record before you, and this must either be quash'd, or altered, or continued on by Process; you have Power to quash it, if it be unduly returned by the Sheriff. If there be any evil Practices for procuring the Pannel, either by the Prosecutor or the Prisoner; if there be no Freeholders return'd, or the same happen in any other respect not to be legally done according to the Command or Precept of the Court; but because there is a Default of Appearance of Jurors, no Pannel was ever quash'd upon that Account. Then say we, if it be not quash'd, this Pannel must continue; for, What shall become of it?

Why should it not continue? It is not within the Act of Parliament that gives the Justices Power to make a new Pannel, as in the Case of a Grand Jury when they are guilty of Concealments, or refuse to find Bills upon great Evidence, but we have no such Case before you, nor do I know any such Rule as can reach this; so that we take it, there is no Difference between this Case, as before Justices of Gaol-Delivery, and other Justices; that Process does lie against the Jury that does not appear even in Treason and Felony, there is no Dispute, and it is very properly so, if it be before Commissioners of Oyer and Terminer; first a *Venire facias*, and then upon Default, a *Habeas Corpora*, that is the proper Way; then take it before Justices of Gaol-Delivery, there it is entered upon Record, *Præceptum est Vice Comiti*, &c. and here is a Pannel returned by virtue of this Precept, and some of the Jury do not appear, and so there are not enough to Try the Prisoner after a great many Sworn and Challenged, and this entered upon Record. What shall become of that Pannel, it cannot be quash'd nor abated? My Lord, there is a Case that does warrant that Opinion of a *Tales* in a Case of Felony; and if there may be a *Tales*, then there may be an *Habeas Corpora*, and there are Directions how the Jurors shall be Sworn again, upon their appearance on the *Habeas Corpora*, and that is *Wharton's Case in Telverton* 23.

Mr. J. *Powell*, jun. Do not dispute that, it is plain, that a *Tales* does lie in Felony, upon a Commission of Oyer and Terminer; but can you shew me, Sir *Bartholomew*, any where, that upon a Commission of Gaol-Delivery a *Tales* does lie?

Sir B. *Showers*. Sir, I can only shew the Reason of the Law, and I cannot find that does contradict what we now contend for.

Mr. J. *Powell*. I tell you, Sir *Bartholomew*, there is no *Tales* but with a *Habeas Corpora* to bring in the first Jurors, and that cannot be upon a parol Precept on a Commission of Oyer and Terminer, there goes a *Venire facias*, which is a Writ upon which the *Habeas Corpora* may be grounded, but there is no *Venire facias*, upon a Commission of Gaol-Delivery.

Sir B. *Showers*. Why should there not be a Precept in nature of an *Habeas Corpora* for a Jury return'd, upon a Precept as well as on a Writ?

Mr. J. *Powell*. No, it never was done; the Commission of Gaol-Delivery is a general Commission that does Authorize the Sheriff to impanel, and have a Jury ready at the Day appointed, for the Delivery of the Gaol, to Try the Prisoners; it doth import in it self a general Precept for that Purpose, before Issue joyned, which the Sheriff cannot do in the Case of a Commission of Oyer and Terminer, but must have a Writ of *Venire facias*, after Issue joyned.

Sir *John Hewles*. Mr. *Sol. Gen.* In all Cases that they cite, there is a Writ of *Venire facias*, upon which the After-process, by Writ, may be grounded; but here is no Foundation for any future Process by Writ, because it is only by Parol-Precept.

Mr. *At. Gen.* Sure these Gentlemen don't think what they say; the Pannel is not Part of the Record, and there is no Record of it; nothing but the Clerk's Entry in a Paper, or Note, for his own Memorandum.

Mr. J. *Rokeby*. Brother *Darnal*, have you any Book that says, Justices of Gaol-Delivery must award a *Tales* upon Default of the Jurors.

Mr. Serj. *Darnal*. No, my Lord, I cannot say so.

L. C. J. *Treby*. Suppose all the Jury had been challenged, or dy'd.

Mr. J. *Powell*. There could be no quashing of it, but it would fall of it self, for Want of a Jury.

Mr. J. *Rokeby*. If, according to your Doctrine, we must keep to the first Pannel, the Consequence wou'd be, there would be no Trial at all.

Sir B. *Showers*. *Stamford* makes no Difference that I can see.

Mr. *Att. Gen.* But these Gentlemen have been told the Difference upon which this Matter is ground; a *Tales* cannot be without a *Habeas Corpora*, and a *Habeas Corpora* cannot be without a *Venire facias*; but a Commission of Gaol-Delivery cannot award a *Venire facias*, because that is not to be awarded till Issue joyned.

Mr. B. *Powis*. The Return of this Pannel before Justices of Gaol-Delivery, is an Act of the Sheriff, by virtue of the Commission, and nothing appears of Record till the Jury are Sworn.

Mr. J. *Rokeby*. They object that it is upon Record.

L. C. J. *Treby*. By the Record, they mean the Clerk's Note.

Mr. *Att. Gen.* If you please to look upon the Indictment, there is no Entry at all, and that is all the Record before you.

Mr. J. *Powell*. Does it appear upon Record, that Nine were Sworn?

Mr. *Baker*. No; there is nothing upon the Record.

Cler. of Arr. It does not appear till the Record is made up, and nothing is entered till Twelve are Sworn.

Mr. Serj. *Darnal*. There will be a great Inconvenience, if a Pannel may be changed at any Time.

Mr. J. *Powell*. This is a Case that never happened before, and may be never may again.

Sir B. *Showers*. The Law will hold the same, in case it does appear upon Record, as well as where it does not: But we say, a Pannel return'd in Court is a Record.

Mr. J. *Powell*. No, it will not; because, when a Jury does appear, and the Twelve are Sworn, then it becomes Parcel of the Record; and therefore *Whitebread's* Case was quite another Case, and was indeed held to be an extraordinary Case, but that comes not up to this, for there a full Jury was Sworn, and Evidence given.

Mr. Serj. *Darnal*. It may be the same Jury will not be returned.

Mr. J. *Powell*. But if you have a Copy of the Jury, you are at no Mischief.

Mr. Serj. *Darnal*. Some that were in the former Pannel are quite left out.

Mr. Sher. *Buck*. There are none left out, but what were not Freeholders, that I know of.

Mr. B. *Powis*. He says the Fact is not true, as you have alledged it.

Mr. Sher. *Buck*. And Mr. Serjeant *Darnal* has been pleased to reflect upon us, as if we had pack'd this Jury, by altering the Places of the

Names, which, my Lord, we do utterly deny, and we only left out those that were not Freeholders.

Mr. B. *Powis*. The Sheriff says, he has not postponed any of them, and only left out those that were not Freeholders.

Mr. Serj. *Darnal*. If the Law were as plain with us as the Fact in that Case, we should have a very good Case of it.

Mr. Sher. *Buckingham*. Mr. Serjeant, I have both the Pannels here; they may be compared.

Mr. Serj. *Darnal*. I said no harm, Mr. Sheriff, nor ment any Reflection upon you.

Mr. Sher. *Buckingham*. Mr. Serjeant was pleased to say, the excepted Men were put in the Front, and those that were Sworn were put last.

L. C. J. *Treby*. There is nothing at all in the Objection.

Mr. J. *Powell*. Really, because it was opened as a Reflection, it will be proper for the Sheriff to clear it.

Mr. Sher. *Buckingham*. My Lord, the Answer I give to it, is, That particular one that was Sworn last Time, is now at the very Beginning of the Pannel; and in general, they are mix'd promiscuously, without any Design or Study in the least. He says we have left out those that served before: I solemnly protest, I know not one Man returned upon the last Pannel that is left out, unless it appeared that he is no Freeholder; and we had no Reason to put in them, that we knew could not serve.

Mr. Serj. *Darnal*. That can't appear to us, that they are not Freeholders.

Mr. J. *Rokeby*. But it appears to him, and therefore he did well to leave them out.

Mr. Sher. *Buckingham*. What I say, I am ready to give upon my Oath.

Mr. Serj. *Darnal*. I say there is one *Henry Beadle* left out, and he was one that was Sworn.

Mr. Sher. *Buckingham*. I will not say for a particular Man; I protest that I did not know he was left out. If it be so, it was by Mistake; for I know Mr. *Beadle* very well, and I take him to be an honest Man, and very well affected to the Government as any Man.

Mr. Serj. *Darnal*. We desire to be tried by Men that are honest and well-affected to the Government.

Mr. Sher. *Buckingham*. There you have of them, Sir.

Mr. Serj. *Darnal*. Those that were Sworn are put last of all, and there is not above one of them that is within possibility of coming on again.

Mr. Sher. *Buckingham*. It will appear by Mr. *Cook's* Challenges, and the other Pannel, that they stood late before; and *Thomas Clark*, who was Sworn the last Time, stands tenth Man upon the Pannel.

Mr. Serj. *Darnal*. He was Sworn after we had gone through the Pannel, and took all our Challenges, not appearing at first.

Mr. Sher. *Buckingham*. I tell you they stand for the most Part as they did, for ought I know.

Mr. Serj. *Darnal*. There is but one in Threescore and Ten, that can be Sworn now, of them that were Sworn before; and there were Nine of them then Sworn.

Mr. *Att. Gen.* That is a Mistake. Indeed there are a great many added to the Pannel, because there was a Defect the last Time, and therefore now they may perhaps stand later.

Mr. *Serj. Darnal.* I do not speak to reflect upon the Sheriffs: I go according to my Instructions.

Mr. *J. Powell.* If it had been so, it had been well enough, for you must be contented, the Court must take it as the Sheriff returns it, and you have a Copy of it.

Mr. *Att. Gen.* Here are four of them that were Sworn before, that stood above sixty off in the old Pannel.

Mr. *Sher. Buckingham.* The first Man that was Sworn, Mr. *Sherbrook,* stands within the first Twelve now, as well as before.

Mr. *J. Powell.* If they had been all new, there had been nothing in that.

Mr. *J. Rokeby.* Truly, I can't see but that the Sheriff hath done like an equal, just, fair, and honest Officer.

Mr. *Att. Gen.* They may challenge as they will.

L. C. J. *Treby.* You are to consider, that this happens because you run out as far as your utmost Number, that Time you challenged Thirty-five peremptorily, and divers others for Cause, so as not to leave enough for a Jury; and from that alone arose a Necessity of increasing the Number of the Pannel.

Mr. *Serj. Darnal.* It was our Client that challenged them, we do not advise him whom to challenge.

Mr. *J. Rokeby.* But you must take the Consequence of it, which causes this Addition to the Pannel.

L. C. J. *Treby.* What do you complain of? they that are returned, are put in the same Order as they were before; they that were Sworn, were (for the most Part) late in the Pannel then, and so they are now. I do not find any Thing done to the Prejudice of the Prisoner.

Mr. *Serj. Darnal.* If the Christian Names had not been mistaken, there had been perhaps enough to have been Sworn.

L. C. J. *Treby.* That's a good Argument for a new Pannel, because the Christian Names were mistaken before.

Mr. *J. Powell.* It was by Defect of Jurors, and therefore there was an absolute Necessity of a new Pannel.

L. C. J. *Treby.* I am of the same Opinion.

Wharton's Case is well known: It was much cited as to another Point in *Brisbel's* Case. It was a Trial at the *King's-Bench* Bar at *Westminster* by a Jury of *Kent*, upon an Indictment of Murder.

And I think you say the Case of *H. 7.* was between Party and Party in Appeal. And I believe *Stamford's* Discourse, in the Place cited, relates chiefly to Appeals.

I shall not deny that a *Tales* may possibly be upon an Indictment before Justices of *Oyer and Terminer*; though 'tis not usual, nor do you shew, or our experienced Clerks know any such Precedent. I agree, that in the mentioned Cases a *Tales* was proper; for in both Cases (*viz.* of *Appeal and Indictment removed into the King's-Bench*) the Process for the Jury was as it ought to be, by Writs of *Venire facias*, &c. upon which a full Jury not appearing, there must be a *Tales*. But in

proceeding to Trial before Justices of *Oyer and Terminer* on such Indictment as is here, though I will not say but they may proceed by Writ of *Venire facias*, yet I do say, that the more known Course is by Precept, in nature of a *Venire facias*: And the Usage is, that after (and never before) the Prisoner hath pleaded not Guilty, there goes a Precept to the Sheriff, under the Seals of the said Justices of *Oyer and Terminer*, returnable at such Day as they shall adjourn to, for returning a Jury to Try it, (as was done lately, upon Advice, in the Case of *Rookwood*, &c.) and upon the Return of That, if, after Challenges, there are not enough left to make a Jury, whether those Justices shall issue a Precept in nature of a *Habeas Corpora*, or *Defringas* with a *Tales*, or another Precept in the same Form as before, and without taking Notice of the former, is a Question not in Judgment before us. For, we are about proceeding to a Trial on an Indictment in this Court of Gaol-Delivery, (which is the Court wherein generally all capital Crimes are tried, as well at this Place as at the Assizes) and, I think, here cannot be a *Tales*; I am sure it is not necessary. For, *First*, Here is never any Writ of *Venire facias*, &c. *Secondly*, Nor ever a Precept for returning a Jury to Try a particular Issue: But this Court takes the Pannels of Juries returned by the Sheriff, without any particular Precept to him.

The Course of proceeding by virtue of a Commission of Gaol-Delivery, which is the Law in this Case, is this, *viz.* There is, antecedent to the Coming of the Justices, a general Commandment or Precept made, in Writing, to the Sheriff by the said Justices, to return Juries against their Coming, for the Trying of all and singular Prisoners in their Gaol, whether they have pleaded before, or shall after. And for that Purpose it requires the Sheriff to summon, out of all Parts of his Country whence the Prisoners come, a great Number of Freeholders, not a-kin to the Prisoners, to be at the Time and Place appointed for holding the Court. The Sheriff, by virtue of this general previous Precept, summoneth many for Jurors, and prepares diverse several Pannels of their Names, either at first, or afterwards, as appears necessary, and returneth and delivereth in one or more of these Pannels from Time to Time, as the Court does need, and call for any: This, we know, in Fact, is frequently done where the Sessions of Gaol-Delivery lasts several Days, and there is occasion. Though, in Supposition of Law, all these Pannels are returned, and the Trials thereupon had the first Day of the Sessions; and, in Law, it is intended to be but that one Day only. The Return of this Precept is thus, *viz. Executio istius Præcepti patet in quibusdam Panellis huic præcepto annexis*, and the Pannels are annexed, and there are often filed here divers Pannels upon the same general Precept, though sometimes but One. These Pannels are thus delivered into Court, and a Jury taken out of them, as there is occasion, only upon a *Parol Award*, that is, barely the Court's calling for the same, without Writ or Precept in Writing, or giving any Day for the Doing it. For, this Proceeding is *immediate*, for the speedy Delivery of Prisoners; and the Entry, after setting forth that the Prisoner being arraigned pleads not Guilty, is, *Ideo immediate veniat inde Jurata, or fiat inde Jurata*:

Jurata: And this Court's being instituted for the speedy Delivery of Prisoners, and Warnings being given long before, of their Coming, are the Causes why it has been always held without doubt, that Justices of Gaol-Delivery might inquire and try the same Day.

If it fall out, that by reason of Defaults, Deaths, or Challenges, there cannot be a full Jury had out of a Pannel, (as here there wanted three) which is an Accident that the Court cannot know, till they have gone through the Pannel; I think in this Case, that Pannel goes for nothing, is utterly lost and void, and to be cast away or cancelled: For it does not answer the Award of the Court, which was to have a Jury to Try the Prisoner presently. It is meant an effectual Pannel that should afford a full Jury of Twelve unexceptionable Men; and every Pannel that comes short in this, is to be laid aside as a void Thing; and then the Court takes and makes use of another immediately, which may not be deficient, whereby the Award is observed, and the present Service dispatched.

Objection. It is objected, That the old Pannel is Parcel of the Record in Court, and, upon that, Nine were Sworn, and their Names are all enter'd upon Record; and now to add a new Pannel, upon which Twelve shall be Sworn and Try the Prisoner; all this appearing upon Record, it will be Error.

Answer. This Objection stands upon two Mistakes, both arising from not observing the Difference between Precepts and Pannels, in a Court of Gaol-Delivery and *Venire facias*'s, or Precepts and Pannels in other Courts.

1. It supposes that here will be two Pannels, which will appear to relate to the Trial of this Prisoner, Mr. Cook.

2. It supposes that both these will become Records, or Parcel of the Record in Court.

If either of these Suppositions prove to be a Mistake, it will destroy the Objection. I think both are Mistakes.

1. Here is not, nor will be, nay, there ought not to be any Pannel purporting to be returned for the Trying of Mr. Cook, or any particular Prisoner or Prisoners. For, the Precept in this Case is (not like a *Venire facias*, which always respects a particular Issue between Parties therein named, but) general, requiring the Sheriff to return Jurors enough to Try all the Prisoners, not naming any. And the Return, which is the Answer to it by a Pannel or Pannels, is as General; the Title of every Pannel being *Nomina Juratorum ad Triandum pro Domino Rege*, and no more; or *Nomina Juratorum ad Triandum inter Dom. Regem & Prisoner. ad Barram*, without naming any of the Prisoners, and it were absurd if it should be otherwise: For the Precept goes to the Sheriff before the Sessions, and his Return is supposed to be made at the Beginning of the Sessions, when it is not known who of the Prisoners will be indicted; or, if indicted, who will plead not Guilty, or Guilty, or a Pardon, or other Plea.

When, for the Trial of a particular Prisoner (or divers Prisoners that are thought fit to be put upon Trial by the same Jury) a Jury is about to be taken out of any Pannel, the Clerk, as he

goes along, may take a Note in Paper of the Name of every one that is sworn; or he may (and usually doth) write *Jur.* on the said Pannel, against the Name of every one Sworn: But this Note or Mark is no Part of the Record; it is not *ex Institutione Legis*, it is but a voluntary *Memorandum*, for the Help of his Memory. If he could safely trust to the Strength of his Memory, he need not write at all on this Occasion; I mean, not till a full Jury is Sworn, who try the Prisoner. But then, indeed, the Clerk must (from his Notes or Memory) write the Names of all the Twelve, entering them on the Record of the Indictment, in this manner, *viz.* just after the *Ideo immediatè veniat inde Jurata coram præfatis Justic. &c.* adding, *& Juratores Juratæ illius, &c. Scil. A. B. &c. Dicunt, &c.* And it is by this only, that the Names of those that are Sworn, come to be of Record; and it is this Entry upon the Body of the Indictment alone, that is the Record, that shews who were Jurors Sworn, to Try this, or that, or other Prisoner, or Prisoners.

So that if the old Pannel were filed, and were a Record, as the Prisoner's Council would suppose, yet it would not thereby be made appear, that the said Pannel was returned, or used for, or in order to the Trial of this Prisoner.

2. The old Pannel is not filed among the Records of the Court, nor ought to be. When such a Pannel does not produce a Jury, the Clerks may and use to throw it by, as a useless Thing. But, however they use it, we cannot allow it to be a Record. It was received *de bene esse*; it is abortive and comes to nothing. And it is not every Thing that passeth in Court in order to a Record, that comes to be so. A frivolous Plea that is rejected, is not recorded. A Presentment or Bill of Indictment, before it is found, is not a Record: And if an *Ignoramus* be returned upon a Bill of Indictment, it never can be a Record; and thereupon, the Clerks do sometimes throw it away, though sometimes they keep it and put it on the File, only taking care to cross it; but if they do forget to cross it, yet it is not a Record.

By all this it is apparent how great the Difference is between a Precept and Pannels in this Court, and a *Venire facias* and a Pannel returned thereupon, which is ever issued after Issue joyned, and doth always mention the particular Parties and Matter it relates to, and is a Record, and a Ground for an *Habeas Corpora* with a *Tales*, to be returnable at a certain future Day.

But, in this Case, in this Court, it is quite otherwise.

Sir B. Shower. Then, my Lord, since there is a new Pannel, we hope we stand in the same Condition upon the Act of Parliament, to take Exceptions to the Indictment before this Jury Sworn, as we did before the other Jury Sworn, since all that is quite set aside.

L. C. J. Treby. Yes truly, I think that may be.

Mr. At. Gen. But these Gentlemen would have done well to have given Notice of their Exceptions.

Sir B. Shower. My Lord, I shall not stand upon an Exception which I think I might take to the Word *Turmas* in the Indictment, which whether it be Troops of Men, or Horses, or what it is does not appear; but, I think, we have an Exception

ception to the chief Overt-Act laid in the Indictment, and that we presume, if my Brief be right, will be sufficient to set aside this Indictment: That Mr. *Cook* did agree with other Traytors to send Mr. *Charnock* into *France* to the said late King *James*, and King *James* is never mentioned before in all the Indictment, that is one Exception that we have, that there is no late King *James* mentioned in the Indictment before this, if my Copy be right, if it be otherwise, I suppose they will find it: It is laid, That Mr. *Cook* did agree to send *Charnock* as a Messenger into *France*, *eidem nuper Regi Jacobo*, and no *Rex Jacobus* is mentioned before. Then there is another Exception, and that's this: They come and say, That whereas there was a War with *France*, which is only in the Indictment by Way of Recital or Rehearsal of an History, *Quod cum per magnum Tempus fuit & modo fit*, &c. Mr. *Cook* the Premises knowing, did compass and imagine the King's Death, and did adhere to the said King's Enemies such a Day. Now, my Lord, I do think that this can never be maintain'd, for that *Cum quoddam Bellum*, &c. being an historical Narrative, is not positive enough: For adhering to the King's Enemies, being one of the Treasons laid in the Charge, there ought to be a War at the Time of the Adhesion, and of Necessity then that ought to be presented by the Jury; for though your Lordships can judicially take notice of War or Peace, yet you cannot take notice of it at such a particular Time, and the Reason is from the Notion that is in my Lord *Coke* in his third *Institutes*, cap. *Treason*, That Adhesions to Rebels is not Adhesion to the King's Enemies, for a Rebel is not said to be an Enemy; but it must be adhering to such an Enemy, as between whom and the King there was War at that Time, and consequently it ought to be more positively averred in the Indictment, than it here is; but as to the Overt-Act of Mr. *Cook's* consulting and agreeing to send *Charnock* over to the said late King *James*, to give him notice of what was agreed upon between them, when King *James* is not named before, that can never be got over, with Submission.

Mr. *Baker*. It is a Mistake of your Copy, Sir *Bartholomew Shower*.

Mr. *Att. Gen.* I have looked into the Record, and it is *Jacobo Secundo nuper Regi*, not *Disco*.

Sir *B. Shower*. Then, with Submission, my Lord, they cannot try us now, for we ought to have a true Copy of the Indictment.

Mr. *Baker*. Upon demand. But you never demanded it.

Sir *B. Shower*. Yes, it was demanded.

Mr. *Baker*. Who demanded it?

Sir *B. Shower*. Our Solicitor *Burleigh*.

Mr. *Baker*. No, he did not; I gave it him officiously.

Mr. *Att. Gen.* With Submission, my Lord, it is no Objection at all, that their Copy is wrong. That should have been before the Prisoner had pleaded; for the Words of the Act are, That he shall have it so many Days before, to enable him to plead, and he cannot be put to plead unless he have a Copy of the Indictment so long before: And at *Rookwood's* Trial it was said by the Court it could not be alledged after Plea pleaded.

Mr. *Burleigh*. The Copy was given to me publickly in Court.

Mr. *Sol. Gen.* Why did not your Solicitor compare it with the Indictment?

Mr. *Att. Gen.* They might have compared it by the Clerk's reading it to them; but they will not admit the Prisoner's Solicitor to see the Original, because the Act expressly says they shall not have a Copy of the Witnesses Names.

Sir *B. Shower*. The Officer is to deliver a true Copy of the Indictment.

Mr. *Att. Gen.* No; the Party is to demand it by himself or his Agent, and then he is to have it; and if he be denied, he ought to apply himself to the Court, who will order the Delivery of it; but we stand upon it that they cannot take this Exception now after they have pleaded, for the Intent of the Copy is to enable him to plead.

J. C. J. *Treby*. The Copy, by the Act of Parliament, is to be delivered to the Prisoner, his Attorney, Agent, or Solicitor, if they require the same, and here it seems there was no requiring of it, but it was voluntarily given; and now you have lapsed your Time of making the Exception of wanting a Copy, by having pleaded to the Indictment, whereby you have in effect admitted and declared, either that you had a true Copy of it, or that you did not think fit to require one; for the Use of the Copy is to better enable the Prisoner to plead. But when you did plead, you took upon your self to be well able to plead without the Help of a Copy, which you might have had upon the asking for.

Sir *B. Shower*. Then, my Lord, there is another Thing in the Indictment, That in this Overt-Act there is a new Time, and a new Place, and a new verb, and a new Fact alledged, and no nominative Case: It is alledged That *Peter Cook*, at first, with others, did so and so: and then the first of *July* to bring the Treasons aforesaid to effect, there *& alibi*, &c. (which is very loose, for I know not whence the *Venue* must come) did traiterously with *Charnock*, *Friend*, &c. consult to procure *Diversas Turmas & Legiones*, &c. to join with them in *England*, and then it comes *& ulterius* such a Day, Year, and Place, did traiterously agree so and so, and not say who: Now this is neither by express Words, nor Rule of Grammar to be referred to the Prisoner at the Bar, it does not say *ipse idem Petrus Cook*; now, my Lord, that the King's Council thought it necessary in every Overt-Act is plain, because those Words are put in every other Clause of the Indictment, in those Clauses that go before, and those Clauses that come after; then if they will take it, that this Clause must refer to the next Antecedent, that will not do, for the next precedent nominative Case is either *Friend* or *Charnock*: So that this is without a nominative Case, and the Precedents in my Lord *Coke's Entries* 361, and all the other Books have the nominative Case repeated, where there is a new Time, and a new Place, and a new Fact alledged: Now it might be true, that the Prisoner at the Bar might be present, and this same Treason might be discoursed of and agitated, and there might be a Consult about this Business, and yet it is not necessarily implied that he must consent and agree to send *Charnock* into *France*, upon which the great Stress of the Indictment lies: Therefore we say, these Words having no nominative Case, the Indictment cannot hold.

Mr. *Att. Gen.* My Lord, as to this Objection it will receive a very plain Answer. Our Indictment begins and sets forth, that *Peter Cook*, the Prisoner at the Bar, did imagine and compass the King's Death, and did adhere to the King's Enemies, and these are the Treasons: And then it sets forth the Overt-Act, that in Execution of the traitorous Compassings, Imaginations, and Adhesions aforesaid, *Ipse idem Petrus Cook*, together with Sir *William Perkins*, Mr. *Charnock*, Sir *John Friend* and others, did propose and consult to procure for the *French King*, Forces to invade this Land; & *ulterius*, he and they did agree to send *Charnock* to the late King *James*.

Mr. *J. Rokeby*. There's the first naming of *James* the Second, late King of *England*, and there is no *idem Jacobo* I promise you.

L. C. J. Treby. Well, that Mistake is over. Pray go on Mr. Attorney General.

Mr. *Att. Gen.* My Lord, as to this Objection of Sir *Bartolomew Shower*, he would have *ipse idem Petrus* repeated over again; and he says that we lay a distinct Overt-Act with a different Time and Place: Now that is a Mistake too; it is not a different Time and Place, but the same Time and Place: And it mentions that *cum R. Charnock, f. Friend, &c. & cum aliis Proditoribus conveniebat, consultabat, &c.* which he says may refer to Sir *John Friend* or *Charnock*: But if you look into the Frame of the Sentence, that can never be.

Mr. *J. Rokeby*. *Petrus Cook* is the nominative Case that governs all the Verbs.

Mr. *At. Gen.* And there is no other nominative Case in all the Indictment, but *Petrus Cook*, except it be in a Parenthesis, and that saves the Rule of Grammar, if there were any Thing in it, that it must refer to the last Antecedent.

Sir *B. Shower*. When it comes to the Clause that he did procure Horse and Arms, there the nominative Case is repeated.

L. C. J. Treby. It would not have made it worse, if they had made it so here; but the Question is, Whether it be necessary?

Sir *B. Shower*. Indictments ought to be precisely certain; but this we say is not so.

Mr. *At. Gen.* But here is as much Certainty as to the Person, as can be, that he did consult with such and such about such Things; and further, the same Day did agree with the same Traytors to do so and so.

Mr. *J. Powell*. Indictments, it is true, ought to be plain and clear; but I do not see but here is as much Certainty as can be, that he did such a Day consult, and further the same Day did agree with the same Persons.

Sir *B. Shower*. Who did agree, my Lord?

Mr. *J. Powell*. He that did consult with them before, and that is *Peter Cook*.

Mr. *At. Gen.* You'd have had us to have put it to every Verb, I believe.

Sir *B. Shower*. In Indictments no Presumption ought to be used, but the Facts ought to be directly and positively alledged.

Mr. *J. Powell*. It's true, there should be no Presumption, and there is none here, for certainly this is a plain Assertion of Fact.

L. C. J. Treby. Here are two Things that are set forth: *First*, That *Peter Cook* did meet with Sir *John Friend*, Sir *William Perkins*, and others, and then and there did consult with them, and

consent to procure an Invasion, and join an Insurrection thereto. And, *Secondly*, Further with the said Traitors did agree to send *Charnock* into *France*. Now, what is the nominative Case to this Agreement? Is it Sir *John Friend*, and Sir *William Perkins*? That's impossible: For they could not be said properly to meet and consult with themselves, every one of them with his own self and the rest. And then the Number, if it had refer'd to them, should have been plural, but here it is singular, [*agrevit*] and the Sense is no more than this; That then and there Mr. *Cook* did meet with such Persons, and did consult with them about such and such Matters, and further, did agree with them to do thus.

Sir *B. Shower*. The Meaning is not to be forced and strained by Inference or Presumption, but it ought to be express and plain.

L. C. J. Treby. Nay, you cannot express it better; you may make a Tautology of it if you will.

Sir *B. Shower*. The Paragraph is long, my Lord, and therefore requires the more Care to have those Repetitions that are necessary.

L. C. J. Treby. Your Objection to this Paragraph is, that it is too long; but repeating the same nominative Case to every Verb, would make it much longer.

Sir *B. Shower*. It cannot be understood to mean *Peter Cook* without Presumption, which ought not to be in an Indictment.

Mr. *Att. Gen.* And as to Sir *Bartolomew Shower*'s first Objection, his Copy is right too, and he mistook the Place.

Sir *B. Shower*. You shou'd have given me that for an Answer.

Mr. *At. Gen.* Nay, you should have taken more Care, and not have made the Objection.

L. C. J. Treby. Truly, I think it is hardly possible to have made this better if it had been otherwise than it is.

Mr. *Serj. Darnal*. My Lord, we think we have a good Fact of it, which we rely upon, and therefore do not so much insist upon these Exceptions, tho' in Duty to our Client, we mention that which we think is necessary, and we submit to your Lordship.

Cl. of Arr. Set *Peter Cook* to the Bar. [*Which was done.*] You, the Prisoner at the Bar, these good Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you would challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Cryer. Call Sir *John Sweetapple*.

Sir *John Sweetapple*. Here.

Cook. My Lord Chief Justice, if your Lordship please, I am advised —

L. C. J. Treby. Pray Sir speak out that we may hear what you say: And let the *Cryer* make a proclamation for Silence. [*Which was done.*]

Cook. My Lord, before the Jury is called, I am advised, that if any of the Jury have said already that I am guilty, or they will find me guilty, or I shall suffer, or be hanged, or the like, they are not fit or proper Men to be of the Jury.

L. C. J. Treby. You say right, Sir, it is a good Cause of Challenge.

Mr. J. *Rokeby*. That will be a sufficient Cause, if when they come to the Book, you object that, and be ready to prove it.

Cook. Which is Sir *John Sweetapple*? [He was shewn to him.]

Cl. of Arr. There he is.

Cook. I challenge him.

Cl. of Arr. *William Walker*.

Cook. Sir, have you said any such Thing that you believe me guilty?

Mr. *Walker*. No, Sir.

Mr. *Baker*. My Lord, he is asking of the Juryman the Question.

Mr. J. *Rokeby*. That's a Fact the Prisoner should prove upon him.

Mr. *At. Gen.* My Lord, he must not ask the Jury that Question, Whether they have declared before, that they will find him guilty; that is to make them guilty of a Misdemeanor.

Mr. *Serj. Darnall*. Is it any Misdemeanor for me to say, I think or believe such a Man is guilty.

Mr. *Att. Gen.* If he be summon'd to be of a Jury, and declare his Opinion before hand, it is a Misdemeanor.

Mr. *Serj. Darnall*. But suppose it be before he was summon'd?

Mr. *Att. Gen.* If you make any such Objection, you must prove it, and not out of the Juryman's own Mouth.

Mr. *Serjeant Darnall*. I think any Man, my Lord, that comes to serve upon the Jury, may be ask'd any Question that does not make him guilty of any Offence or Crime, or liable to any Punishment: Now if any of these Gentlemen that are return'd upon this Pannel, before the Summons have declared their Opinion, that the Prisoner is guilty, or ought to suffer, with Submission, the Prisoner may ask such a Question, Whether he have said so, yea or no?

Mr. J. *Powell*. He cannot upon a *Voyer Dire* be ask'd any such Question.

Mr. J. *Rokeby*. It is not denied to be a material Objection, but it must be made out by Proof.

L. C. J. *Treby*. You put it too large, Brother *Darnall*, you may ask upon a *Voyer Dire*, whether he have any Interest in the Cause; nor shall we deny you Liberty to ask whether he be fitly qualified, according to Law, by having a Freehold of sufficient Value; but that you can ask a Juror or a Witness every Question that will not make him criminous, that's too large: Men have been ask'd, Whether they have been convicted and pardon'd for Felony, or whether they have been whipt for Petty Larceny; but they have not been obliged to answer; for, tho' their Answer in the affirmative will not make them Criminal, or subject them to Punishment, yet they are Matters of Infamy; and if it be an infamous Thing, that's enough to preserve a Man from being bound to answer. A pardon'd Man is not guilty, his Crime is purged; but merely for the Reproach of it, it shall not be put upon him to answer a Question whereon he will be forced to forswear or disgrace himself. So Persons have been excused from answering whether they have been committed to *Bridewell* as Pilferers or Vagrants, or to *Newgate* for Clipping or Coining, &c. Yet to be suspected or committed is only a Misfortune and Shame, no Crime. The like has been observed in other Cases of odious and infamous Matters which were not Crimes indictable. But to keep to our Case, 'tis true, a Juror may be challenged being

an *Alien*, or being a *Villain*; but where the Matter apparently carries Crime or Shame, it should be proved; the Outlawry should be proved, and so should the being a *Villain*. Yet that is no Crime, tho' it be an Ignominy.

Mr. *Serj. Darnall*. But, my Lord, I take this to be no manner of Infamy at all, there is nothing of Crime, nor nothing of Reproach, but only a declaring of a Man's Opinion.

L. C. J. *Treby*. Truly, I think otherwise; I take it to be at least a scandalous Misbehaviour, and deservedly ill-spoken of, for any Man to prejudge, especially in such a heinous Matter. I think it is a very shameful Discovery of a Man's Weakness and Rashness, if not Malice, to judge before he hears the Cause, and before the Party that is accused could be tried. But, it seems, by what the Prisoner says, that he would ask all the Jurors, whether they have not said, that he was guilty, or that they would find him guilty, or that he should be hanged, or the like: Which (presuming him innocent) is to ask whether they have not defamed and slandered him in the highest Degree; and to force them to discover that they have a mortal Hatred to him, and come with a malicious Resolution to convict him: Which, admitting they are not punishable by our Law, yet are Things so detestably wicked and so scandalous, as are not fit to be required to be disclosed by and against themselves.

Mr. *Serj. Darnall*. Pray, my Lord, what is more common than for a Man to say, before he is summoned to be upon a Jury, when he hears a Fact reported concerning such a one, to say I believe he is guilty, or I am of Opinion he is, and I am sure he will be hanged, and yet there is no Crime in this.

L. C. J. *Treby*. Truly, Brother *Darnall*, I know not how you may approve of such a Man, but I'll assure you I do not. I take the Question not to be concerning a Man's discoursing *suppositively*; as, if upon hearing News, or a Report of clear Evidence, a Man should say, *Supposing this to be true, such a Man is guilty, and I should find him so if I were of his Jury*. This might not be sufficient to set aside a Juror: For this has been a general Discourse among the Subjects upon Occasion of this Conspiracy; and it imports that if Evidence should not be true and clear, he would acquit him. And so he is, as he should be, indifferent. But if a Man, qualified for a Juror, affirm *positively* that such a Prisoner is guilty, and that he will find him so whatever Evidence or Proof be given or made to the contrary, I think that may be a Misdemeanour punishable as an owning and encouraging of Falshood, Perjury, and Injustice, and a Contempt and Scandal to the Justice of the Kingdom. Tho' I hope and believe that no Man hath so demeaned himself.

Mr. J. *Powell*. In a Civil Case it would be a good Cause of Challenge. If a Man have given his Opinion about the Right one way or other, may you not upon a *Voire dire* ask him whether he hath given his Opinion one way or other? I believe it may be ask'd in a Civil Cause, because he may have been a Referee; but if you make it Criminal it cannot be ask'd, because a Man is not bound to accuse himself; now the Difference lies in the Nature of the Cause, it is not Criminal in a Civil Case for a Man to say he was an Arbitrator in such a Case, and, upon what appeared before him, he was of such an Opinion.

Mr.

Mr. *Att. Gen.* But, my Lord, it is a different Case to give an Opinion about the Right between Party and Party, where a Man has been an Arbitrator and so in the Nature of a Judge, and where a Man is to go upon a Jury in the Case of Life and Death, and before the Evidence given, he declares his Opinion without hearing the Cause.

Mr. *B. Shower.* My Lord, we know several of the Trials have been printed, and the Names of several Persons mentioned, and upon reading of the Trials or conversing about them, Men are apt to give their Opinions one way or other.

Mr. *Serj. Darnal.* It is only an Objection in Case he has done it.

Mr. *J. Rokeby.* But, Brother, how can you ask him the Question?

Mr. *Serj. Darnal.* If the Court are of Opinion that it is such a Crime that it cannot be ask'd, as tending to make a Man accuse himself of an infamous Crime, then we submit it to you, and I confess we must not ask it; but we cannot apprehend that there is either Crime or Infamy in it, tho' we think it is an Objection and a good Cause of Challenge.

Mr. *B. Powys.* I think, tho' it be not such a Crime as infamous upon which a Man is not to be credited, for that is Infamy in the Eye of the Law, whereby a Man is prejudiced in his Credit; yet however it is a shameful Thing for a Man to give his Judgment before he hath heard the Evidence, and therefore I think you ought not to ask him it, to make him accuse himself, if it be an opprobrious Matter upon him.

Mr. *Serj. Darnal.* Truly, my Lord, I always took it to be the Rule, if the Thing asked to the Person returned be not criminal nor infamous, the Party that is ask'd ought to answer to it.

L. *C. J. Treby.* I would fain know, if you should ask any of the Jury-men this Question, whether he be guilty of all the Crimes that are pardoned by the last Act of Grace, he be bound to answer it?

Mr. *Serj. Darnal.* Undoubtedly we cannot ask any such Question; no, not to any one of the Things therein mentioned.

L. *C. J. Treby.* But yet you will force him to discover a Crime (if it be one) that is unpardoned.

Mr. *J. Powel.* Certainly you go too far, Brother, for no Man is obliged to charge himself with what is Criminal, but whether this be Criminal to say, *I believe such a one will be hanged*, is of another Consideration.

Mr. *J. Rokeby.* But I think it must be proved upon him if any Objection be made.

Sir. *B. Shower.* My Lord, it will be no easy Thing to bring Witnesses to prove this Matter, and therefore we would have it from his own Mouth.

Mr. *J. Rokeby.* And it is a very hard Matter for a Man to be put upon proving every Discourse that he has had about the publick Affairs of the Time.

Mr. *Recorder.* The Reason of your Exception is, that he has declar'd his Opinion before-hand, that the Party would be hanged or would suffer, that's a Reproach and a Reflection upon a Wife Man so to do; and if they can prove it upon him, let them do it: But whether you should ask him such a Question, Whether he be a Fool or a

Knave for the giving an Opinion one way or other, that's the Question before us.

Mr. *Serj. Darnal.* My Lord, we do not offer it to the Court as an Objection that he is not a wife Man.

Mr. *Att. Gen.* But what a Man does utter imprudently, may occasion a Prejudice against him, and therefore ought to be proved, and not he to prove it himself.

L. *C. J. Treby.* Especially being a Freeholder of London, and taking Notice of what is done in London; and if he does take Notice of the Fact, and does previously give his Opinion of a Matter which he may be called upon a Jury to try, this is an Indiscretion and a Reproach to him, and I think a Misdemeanour.

Mr. *Serj. Darnal.* My Lord, I acknowledge it is ill done of him, that is, indiscreetly and not wisely, and we would have discreet and wife Men upon our Jury.

Mr. *Cowper.* My Lord, Mr. *Serj. Darnal* will make it so little a Thing at last, that it will amount to no Cause of Challenge, if it were even prov'd against him, which we insist it ought to be, it being their Objection, and the Party not being bound to prove it against himself; but truly we think there is more in it than so, because it is an unjust prejudging of a Man before he is tried and heard, and if so, it is a Thing that he ought not to accuse himself of, and therefore we oppose the asking any such Question.

Mr. *Serj. Darnal.* Our Objection is not because it is an Offence to declare a Man's Opinion upon a Fact reported, but because it shews he has a settled Opinion against the Person of his Guilt, and so he is not so equal a Man to try him.

L. *C. J. Treby.* And is that like an honest Man and a Freeholder of London, (who ought to be indifferent) to come with a settled Opinion against a Man, when he is to be one of his Jury?

Mr. *Serj. Darnal.* Well, my Lord, we have been heard, and submit it to the Judgment of the Court.

L. *C. J. Treby.* Truly, I think it reflects both Dishonesty and Dishonour upon him, and therefore these Questions ought not to be ask'd. The Question is *not* whether a Man (if ever such a Man there were) that hath so resolved and declared shall be sworn? No; he is not fit to serve upon a Jury. But the Question is, How this shall be discovered, by his own Oath or by other Proof? I think it ought to be made appear by other Proof, if true. A Man attainted of Felony, Forgery, false Verdict, or Perjury, ought not to serve on a Jury, yet he shall not be examined concerning the same on a *Voire dire*. And if there be in Court a Copy of such Judgment carefully examin'd and kept by himself, he shall not be forced to answer whether it be a true Copy; tho' his Answer could not subject him to any further Penalty.

Mr. *Serj. Darnal.* My Lord, I hope no Gentleman of the Jury has done it.

L. *C. J. Treby.* I hope no Freeholder of London is so indiscreet or so unjust. But if any Man in this Pannel have any particular Displeasure to the Prisoner, or be unindifferent, or have declared himself so, I do admonish and desire him to discover so much in general; for, it is not fit, nor for the Honour of the King's Justice, that such a Man should serve on the Jury.

Mr. Serj. *Darnal*. We hope so too. We hope that all that are returned upon the Jury are discreet and impartial Men.

Cl. of Arr. Well, Sir, what say you to this Gentleman Mr. *Walker*?

Cook. I challenge you, Sir.

Cl. of Arr. Nathanael Long.

Sir *B. Shower*. My Lord, we think he may ask if they have a Freehold or no; because the Law requires that Qualification, and the Prisoner not being able to prove the Negative, it puts the Proof of the Affirmative upon the Person himself.

Mr. *Att. Gen.* What does Sir *Baribolomew* mean? would he have the Jury-men bring their Evidences with them to prove their Freehold?

L. C. J. Treby. No sure, Mr. *Attorney*; but to ask the Question was allowed him the last Time, and we will not deny him the same just Favour now.

Cook. Are you a Free-holder, Sir, in *London*, of the Value of 10 *l.* a Year?

Mr. *Long*. Yes, Sir.

Cook. Were you of the Grand-Jury when the Bill was found against me?

Mr. *Long*. No, Sir.

Cook. I challenge you, Sir.

Cl. of Arr. William Carbonell.

Mr. *Carbonell*. My Lord, I am no Free-holder.

L. C. J. Treby. What, does he say he has no Free-hold?

Cl. of Arr. Yes, my Lord.

L. C. J. Treby. Then he must be set aside.

Cl. of Arr. Joshua Foster.

Mr. *Foster*. My Lord I am no Freeholder in *London* neither.

Mr. *Att. Gen.* My Lord, we desire they may be sworn whether they have a Freehold or not.

Cl. of Arr. Hold Mr. *Carbonell* and Mr. *Foster* the Book. (which was done severally.) You shall true Answer make to all such Questions as shall be ask'd you by the Court. So help you God.

Mr. *Att. Gen.* Ask him if he hath not a Freehold in *London*?

Mr. *Carbonell*. No, I have not.

Cl. of Arr. Have you or any Body in Trust for you a Freehold in *London* of the Value of 10 *l.* a Year?

Mr. *Carbonell*. No, Sir.

Cl. of Arr. Joshua Foster, have you or any in Trust for you any Estate of Freehold in *London* of the Value of 10 *l.* a Year?

Mr. *Foster*. No, Sir.

Cl. of Arr. Joseph Billers.

Cook. I desire they may be called in the Order as they are in the Pannel; you have not called *John Ewen*, who is next.

Cl. of Arr. I do call them in Order: As for Mr. *Ewen*, one has made Oath that he is sick, and is not able to come hither. What say you to Mr. *Billers*? I here he stands.

Cook. Sir, are you a Freeholder of 10 *l.* a Year, within the City of *London*?

Mr. *Billers*. Yes, Sir.

Cook. Was you of the Grand-Jury, Sir, when the Bill was found against me?

Mr. *Billers*. No, Sir.

Cook. I challenge you.

Cl. of Arr. John Child.

Cook. Sir, are you a Freeholder within the City of *London*?

Mr. *Child*. Yes, Sir.

Cook. Of 10 *l.* a Year?

Mr. *Child*. Yes, Sir.

Cook. Were you of the Grand-Jury when the Bill was found against me?

Mr. *Child*. No, Sir.

Cook. I challenge you.

Cl. of Arr. Edward Leeds.

Cook. Sir, are you a Freeholder within the City of *London*, of 10 *l.* a Year?

Mr. *Leeds*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr. *Leeds*. No, Sir.

Cook. I challenge you.

L. C. J. Treby. What Question was that he ask'd him?

Cl. of Arr. Whether he were one of the Grand Jury that found the Bill.

L. C. J. Treby. A very proper Question: For an Indictor ought not to be a Trier.

Cl. of Arr. Thomas Clark.

Cook. Sir, are you a Freeholder within the City of *London*, of 10 *l.* a Year?

Mr. *Clark*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me.

Mr. *Clark*. No, Sir.

Cook. I challenge you.

Cl. of Arr. Nathan Green.

Cook. Are you a Freeholder, Sir, within the City of *London*, of the Value of 10 *l.* a Year.

Mr. *Green*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr. *Green*. No, Sir.

Cook. I challenge you.

Cl. of Arr. Henry Sherbrooke.

Cook. I have nothing to say against him.

Cl. of Arr. Then hold Mr. *Sherbrooke* the Book. (Which was done.) Look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoner at the Bar, (whom you shall have in Charge) according to your Evidence. So help you God.

Then Mr. *Sherbrooke* was put into the Place appointed for the Jury.

Cl. of Arr. Henry Dry.

Cook. Sir, are you a Freeholder in the City of *London*, of the Value of 10 *l.* a Year.

Mr. *Dry*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr. *Dry*. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Joseph Morewood.

Cook. Sir, have you a Freehold in *London*, of the Value of 10 *l.* a Year?

Mr. *Morewood*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr. *Morewood*. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Richard Greenway.

Cook. Are you a Freeholder of 10 *l.* a Year in *London*?

Mr. *Greenway*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr. *Greenway*. No, Sir.

Cook.

Cook. Sir, I challenge you.
 Cl. of Arr. *John Sherbrook*.
 Cook. Sir, are you a Freeholder in the City of London, of 10 l. a Year?
 Mr. *Sherbrook*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Sherbrook*. No, Sir.
 Cook. Sir, I challenge you.
 Cl. of Arr. *Thomas Emmes*.
 Cook. Are you a Freeholder, Sir, within the City of London of 10 l. a Year?
 Mr. *Emmes*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Emmes*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *Samuel Jackson*.
 Cook. Are you a Freeholder within the City of London of 10 l. a Year?
 Mr. *Jackson*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Jackson*. No, Sir.
 Cook. Sir, I challenge you.
 Cl. of Arr. *Henry Hunter*.
 Cook. Are you a Freeholder, Sir, in London, of the Value of 10 l. a Year?
 Mr. *Hunter*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Hunter*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *John Deacle*.
 Cook. Sir, are you a Freeholder within the City of London, of the Value of 10 l. a Year?
 Mr. *Deacle*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Deacle*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *John Cullum*.
 Cook. I accept of him. (He was sworn.)
 Cl. of Arr. *Thomas Shaw*.
 Cook. I accept of him. (He was sworn.)
 Cl. of Arr. *George Juyce*.
 Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?
 Mr. *Juyce*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Juyce*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *Richard Young*.
 Cook. I have nothing to say against him. (He was sworn.)
 Cl. of Arr. *John Hedges*.
 Cook. Sir, are you a Freeholder within the City of London, of 10 l. a Year?
 Mr. *Hedges*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Hedges*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *John James*.
 Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?
 Mr. *James*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *James*. No, Sir.

Cook. I challenge you.
 Cl. of Arr. *Thomas Poole*.
 Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?
 Mr. *Poole*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Poole*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *Peter Parker*.
 Cook. Sir, are you a Freeholder in the City of London of 10 l. a Year?
 Mr. *Parker*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Parker*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *William Wilkinfon*.
 Mr. *Wilkinfon*. My Lord, I am no Freeholder in London.

(To which he was sworn.)

Cl. of Arr. *Henry Mitchel*.
 Cook. Hold, Sir, here *Thomas Man* in my Pannel is next.
 Cl. of Arr. There is Oath made that he is sick in Bed. What say you to Mr. *Mitchel*?
 Cook. Sir, Have you a Freehold of 10 l. a Year in the City of London?
 Mr. *Mitchel*. No, Sir. (To which he was sworn.)
 Cl. of Arr. *Richard Ryder*.
 Cook. Sir, Have you a Freehold of 10 l. a Year in the City of London?
 Mr. *Ryder*. Yes, I have, Sir; but I live in a Parish that never serve upon any Juries, nor ever did in the Memory of any Man.
 Cl. of Arr. But have you a Freehold of 10 l. a Year?
 Mr. *Ryder*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Ryder*. No, Sir.
 Cook. Sir, I challenge you.
 Cl. of Arr. *Richard Temple*.
 Mr. *Temple*. My Lord, I am no Freeholder. (To which he was sworn.)
 Cl. of Arr. *Peter Walker*.
 Cook. Sir, are you a Freeholder of the City of London, of 10 l. a Year?
 Mr. *Walker*. Yes, Sir.
 Cook. Were you of the Grand-Jury that found the Bill against me?
 Mr. *Walker*. No, Sir.
 Cook. I challenge you.
 Cl. of Arr. *Thomas Pistol*.
 Mr. *Pistol*. I am no Freeholder. (To which he was sworn.)
 Cl. of Arr. *John Hunt*.
 Mr. *Hunt*. My Lord, my Name is mistaken; my Name is *William Hunt*.
 L. C. J. *Treby*. Then you must go on to another.
 Cl. of Arr. *John Hardret*.
 Mr. *Hardret*. I am no Freeholder of 10 l. a Year. (To which he was sworn.)
 Cl. of Arr. *John Hammond*.
 Cook. Are you a Freeholder, Sir, of 10 l. a Year, in London?
 Mr. *Hammond*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Hammond. No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Cooper.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *Joffelin Roberts.*

Cook. Sir, are you a Freeholder within the City of London, of 10 l. a Year ?

Mr. Roberts. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Roberts. No, Sir.

Cook. I challenge you.

Cl. of Arr. *Jonathan Micklethwait.*

Cook. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Arr. *Richard Chifwell.*

Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year ?

Mr. Chifwell. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Chifwell. No, Sir.

Cook. I challenge you.

Cl. of Arr. *Joſeph Thompson.*

Cook. Sir, are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Thompson. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Thompson. I was returned upon the Grand Jury, but did not ſerve.

Cook. I challenge you.

Cl. of Arr. *Edward Brewſter.*

Cook. Sir, are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Brewſter. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Brewſter. No, Sir.

Cook. I challenge you.

Cl. of Arr. *George Gooday.*

Mr. Gooday. My Lord, I am no Freeholder. (*To which he was ſworn.*)

Cl. of Arr. *Abraham Hickman.*

Cook. Sir, Are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Hickman. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Hickman. No, Sir.

Cook. I challenge you.

Cl. of Arr. *George Grove.*

Cook. Sir, Are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Grove. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Grove. No, Sir.

Cook. I challenge you.

Cl. of Arr. *Nathanael Wyerſden.*

Cook. Sir, Are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Wyerſden. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Wyerſden. No, Sir.

Cook. I challenge you. My Lord, I deſire to know how many I have excepted againſt.

Cl. of Arr. One and Thirty.

Mr. Burleigh. Write, write.

Cl. of Arr. *Samuel Blewitt.*

Cook. Sir, Are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Blewitt. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Blewitt. No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Wolfe.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *William Smith.*

Cook. Sir, Are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Smith. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me ?

Mr. Smith. No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Bickley.*

Mr. Bickley. My Lord, I don't look upon my ſelf as a Freeholder.

L. C. J. *Treby.* Why ſo, Sir ?

Mr. Bickley. I have a Leaſe for one and Fifty Years, my Lord, of my Houſe, and there is a very little Piece of Ground adjoining to it that was very convenient for me to lay to my Leaſe; there is no Way to it but through my Houſe; it is a Thing that never was let for any Thing, and it is not worth the Building

L. C. J. *Treby.* What Eſtate have you in it? Do you pay a Ground-Rent for it?

Mr. Bickley. My Lord, I bought that little Piece of Ground for the Conveniency of my Leaſe.

L. C. J. *Treby.* But did you purchaſe it for Term of Years, or to you, and to your Heirs ?

Mr. Bickley. Nay, I bought it for ever, my Lord.

L. C. J. *Treby.* Then you have a Freehold in it. What's the Value of it?

Mr. Bickley. Truly very little, my Lord.

L. C. J. *Treby.* I don't known any Body can judge of the Value of it but yourſelf. Is it worth 10 l. a Year ?

Mr. Bickley. My Lord, I can't value it at Ten Pound a Year, it never coſt me Forty Pound.

L. C. J. *Treby.* Then for Eſtate you are well enough, but for Value you are a little under.

Cl. of Arr. *Thomas Collins.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *John Watſon.*

Cook. I do not challenge him. (*He was ſworn.*)

Cl. of Arr. *Benjamin Hooper.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *John Wells.*

Cook. Sir, are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Wells. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me ?

Mr. Wells. No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Hibbart.*

Cook. Sir, Are you a Freeholder of the City of London, of 10 l. a Year ?

Mr. Hibbart. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me ?

Mr. Hibbart. No, Sir.

Cook. I challenge you.

Cl. of Arr. *Mr. Cook* you have challenged your full Number. Call *Daniel Wray.* (*He was ſworn.*)

Cl.

Cl. of Arr. *John Pettit.* (He was sworn.) Cryer Countez.

Henry Sherbrook.

Cryer. One, &c.

Cl. of Arr. *John Pettit.*

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Twelve sworn are as follows :

<p><i>Henry Sherbrook,</i> <i>John Cullum,</i> <i>Thomas Shaw,</i> <i>Richard Tomig,</i> <i>John Cooper,</i> <i>Jonath. Micklethwait,</i></p>	}	<p><i>John Wolfe,</i> <i>Thomas Collins,</i> <i>John Watson,</i> <i>Benjamin Hooper,</i> <i>Daniel Wray, and</i> <i>John Pettit.</i></p>
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Cl. of Arr. Cryer, Make Proclamation.

Cryer. O Yes, If any one can inform my Lord, the King's Justices, the King's Serjeant, the King's Attorney-General, or this Inquest now to be taken of the High-Treason whercof *Peter Cook*, the Prisoner at the Bar stands indicted, let them come forth and they shall be heard, for the Prisoner now stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or they forfeit their Recognizance.

L. C. J. *Treby.* You must make Room for those Twelve Gentlemen that are sworn, that they may be at ease; and for those that are not sworn, their Attendance may be spared.

Cl. of Arr. *Peter Cook.* Hold up thy Hand. (*Which he did.*) Gentlemen you that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted in *London*, by the Name of *Peter Cook*, late of *London*, Gentleman; For that whereas an open and notoriously publick and most sharp and cruel War, for a great while hath been, and it is by Land and by Sea, carried on, and prosecuted, by *Lewis the French King*, against the most Serene, most Illustrious and most Excellent Prince, our Sovereign Lord *William the Third*, by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. All which time, the said *Lewis the French King*, and his Subjects, were, and yet are Foes, and Enemies of our said Lord the King that now is, *William the Third*, and his Subjects, he the said *Peter Cook*, a Subject of the said Lord the King that now is, of this his Kingdom of *England*, well knowing the Premises, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved, and seduced by the Instigation of the Devil, as a false Traytor against the said most Serene, most Mild, and most Excellent Prince, our Sovereign Lord, *William the Third*, now King of *England*, his Supreme, True, Rightful, Lawful, and undoubted Lord, the Cordial Love, and true, and due Obedience, Fidelity, and Allegiance, which every Subject of the said Lord the King that now is, towards him our said Lord the King, should bear, and of Right is bound to bear, withdrawing, and utterly to extinguish, Intending, and Contriving, and with all his Strength, purposing, and designing the Government of this Kingdom of *England*, under him our said Lord the King that now is of Right duly, happily, and very well established altogether to subvert, change, and alter, and his Faithful Subjects,

and the Freemen of this Kingdom of *England*, into intollerable, and miserable Servitude to the aforesaid *French King* to subdue, and enthrall; the First Day of *July*, in the Seventh Year of the Reign of our said Lord the King that now is, and divers Days, and Times, as well before as after, at *London*, in the Parish of *St. Peter Cornbil*, in the Ward of *Lincolne-street*, falsely, Maliciously, Devilishly, and Traiterously did Compass, Imagine, and Contrive, Purpose, and Intend, our said Sovereign Lord the King that now is, then his Supreme, True, Rightful, and Lawful Lord, of and from the Regal State, Title, Honour, Power, Crown, Empire, and Government of this Kingdom of *England*, to depose, cast down, and utterly deprive, and the same our Lord the King to Death, and final Destruction to bring, and the aforesaid *Lewis the French King*, by Armies, Soldiers, Legions, and his Subjects, this Kingdom of *England* to invade, fight with, conquer and subdue, to move, incite, procure and assist, and a miserable Slaughter among the Faithful Subjects of our said Lord King *William*, throughout this whole Kingdom of *England*, to Make, and Cause. And further, That the said *Peter Cook*, during the War aforesaid, to wit, the aforesaid first Day of *July*, in the seventh Year above said, and divers other Days and Times, before and after, at *London* aforesaid, in the Parish and Ward aforesaid, to the said Foes, and Enemies of the same our Lord the King, did adhere, and was assisting: And his aforesaid most wicked, and devilish Treasons, and Traiterous Compassings, Contrivances, Intentions, and Purposes aforesaid, to fulfill, perfect, and bring to Effect, and in Prosecution, Performance, and Execution of that traiterous adhering, he the said *Peter Cook*, as such a false Traytor, during the War aforesaid, to wit, the same first Day of *July*, in the Year above said, at *London* aforesaid, in the Parish, and Ward aforesaid, and divers other Days, and Times, as well before as after, there and elsewhere in *London* aforesaid, falsely, maliciously, advisedly, secretly, and traiterously, and by Force, and Arms, with one *Robert Charnock*, Sir *John Friend*, and Sir *William Perkins*, Knights, (which said *Robert Charnock*, Sir *John Friend*, and Sir *William Perkins*, were lately severally duly Convicted, and Attainted of High-Treason, in Contriving and Conspiring the Death of our said Lord the King that now is) and with divers other false Traytors to the Jurors unknown, did meet, propose, treat, consult, consent, and agree to procure from the aforesaid *Lewis the French King*, of his Subjects, Forces, and Soldiers, then, and yet Foes, and Enemies of our said Sovereign Lord *William*, now King of *England*, &c. great Numbers of Soldiers and Armed Men, this Kingdom of *England* to Invade and Fight with, and to Levy, Procure, and Prepare great Numbers of Armed Men, and Troops, and Legions against our said Lord the King that now is, to rise up and be formed, and with those Foes and Enemies, at and upon such their Invasion and Entry within this Kingdom of *England*, to join and unite, Rebellion and War against our said Lord the King that now is, within this Kingdom of *England*, to make, levy, and carry on; the same our Lord the King so, as aforesaid, to Depose, and him to Kill and Murder: And further, with the said false Traytors, the same first Day of *July*, in the Year above said, at *London* aforesaid, in the Parish and Ward aforesaid, traiterously

traiterously did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from him the said *Peter Cook*, and the same other Traitors, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to propose to him, and to request him to obtain from the aforesaid *French* King the aforesaid Soldiers and Armed Men for the Invasion aforesaid to be made, and Intelligence and Notice of such their traiterous Intentions and Adherings, to the said late King *James* the Second, and the said other Foes and Enemies, and their Adherents, to give and shew, and them to inform of other Things, Particulars, and Circumstances thereunto referring, for the Assistance, Animating, Comforting, and Aid of the said Foes and Enemies of the said Lord the King that now is, in the War aforesaid: And to stir up and procure those Foes and Enemies the readilier, and more boldly, this Kingdom of *England* to invade; the Treasons, and traiterous Contrivances, Compassings, Imaginings, and Purposes of the said *Peter Cook* aforesaid, to perfect and fulfil; also the same first Day of *July*, in the Seventh Year above said, at *London* aforesaid, in the Parish and Ward aforesaid, He the said *Peter Cook*, divers Horses, and very many Arms, Guns, Muskets, Pistols, Rapiers, and Swords, and other Weapons, Ammunition, and Warlike Matters, and Military Instruments, falsely, maliciously, secretly, and traiterously, did obtain, buy, gather together, and procure; and to be bought, gathered together, obtained and procured, did cause and in his Custody had, and detained to that Intent, to use the same in the said Invasion, War, and Rebellion against our said Lord the King that now is, him our said Lord the King, of and from the Regal State, Crown and Government of this Kingdom of *England*, to depose, cast down, and deprive, and him to Kill and Murder; and the Designs, Intentions, and all the Purposes of him the said *Peter Cook* aforesaid, to fulfil, perfect, and fully to bring to effect, against the Duty of his Allegiance, and against the Peace of our said Sovereign Lord that now is, his Crown and Dignity, as also against the Form of the Statute in such Case made and provided.

Upon this Indictment he has been arraigned, and thereunto has pleaded not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are, your Charge is to inquire whether he be guilty of the High-Treason whereof he stands Indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since; if you find him not guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Mompesson. May it please your Lordship, and you Gentlemen that are sworn, this is an Indictment for High-Treason against *Peter Cook*, the Prisoner at the Bar, and the Indictment sets forth, That whereas there has been an open and cruel War for a long Time, and still is between his Majesty King *William*, and the *French* King, the Prisoner at the Bar not weighing the Duty of his

Allegiance, the first of *July* in the Seventh Year of the King's Reign, did compass and intend to depose and deprive the King of the Title, Honour, and Dignity of the Imperial Crown of this Realm, and likewise to put the King to Death, and did adhere to the King's Enemies; and to fulfil these Treasons, he did consult with *Charnock*, and several other Traitors who were mentioned there, and some of whom have been found guilty of Treason, and executed for it, to send over to the late King *James*, to persuade the *French* King to send over Soldiers and Arms to invade this Kingdom, and to raise an Insurrection and Rebellion in it, and to deprive and put the King to Death, and to compleat these Treasons, it further sets forth, That the Prisoner at the Bar did provide several Arms and Horses, and this is laid to be against the Duty of his Allegiance, against the King's Peace, Crown and Dignity, and against the Form of the Statute in that Case made and provided; to this he has pleaded not guilty, and for Trial put himself upon the Country, and, Gentlemen, if we prove these Facts laid in the Indictment, its your Duty to find him guilty.

Mr. Att. Gen. May it please your Lordship, and you, Gentlemen of the Jury, the Prisoner at the Bar stands indicted for High-Treason.

Cook. My Lord Chief Justice, if your Lordship pleases, before the Witnesses are examined against me, I intreat you that they may not be both in Court together, that one may not hear what the other swears, tho' I suppose it is the same thing; for they have been together both now and the last Day.

L. C. J. Treby. *Mr. Cook.* I must tell you it is not necessary to be granted for asking; for we are not to discourage, or cast any Suspicion upon the Witnesses, when there is nothing made out against them; but it is a Favour that the Court may grant, and does grant sometimes, and now does it to you; though it be not of necessity: They shall be examined apart, but at present this is not the Time of Examination; for the King's Council are now to open the Evidence before they examine the Witnesses; but when the Time comes for the Witnesses to be called and examined, the Court will, in favour to you, take care that your Request be complied with.

Mr. Att. Gen. May it please your Lordship, the Prisoner stands indicted for High-Treason, in compassing and imagining the Death and Destruction of his Majesty, and likewise in adhering to his Majesty's Enemies, these are the Treasons specified in the Indictment: The Overt-Acts that are laid to prove these Treasons are, That he with several other Traitors, named in the Indictment, did meet and consult, and agree to send over *Charnock* into *France*, to invite the *French* King to make an Invasion upon the Kingdom, and did provide Arms for that Purpose.

Gentlemen, the Nature of the Evidence that you will have produced to prove the Prisoner guilty of these Treasons lies thus: It will appear to you that there has been for some Time a Conspiracy carried on by several Traitors, and wicked Persons, to subvert the established Government of this Kingdom, and destroy the Constitution of *England*, by a foreign Invasion of the *French*. You will hear that this Conspiracy was laid wide, and consisted of several Parts, one Part was that of *Assassinating* his Majesty's Royal Person,

son, and that was to be done first, as a Preparation and Encouragement to the *French* to invade the Kingdom: The other Part was the inviting the *French* King to invade us, and the Prisoner at the Bar is accused of being concerned in that Part that relates to the Invasion of this Kingdom, by a *French* Power; and though it may be the other Part, that of Assassinating the King, be the blackest Part of the Conspiracy, yet if the Prisoner at the Bar has been engaged in the inviting a Foreign Power to invade the Kingdom, my Lords, the Judges, will tell you, in Point of Law, that is as much an Overt-Act of the compassing the Destruction of the King and the People of *England*, and the Subversion of our ancient good Constitution, as if he had been concerned immediately in the other Part, the Assassination.

But now, Gentlemen, that the Prisoner was engaged in inviting the *French* to invade us, you will hear proved by several Witnesses, that there having been a Design last Year, just before his Majesty went to *Flanders*, to expose his own Person for our Protection, and the Protection of the Liberties of *Europe*, there was a Conspiracy to Murder him before he went to *Flanders*, which, it seems, they were not ripe for them; but immediately after he was gone to *Flanders*, you will hear there were formal Meetings of several Gentlemen and Persons of Quality, among whom the Prisoner at the Bar was one: There was a Meeting in *May*, last Year, after the King was gone to *Flanders*; and this was at the *Old King's-Head* in *Leaden-Hall-Street*; and there were present, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *William Perkins*, Sir *John Friend*, Mr. *Charnock*, (all which Three last have suffered the Punishment of the Law for their Treason already;) and there were also Mr. *Cook*, the Prisoner at the Bar, Mr. *Porter* and Mr. *Goodman*; these Men did meet together, to consider of the best Ways and Means of encouraging and inviting the *French* King with an Armed Force to invade this Kingdom; they considered that that was a proper Opportunity, and did treat of several Arguments that might persuade to it: First, that the King was gone to *Flanders*, and so was not in Person here to defend us; and that the Troops, to make good such Defence, were in a great measure drawn thither, to assist the Allies against the *French* Power; they did think likewise, that at that Time there was a great Discontent and Dissatisfaction in the Nation, though I think in that they were greatly mistaken; and I believe and hope they will always find themselves so, to think that the People of *England* are so little sensible of that which is the Means of their Preservation, as to hearken to any Discontents to encourage a *French* Power to come into *England* to destroy our Religion and Liberties; that indeed they did apprehend, though they were mistaken, and I believe they always will, when they go upon that Ground.

Gentlemen, These Persons thinking this a proper Opportunity, did agree to send a Messenger into *France* upon this Message, To go to the late King *James*, and persuade him to desire and prevail with the *French* King to assist him Ten Thousand Men, 8000 Foot, 1000 Horse, and 1000 Dragoons; and to encourage him, they promised their Assistance here, as soon as he came over; and undertook, that between them, they could furnish, and would raise 2000 Horse to meet him at his Landing, and join upon such an Invasion.

Gentlemen, At this Meeting this was agreed upon by all that were there, whereof the Prisoner was one; and they did agree to send Mr. *Charnock*, (who has since been executed, and a principal Incourager of the Design, and Actor in it;) he was the Messenger that was appointed to go upon this Errand, and Mr. *Charnock* was resolved to go, but desired another Meeting of these Gentlemen, to know if they continued in their former Resolution, that he might have all the Assurance that was reasonable to give the *French* King Incouragement to make the Invasion: Accordingly another Meeting was had of most of the same Persons that were at the Meeting before; particularly the Prisoner at the Bar was at that Second Meeting, which was in *Covent-Garden* at one Mrs. *Mounjoy's*, who keeps a Tavern next Door to Sir *John Fenwick's* Lodgings; there they met upon the same Design, and upon Consultation had, and the Question ask'd, they did agree to continue in the former Resolution, and upon that immediately Mr. *Charnock* went into *France* to solicit Forces from thence to invade us; but it happened, as it seems, that the *French* King's Forces were otherwise employed, so that he could not spare so many at that Time; and this Return was brought by *Charnock* to the Gentlemen that employed him; that he had spoke with the late King, who gave him that Answer, That the *French* King could not spare so many Men at that Time, but he thank'd them for their Kindness.

Gentlemen, This will be the Nature of our Evidence, to show, that the Prisoner at the Bar was concerned in that Part of the Conspiracy which relates to the *French* Invasion; and if he be guilty of that, in point of Law, he is as much guilty of the Conspiracy, to depose and murder the King, as if he had been concerned in the other Part of Assassinating his Royal Person; and I believe no Body can think that those that were to act in the Assassination, would have attempted to engage in such a desperate Design, if it had not been for the Encouragement of the *French* Invasion that was to second them afterwards if they succeeded; so that no Body can extenuate the Crime of the Invasion, because as to the Horridness of the Attempt, it is less Black than the other; they are both Crimes of a very high Nature, and equally High-Treason; and if we prove the Prisoner guilty of this Part, we hope you will find him guilty.

Mr. *Soll. Gen.* My Lord, we will call our Witnesses and prove the Matter, as it has been opened. Call Captain *Porter* and Mr. *Goodman*.

Mr. Serj. *Darnal*. Now, my Lord, we must desire that that may be done which our Client desired before, and which your Lordship was favourably pleased to promise, that the Witnesses may be examined a-part.

L. C. J. *Treby*. Let it be so: Who do you begin with?

Mr. *Soll. Gen.* We begin with Captain *Porter*, my Lord.

L. C. J. *Treby*. Then let Mr. *Goodman* withdraw.

Mr. *Baker*. Let Mr. *Goodman* go up Stairs, and we will call him presently.

Mr. *Soll. Gen.* Swear Captain *Porter*: (which was done.) Captain *Porter*, Do you know Mr. *Cook*, the Prisoner at the Bar?

Capt. *Porter*. Yes, my Lord.

Mr. *Soll. Gen.* Do you remember a Meeting of some Gentlemen at the *King's-Head-Tavern* in *Leaden-Hall-street*.

Capt. *Porter.* Yes, I do, Sir.

Mr. *Soll. Gen.* Then pray give an Account of the Company that were there, the Time when, and what pass'd.

Capt. *Porter.* My Lord, the last Year we had two Meetings; the First was in *May*, the other was the latter End of *May*, or the Beginning of *June*; the First was at the *King's-Head* in *Leaden-Hall-street*; there were my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *John Friend*, Sir *William Perkins*, Mr. *Charnock*, Mr. *Cook* and my self; Mr. *Goodman* came in after Dinner; at this Meeting it was consulted which was the best Way and the quickest to restore King *James*, and hasten his Return into *England*; several Discourses and Proposals there were; at last it was agreed to send Mr. *Charnock* to the late King to borrow of the *French King* Ten Thousand Men, 8000 Foot, 1000 Horse, and 1000 Dragoons, to be sent over into *England* to assist the King's Restoration. Says Mr. *Charnock* thereupon, this the King can do without your sending, and I would not go upon a foolish Errand. What will you do to assist in this Matter? The Company desired him to promise King *James*, that if he would send Word when he Landed, and where, they would be sure to meet him at his Landing with a Body of 2000 Horse.

Mr. *Att. Gen.* Was the Prisoner at the Bar in the Company, and present at this Resolution?

Capt. *Porter.* Yes, he was.

Mr. *Att. Gen.* Did all the Company agree to it?

Capt. *Porter.* Yes, they did.

Mr. *Att. Gen.* What Signs were there of their Agreement? Did they stand up severally and declare their Agreement, or how?

Capt. *Porter.* My Lord of *Aylesbury* and Sir *John Fenwick* did rise up, and desired Captain *Charnock*, that he would go upon this Errand: And when the Question was ask'd severally of all there present by Mr. *Charnock*, whether he might assure the King of what they had told him? Every one said yes, you may; and Mr. *Cook* kneel'd indeed upon a Chair, and said, Yes, you may.

Mr. *Att. Gen.* Did he give his Consent to it?

Capt. *Porter.* Yes, he answered in those very Words.

Mr. *Soll. Gen.* Do you remember any Meeting of any Company at Mrs. *Mountjoy's*?

Capt. *Porter.* Yes, that was a second Meeting.

Mr. *Soll. Gen.* Pray tell my Lord and the Jury, how you came to meet there then, what Company were there, and what pass'd.

Capt. *Porter.* Mr. *Charnock* desired another Meeting, to see if the Gentlemen kept to their former Resolution; and we met at Mrs. *Mountjoy's* eight or ten Days after, and there were most of the Company that was at the first Meeting, and there all that were present did assure Mr. *Charnock* that they kept to their first Resolution, and would abide to what was agreed upon at the former Meeting.

Mr. *Att. Gen.* Who were present at the second Meeting?

Capt. *Porter.* The Prisoner at the Bar was there at that second Meeting.

Mr. *Att. Gen.* What was that second Meeting for, do you say?

Capt. *Porter.* It was to give Mr. *Charnock* Assurance, that we were agreed to stand by the Resolution taken at the first Meeting.

Mr. *Att. Gen.* What did Mr. *Charnock* do afterwards?

Capt. *Porter.* I went away from them; there was Sir *William Perkins*, Sir *John Friend* and Captain *Charnock* went to the *Queen's-Head Tavern* in *Fleet-street*, and Captain *Charnock* told me he would go in two or three Days, and I believe did so.

Mr. *Att. Gen.* When did you see him afterwards?

Capt. *Porter.* When I was a Prisoner upon the Account of the Riot in *Drury-Lane*; about two or three Days after I came to *Newgate* he came to see me, and said he had been in *France*; and that King *James* thank'd us for our kind Offer, but the *French King* could not spare so many Men that Year; and he told me he had been with my Lord of *Aylesbury*, and the rest of the Gentlemen that had employ'd him to go over, and had delivered them the several Messages that he was ordered to from the King.

L. C. J. *Treby.* Captain *Porter*, who were present at the second Meeting, do you say?

Capt. *Porter.* My Lord of *Aylesbury*, Sir *John Friend*, Sir *William Perkins*, Captain *Charnock*, Mr. *Cook* and my self; I cannot tell whether my Lord *Montgomery*, or Mr. *Goodman* were at that second Meeting or no.

Mr. *Att. Gen.* Capt. *Porter*, I would ask you another Question: You were concerned in the Assassination with those other Persons that ingaged in it; Pray what Safety did you propose to your selves after the Assassination was over?

Capt. *Porter.* My Lord, I asked Sir *George Barclay* what we should do after the Fact was committed: Says he, you need fear nothing, I will go away that Night, I have a Ship ready, and the King will be Landed in five or six Days afterwards; if you'll but keep your selves close for so many Days, all will do well.

Mr. *Soll. Gen.* If the Prisoner or the Council will ask him any Questions, my Lord, they may do it.

Sir *B. Shower.* Pray Sir, can you recollect what Time of Day this was that this Debate and Resolution were had at the *Old-King's-Head* in *Leaden-Hall-Street*.

Capt. *Porter.* Truly Sir *Bartolomew*, I can't tell.

Sir *B. Shower.* Pray, by what means do you recollect that this was in the Month of *May*?

Capt. *Porter.* Because Capt. *Charnock* was absent at the *Dog-Tavern* Riot, which was the Tenth of *June*.

Sir *B. Shower.* Was it not in *April*?

Capt. *Porter.* No, Sir; to the best of my Remembrance it was in *May*.

Sir *B. Shower.* What makes you think it was in *May* rather than *April*?

Capt. *Porter.* I have told you, Sir, because both Meetings were before the *Dog-Tavern* Riot, the Tenth of *June*, and Mr. *Charnock* was not there at that Time; but he told me afterwards he had been in *France*, and there were eight or ten Days Difference between the two Meetings.

Mr. *Att. Gen.* My Lord, if they have done with him, I would ask him one Question, to settle this Matter in point of Time. Capt. *Porter*, Was the King gone to *Flanders* when you had these Meetings?

Capt. *Porter*. The King was gone, Sir, before the first Meeting.

Mr. *Att. Gen.* The King did not go till several Days in *May*; was Mr. *Goodman* there?

Capt. *Porter*. He was at the first Meeting, but I can't tell whether he was at the Second or no.

Mr. *Serj. Darnal*. Pray what Time was Mr. *Goodman* there at the first Meeting?

Capt. *Porter*. He came up after Dinner at the first Meeting.

Mr. *Baker*. Then call down Mr. *Goodman*, who came in, and was sworn.

Mr. *Sol. Gen.* Mr. *Goodman*. Pray will you give my Lord and the Jury an Account what you know of an intended Invasion upon this Kingdom; what were the Circumstances of it, and who were concerned in it.

Mr. *Goodman*. My Lord, about the Middle of *May* last, or thereabouts, Captain *Porter* sent to me, and told me there was a Meeting of some Gentlemen of our Acquaintance at the *King's-Head* in *Leaden-Hall-street*; and he desired me that I would be there, because it was about Business: I told him I did not know whether I could be there at Dinner; but however, I would not fail of coming thither after Dinner; and accordingly I came. When I came into the House, I sent up my Name to Capt. *Porter*, and he came down and brought me up Stairs, and there I saw my Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *William Perkins*, Sir *John Friend*, Mr. *Charnock*, and that Gentleman at the Bar, Mr. *Cook*: When we were there, the Discourse was, that we did think King *James's* coming was retarded, and we would do any thing to facilitate his Restoration.

Cook. My Lord Chief Justice.

L. C. J. *Treby*. What say you, Mr. *Cook*?

Cook. My Lord, If your Lordship pleases, I desire the Jury may not be talk'd to by any Body; and I understand there are some talking with the Jury.

L. C. J. *Treby*. Fie upon it, we will lay any Body by the Heels that do so, they must neither be disturbed, nor instructed by any Body.

Cook. My Lord, I am inform'd there was somebody talking to them, and telling them this was the same Case with Sir *John Friend*.

L. C. J. *Treby*. Do you but show us the Man, and we will find another Place for him; we will send him to the Gaol, I'll assure you.

Mr. *Burleigh*. This Gentleman, my Lord, did hear such a Discourse to the Jury (pointing to a Gentleman there) who stood up.

My Lord, I cannot positively swear to the Man, but I did hear some Discourse that it was the same Evidence as in the former Trial.

L. C. J. *Treby*. If you can show us who it was, we will take Care to punish him: I suppose he stands Corrected; and if we knew who he was, he should stand Committed.

Mr. *Att. Gen.* Pray, Mr. *Goodman*, begin again, and tell what pass'd at that Meeting, because the Jury were interrupted from hearing by People's buzzing about them.

Mr. *Goodman*. My Lord, When Captain *Porter* brought me up into the Room, I told you what Gentlemen I found there; after we were set down, there was a Consultation, that considering the *French King's* Wars retarded the Affair of sending back King *James*, and the Means of restoring him to the Crown, it was fit we should find out some Way or Method to facilitate his Restoration, and it was thought convenient to have a Messenger to send over to King *James* with Proposals for that Purpose; to this effect, as near as I remember, That if King *James* could prevail with the *French King* to furnish Ten Thousand Men, whereof 8000 to be Foot, 1000 Horse, and 1000 Dragoons, we would endeavour to meet him at the Head of as many Horse as we could raise, to sustain those Forces at their Landing: This was debated in order to come to a Resolution; and much Difficulty there was how many the Number should be; the Man pitched upon to be sent, was Mr. *Charnock*; and after some Debate, how many Thousand Horse could be raised: Says Mr. *Charnock*, don't let me go over upon a foolish Errand, but let me know what I have to say exactly: Thereupon it was concluded by all, that Two Thousand Horse should be the Number we could promise, and the King might depend upon them; and if we brought more, so much the better; and Sir *John Friend* said, I believe he has so many Friends here, that if he came himself, he might be welcome; but that we did not think fit to trust to; and no Body would advise any such thing; when the Resolution of the Thing and the Number was thus fixed, Mr. *Charnock* ask'd whether it were with all our Consents and that he might assure the King, that this was our Resolution thereupon? We all rose up, and said to him, *Yes, you may, yes, you may*, every one particularly; and I remember one Thing particularly concerning the Prisoner Mr. *Cook*, That he kneel'd upon the Chair when he said, *Yes, you may*; and his Elbows were upon the Table: This is all that I know of that Meeting. There was to be another Meeting, as Captain *Porter* told me; but I had Business in the City; but whatsoever he promised on my Behalf, as to the Quota of Men, I would be sure to make it good; and I was not at the second Meeting.

Mr. *Att. Gen.* Did you see Mr. *Charnock* afterwards?

Mr. *Goodman*. Yes, I did, when he came back; and he told me the Thing was not accepted, for the *French King* could not spare Men, and that he had been with the several Gentlemen to carry them the Compliments that he had in Charge from King *James*, who returned them Thanks for their good Affection; and among the rest, he did me the Honour to return me Thanks too.

Sir *B. Shower*. Pray, Mr. *Goodman*, let me ask you a Question: When it was that you saw Mr. *Charnock* after this?

Mr. *Goodman*. It was in *Arundel-street*, at his Lodgings.

Sir *B. Shower*. But I ask you, Sir, when it was? Was it before or after the Tenth of *June*?

Mr. *Goodman*. It was after the Tenth of *June*, Sir.

Sir *B. Shower*. How long after, pray?

Mr. *Goodman*. I believe it was a Month after the Tenth of *June*.

C c c c c

Sir

Sir B. Shower. Did you see him here in England before Mr. Porter was discharged from the Riot, and came out of Newgate?

Mr. Goodman. I believe I did see him before Captain Porter was discharged, long.

Mr. Serj. Darnal. Who were the Persons that were present at that Meeting?

Mr. Goodman. My Lord Montgomery, my Lord of Aylesbury, Sir John Fenwick, Sir John Friend, Sir William Perkins, Mr. Charnock, Captain Porter, and the Prisoner at the Bar, Mr. Cook.

Mr. Serj. Darnal. Were you at Dinner with them, Sir?

Mr. Goodman. No, I came in after Dinner.

Mr. Serj. Darnal. Pray what House was it, do you say, this Meeting was at?

Mr. Goodman. It was at the King's-Head in Leaden-Hall-street.

Sir B. Shower. Can you tell what Day of the Week it was?

Mr. Goodman. No, nor the Day of the Month.

Sir B. Shower. Was you ever in the Company of these Gentlemen at any other Time?

Mr. Goodman. No, this was the only Time that I heard of this Consultation; I was not at the second Meeting.

Cook. If your Lordship please, may I ask Mr. Goodman any Questions?

L. C. J. Treby. Yes, by all Means ask him what you will.

Cook. Mr. Goodman, You are upon your Oath: but did you ever hear me speak ten Words in your Life? Was you ever in my Company in any House, before or since?

Mr. Goodman. Yes, Sir; I was in your Company at the Cook in Bow-street, where you came in accidentally.

Cook. Did you ever hear me talk of the Government, or any Thing of that Nature?

Mr. Goodman. What the Discourse was of, I cannot particularly say, but I am certain you was there: And as to the Consultation that I now speak of, I remember very well you gave your Consent in that Manner as I have told the Court.

Mr. Att. Gen. My Lord, we have done at the present.

L. C. J. Treby. Then, Brother Darnal, what say you for the Prisoner?

Mr. Serj. Darnal. May it please your Lordship, and you Gentlemen of the Jury: I am of Counsel, in this Case, for the Prisoner at the Bar, Mr. Cook, who stands indicted of a very great Offence, no less, Gentlemen, than High-Treason; and if he be Guilty, his Punishment will be as great: But because the Punishment and the Offence are both very great, the Law requires exact positive Proof, and that by two credible Witnesses. There have been two indeed that have been produced to you; and if you believe both of them, after what we shall offer to you against them; and if what they swear be true, the Prisoner is Guilty: But if we satisfy you that either of them is not to be credited, so that you do not believe both of them, he must be acquitted.

There is no doubt, Gentlemen, but there has been a Villanous Horrid Plot; there is no question of it; and it was, as it has been opened, basely to Assassinate one of the bravest Men living; and to make the happiest People in the World, if they know when they are so, the most

miserable People upon Earth, by bringing them under French Tyranny and Slavery. Many of the Traitors have been brought to just Punishment for this Treason; nay, they have own'd the Fact at their Deaths, so that there is no question of the Truth of it; and therefore, Gentlemen, every honest Man will endeavour to bring such as are plainly guilty, of such an abominable Conspiracy, to just Punishment; but yet they will be as careful not to let an innocent Man suffer; that, Gentlemen every honest Man will take care of, and especially such as are upon their Oaths: It concerns a Jury highly to be satisfied, that he is not innocent, whom they bring in guilty; for it is better that Twenty guilty Men should escape, than one innocent Man suffer.

But, Gentlemen, if my Brief be true, we shall give you such an Account of one of these Witnesses; first, as to the Man himself; that he is not a Man to be credited as a Witness; and then besides that, as to the Evidence he gives in this Case; (I say, if my Brief be true) it is false, and we shall prove it so; and when you have heard our Evidence, if you are satisfied that one of these Witnesses is not to be credited, or that what he swears is not true, you are to acquit the Prisoner.

Gentlemen, Here has been one Mr. Goodman produced as a Witness, one that never was produced before at the Trial of any of those that have suffered, so that the Truth of their Guilt does not at all depend upon his Evidence, nor does it give any Credit to it. This is this Gentleman's first Entry upon this Stage; and yet (if my Brief be true) this is not the first bloody or cruel Part that he has acted; for we have a Record of Conviction against him, whereby it will appear to you, that he was indicted (for Endeavouring to poison two great Dukes) for giving forty Guineas to an Italian Empirick, one Amydei, and promising two Hundred Pounds more when it was effected, to poison the late Duke of Grafton, and the present Duke of Northumberland; and we shall shew you, that he was convicted of it, and fined a Thousand Pound for the Offence; which, considering the Meanness of his Circumstances at that Time, was as much as Twenty Thousand Pounds; for he could as well have paid Twenty as One then; and it appears too, that Mr. Goodman (nay, it will not be denied by him himself) was in this horrid Plot; and he that wou'd be concern'd to poison two Dukes in a Family, to which he had so many Obligations——

Mr. Goodman. My Lord, I desire Leave to speak to this Matter that the Serjeant mentions.

Mr. Serj. Darnal. Pray, Sir, let me go on; you may talk anon; I have seen the Copy of the Record of Conviction, and have it ready to produce.

Mr. Att. Gen. Mr. Goodman, be quiet, and stay till by and by; you will be defended, no Doubt on it; but in the mean Time let them go on, and don't interrupt them.

Mr. Serj. Darnal. I say, my Lord, he that wou'd be concern'd in so vile an Act, as a Contrivance to take away the Lives of two great Dukes, (who were, in effect, his young Masters) that he shou'd go to poison them in a Family to which he had been so much oblig'd; and then, he that wou'd be concern'd in so horrid a Plot as this was, to destroy his Country, and take away the

the Life of the King ; sure it will be no difficult Thing to think that this Man will not stick at the little Prisoner's Life at the Bar, especially when he has so great a Temptation to it, as to save his own Life by it.

But perhaps some of you may doubt whether it is to save his own Life or no : But I believe there are none of you would give any Credit to him, if you thought so : Therefore, to satisfy you of that Fact, we shall produce you Evidence of his own Opinion of that Matter, beside the general known Circumstances he lay under ; As, That he was long in Prison before he charged the Prisoner with any Thing, and the Prisoner was at Liberty, went every Day abroad for a Week after Mr. *Charnock's* Trial, and never absconded one Minute, but lived publicly, openly and visibly to all his Friends, and all Strangers : But besides, Gentlemen, that Mr. *Goodman* knew he must die, and justly and deservedly for this horrid Plot and Treason himself ; and had no other Way left to save his Life, but to come in thus as an Evidence and Accuser, which we think will shake his Credit with you.

I say, besides all this, (if my Brief be true) we shall prove that he has said himself, That either he must hang *Peter Cook*, or he must be hang'd himself. Thus, Gentlemen, he swears to save his own Life, by taking away another's.

This, Gentlemen, is as to the Man himself, that he is not to be credited. But now further, as to the Evidence that he has given ; He tells you that he came into the Tavern in *Leaden-Hall-Street*, and that there he found such Company ; he owns he came in after Dinner ; and that the other Gentleman, Mr. *Porter*, owns too ; he says there were present at this Meeting, my Lord *Montgomery*, my Lord of *Aylesbury*, Mr. *Cook*, and several other Gentlemen ; but (if my Brief be true) we shall prove by three Witnesses, that he was not there till they were gone ; and that will make an End of all the Pretence of his Evidence.

Mr. *Att. Gen.* Nay, then we shall never have done.

Mr. Serj. *Darnal*. I'll assure you, Sir, I have the Names of three Witnesses in my Brief, to prove that my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr. *Cook*, were gone before he came in, tho' if any, or either of them were gone, it destroys his Testimony ; and if we prove this to you, I would be loth to be one of the Jury that should take away the Prisoner's Life upon this Evidence ; no, if he were the vilest Man alive, and much less the Life of the Prisoner at the Bar ; for we shall prove (if my Brief be true) he is a Man of Morals, a Man of Virtue, one that has a great Love for his Country ; and this we shall prove by Evidence undeniable, Persons of Quality in their Country, such as serve their Country in Parliament, as their Representatives ; we shall shew it by such Evidence, that there will be no Room to doubt of it : He is a Man without any Stain or Blot upon him, till this Accusation ; he is the eldest Son of his Father, and Heir to a great Estate ; his Father is a great Officer, and a great Getter under this Government, and can it be imagin'd, or believ'd, that such a Man would be guilty of the worst of Treasons, to destroy the Religion he professes, to overturn the State, to ruin his own Estate, himself and his Posterity, which must be the Consequence of it ? Nay, if

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two good Witnesses cou'd be produc'd to testify it, and if we had not had so much to take off the Credit of *Goodman*, I cou'd hardly believe it of any Man that was in his right Senses ; he must have been a Mad-man if he had done it, one that stood so well with the present Government, and of a Family never tainted with Disloyalty.

Certainly, Gentlemen, when we make out this to you against Mr. *Goodman*, the Prisoner can be in no Danger of his Life, from Mr. *Goodman's* Evidence, tho' he is an unfortunate Man to come under such an Accusation ; but I cannot believe that any Jury, upon such a Man's Evidence, will brand an honest Family with the foulest, vilest, blackest Treason that ever was hatch'd ; no, Gentlemen, you are Men of Ability and Understanding, and that is it we rely upon ; we doubt not but that you will consider the Evidence, and consider your Oaths, and not let the Prisoner's Blood lie at your Doors ; therefore we shall go on and call our Witnesses to make out what I have open'd.

Sir. *B. Shower*. My Lord, we desire to call our Witnesses, and I shall reserve my self to make some Observations after we have given our Evidence : Mr. Serj. has open'd as much as we can prove, and we will now produce our Evidence ; First we will shew the Conviction of *Goodman* : Mr. *Burleigh*, where is the Conviction ?

Mr. *Burleigh*. Here it is, Sir.

Sir *B. Shower*. Where had you it, Sir ?

Mr. *Burleigh*. Out of the Treasury at *Westminster*.

Sir *B. Shower*. Is it a true Copy, did you examine it there ?

Mr. *Burleigh*. Yes, it is a true Copy, I did examine it with the Record.

Sir *B. Shower*. Then read it, Mr. *Tanner*.

Cl. of Arr. Reads— *Michaelmas Term : Tricesimo secundo Caroli Secundi.*

L. C. J. *Treby*. Read the Record in *English* to the Jury.

Cl. of Arr. (Reads.) Be it remember'd, that Sir *Robert Sawyer*, Knight, Attorney-General of our Lord the King that now is, who for the same our Lord the King in this part sueth, came here in the Court of our said Lord the King, before the King himself at *Westminster*, on *Tuesday* next after three Weeks of St. *Michael*, the same Term ; and for the same our Lord the King, brought here into the Court of our said Lord the King, before the said King, then and there, a certain Information against *Cardell Goodman*, late of the Parish of St. *Martin in the Fields*, in the County of *Middlesex*, Gentleman, which Information follows in these Words, *Scilicet, Middlesex scilicet*, Be it remember'd that Sir *Robert Sawyer*, Knight, Attorney-General of our said Lord the King that now is, who for the same our Lord the King, in this Behalf sueth, in his own proper Person came here into the Court of our said Lord the King, before the King himself at *Westminster*, on *Tuesday* next after three Weeks of St. *Michael* that same Term, and for the same our Lord the King, gives the Court here to understand and be inform'd, That *Cardell Goodman*, late of the Parish of St. *Martin in the Fields*, in the County of *Middlesex*, Gentleman, being a Person of a wicked Mind, and of an ungodly and devilish Disposition, and Conversation, and contriving, practising, and falsely, maliciously and devilishly intending

intending Death, and Poisoning and final Destruction unto the Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*, and that the aforesaid *Cardell Goodman*, his most wicked, most impious, and devilish Intentions, Contrivances and Practices aforesaid, to fulfil, perfect, and bring to Effect, the Thirtieth Day of *September*, in the six and Thirtieth Year of the Reign of our Lord *Charles* the Second, now King of *England*, &c. and diverse other Days, and Times, as well before as after, at the Parish of *St. Martin in the Fields*, in the County of *Middlesex*, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, and devilishly, by unlawful Ways and Means, did sollicite, persuade, and endeavour to procure one *Alexander Anydei*, to prepare and procure two Flasks of *Florence Wine*, to be mix'd with deadly Poison, for the Poisoning of the aforesaid Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*, and his most wicked, most impious, and devilish Contrivances, Practices and Intentions aforesaid, to fulfil, perfect, and the more to bring to Effect, the aforesaid *Cardell Goodman*, the Day and Year aforesaid, at the Parish aforesaid, in the County aforesaid, falsely, unlawfully, unjustly, maliciously and devilishly, did promise and agree, to give unto the aforesaid *Alexander Anydei*, forty Pieces of Guinea-Gold, of the Value of forty Pound, of lawful Money of *England*, if he the said *Alexander Anydei* wou'd prepare, procure and provide two Flasks of *Florence Wine*, to be mix'd with deadly Poison, for the Poisoning of the aforesaid Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*; and if the aforesaid Poison with the Wine aforesaid to be mix'd, shou'd effect the Death of the aforesaid *Henry*, Duke of *Grafton*, and *George* Duke of *Northumberland*; that then he the said *Cardell Goodman*, wou'd give unto the said *Alexander Anydei*, the Sum of one Hundred Pounds, and that beyond Sea he wou'd maintain the said *Alexander* all the Days of him the said *Alexander*, to the evil and most pernicious Example of all others in the like Case offending, and against the Peace of our said Lord the King that now is, his Crown and Dignity, &c.—— Then here is Process pray'd by the Attorney General against Mr. *Goodman*, who comes, and by his Attorney pleads not Guilty, and here is Issue join'd.

Sir *B. Shower*. Well, see for the Verdict.

Cl. of Arr. There was a Trial at *Nisi Prius*, and the Jury find that the said *Cardell Goodman* is guilty of the Premises in the Information specify'd as by the Information is supposed against him.

Sir *B. Shower*. Now read the Judgment.

Cl. of Arr. Thereupon it is consider'd, that the said *Cardell Goodman* do pay to the King, the Sum of One Thousand Pounds, for his Fine, impos'd upon him for the Occasion aforesaid, and that the aforesaid *Cardell Goodman* be committed to the *Marshalsea* of this Court, in Execution for his Fine aforesaid, that he be safely kept there, till he pay his Fine aforesaid; and before that the said *Cardell Goodman* is deliver'd out of the Prison aforesaid, he shall give Security to behave himself well, during his Life, and also shall give Security for the Peace to be kept towards the said Lord the King, and all his People, and particularly towards the Right Noble *Henry*, Duke of *Grafton*, and *George*, Duke of *Northumberland*.

Mr. Serj. *Darnal*. So, you hear the Record of the Information, Conviction and Judgment, for a very horrid, abominable Crime.

Mr. *At. Gen.* But I desire they may now go on, and read the whole of the Record.

Cl. of Arr. Reads. And afterwards, to wit, on *Friday* next after eight Days of *St. Hilary*, in the thirty sixth, and thirty seventh Years of the Reign of our said Lord the King that now is, before our said Lord the King at *Westminster* came the aforesaid Sir *Robert Sawyer*, Knight, Attorney-General of our said Lord the King that now is, and acknowledged that the said *Cardell Goodman* has satisfy'd to our said Lord the King that now is, of the Judgment aforesaid against him, in Form aforesaid given, therefore the said *Cardell Goodman* is thereof acquitted; And so forth.

Mr. Serj. *Darnal*. Call Mr. *Charles Edwards*, *William Cook*, *Christopher Crawford*, *Mary Crawford*, and Mr. *Huntley*.

Edwards appear'd upon a Habeas Corpus, directed to the Keeper of Newgate, where he was a Prisoner.

Mr. *Baker*. Where is the Warrant of his Commitment? What is he committed for?

Tokefield. He is committed for Suspicion of Treason, and treasonable Practices.

Mr. *Baker*. Is he not committed for High-Treason?

Tokefield. No, Sir, he is not.

Mr. Serj. *Darnal*. What Discourse had you with Mr. *Goodman*, concerning the Prisoner at the Bar, what did you hear him say?

Mr. *Baker*. He is not sworn yet, it seems this Gentleman was *Dundee's* Chaplain in *Scotland*.

Mr. *Att. Gen.* If he be not sworn, he can give no Evidence.

Mr. Serj. *Darnal*. My Lord, we desire he may be sworn.

L. C. J. *Treby*. Swear him. (*Which was done.*)

Mr. Serj. *Darnal*. Pray Sir, will you tell the Court, and the Jury, what you know of any Discourse of Mr. *Goodman's*, concerning the Prisoner at the Bar.

Edwards My Lord, I desire to know, being ignorant of the Law, whether I am brought here by the common Course of Justice or not?

Mr. Serj. *Darnal*. Sir, we have Subpœna'd you for the Prisoner at the Bar, to give Evidence of the Truth of your Knowledge here upon Oath.

L. C. J. *Treby*. Would you have us tell you how you came here? We suppose you came by due Process of Law, as a Witness.

Edwards. Then, my Lord, I desire to speak but one Word; that 'tis a strange Thing to me to consider, how Words should be carried away that were privately spoken; as if it were to expose me to the Reproaches of all my Friends; it is a Thing that I did never expect to hear of again: However, seeing I am called here, and obliged upon my Oath to declare what I know, I by God's Grace will, to the uttermost of my Power, tell what has pass'd in this Matter.

L. C. J. *Treby*. Don't make any Apology for telling the Truth: You are obliged by your Oath to do it, and the Court expects it from you.

Edwards. Among other Discourses that pass'd betwixt Mr. *Goodman* and me, I ask'd him when Mr. *Cook* was to be arraigned, and when he was to

to be tried : Says he, he is to be arraigned upon *Monday*, and he is to be tried upon *Thursday*. I ask'd him whether it was for the Assassination-Plot, and he told me no. For what then ? Said I : As being concerned in sending Mr. *Charnock* into *France* ? Who are the Evidences against him, said I ? Said he, Captain *Porter* and my Self. Said I, I believe two Witnesses will be found Good, or by Way of Demonstration in Law ; and I pity the poor Gentleman's Case. Says he, he swore against me. How comes it then, said I, that he is not come off, and has not a Pardon, and would divulge no Body else ?

L. C. J. *Treby*. Who had not a Pardon do you mean ?

Edwards. Mr. *Cook*. I ask'd how he had not a Pardon ? Says he, he would give an Account of no Body else but me, and that was the Reason he had no Pardon. Said I to him, Who are the Evidences against him ? Says he, Captain *Porter* and my Self. And after this, says he, he or I must perish ; or, he or I must suffer ; I believe the Word was suffer : But, says he, 'tis a foolish Thing to be hang'd. All that's said of a Man that is hang'd, is, That he hang'd handsomely, or he dy'd bravely. That's all the Discourse that I can remember.

Mr. Serjeant *Darnal*. He said it was a foolish Thing to be hang'd ; and Mr. *Goodman*, it seems, had no Mind to be hang'd ; and I believe so too : But he must not hang my Client, to save his own Life.

Edwards. Now, by the same Oath that I have Sworn, I knew nothing of being brought hither, till my Words were carry'd away privately from me, and has been consulted of, and returned to me back again ; and I was far from suborning or carrying away a Discourse privately to make any Advantage of it.

Mr. Serjeant *Darnal*. Now we will call *Crawford*, and *Huntley*, and *Cock*.

Mr. *Att. Gen.* I desire that Gentleman that was last examin'd, may not go away.

[*Crawford*, *Huntley*, and *Cock* were Sworn.]

Sir *B. Shower*. Set up Mr. *Crawford* (which was done.) Pray, Sir, will you recollect your self : Do you remember when my Lord of *Aylesbury* and Captain *Porter* din'd at the *King's-Head*.

Crawford. Yes : It was about a Twelve-month ago.

Mr. Serjeant *Darnal*. What Company was there ?

Crawford. My Lord of *Aylesbury*, Sir *John Friend*, Sir *John Fenwick*, Sir *William Perkins*, Captain *Porter*, and Two or Three more, I did not know their Names.

Sir *B. Shower*. How many were there that din'd there ?

Crawford. I think about Eight in all.

Sir *B. Shower*. Was the Room shut while they were there, or did the Servants and Drawers go up and down commonly ?

Crawford. Yes they did go up and down commonly.

Sir *B. Shower*. After Dinner, did any Body come to them while they were there ?

Crawford. No, not during my Lord of *Aylesbury's* Stay, and my Lord *Montgomery* went away with him ?

Sir *B. Shower*. About what Time did my Lord of *Aylesbury* go away ?

Crawford. I think it was about Four a-Clock.

Sir *B. Shower*. How can you tell it ?

Crawford. I did attend upon them the most Part of the Time.

Sir *B. Shower*. Did you see him go away ?

Crawford. Yes, I did.

Sir *B. Shower*. Was that Gentleman, Mr. *Goodman*, there, when they went away ?

Crawford. I did not see him there, to my Remembrance : No Body came in there before they went away, saving their own Servants.

Mr. Serj. *Darnal*. Do you know Mr. *Cook*, the Prisoner at the Bar ? Was he one of the Gentlemen that were at your House ?

Crawford. Yes : I did not well remember or recollect, till I saw him on *Saturday* last.

Mr. *Att. Gen.* Was he one that went away ?

Crawford. I do not remember truly, Sir.

Mr. *Att. Gen.* Pray, how long was it after Dinner that they went away ?

Crawford. I think it was not an Hour.

Mr. *Att. Gen.* Was you there all the Time, from the Time of the Dinner ?

Crawford. No, not all the while I was not in the Room, but going too and fro.

Mr. Serj. *Darnal*. You say Mr. *Goodman* did not come up till after they were gone ?

Crawford. No, I did not see him.

Mr. *Att. Gen.* Did you see him at all ?

Crawford. No, I did not see him at all.

Mr. *Att. Gen.* Just now it was said he did not come till they were gone, and now it seems he did not see him at all.

Crawford. I do not know that he was there at all.

L. C. J. *Treby*. But, Brother *Darnal*, you open'd it, that Mr. *Goodman* came after my Lord of *Aylesbury* was gone, and now you will prove it that he came not at all.

Sir *B. Shower*. My Lord, we do not pretend to falsify his Evidence for any thing more than is material for the Prisoner : We say Mr. *Goodman* was not in the Room where they din'd till those Persons went away ; if in any Particular we disprove him, it is sufficient for us : If we can shew that he was not there till three of those that he has nam'd were gone away, that answers our End. We are not concerned if he came at four, five, or six a-Clock, and discours'd with *Charnock* till twelve a-Clock at Night.

Mr. *Att. Gen.* Pray reserve your Remarks, but only observe now what he says, that Mr. *Goodman* came not at all thither, and that is more than you pretended to open.

Mr. *Coyers*. How many were there that were there at Dinner ?

Crawford. About Eight.

Mr. *Coyers*. How many do you name that you know ?

Crawford. My Lord of *Aylesbury*, Sir *John Friend*, Sir *John Fenwick*, Sir *William Perkins*, and Captain *Porter*, there were several others ; two or three more, but I did not know their Names.

Mr. *Coyers*. Did you see Mr. *Goodman* come in at any Part of the Day afterwards ?

Crawford. I do not know that Mr. *Goodman*.

Mr. *Cowper*. Mr. *Crawford*, you say, that for an Hour after Dinner you were sometimes in the Room

Room and sometimes out; when you were out of the Room, were you always in the Passage up to the Room?

Crawford. No, I was not.

Mr. Cowper. Could any Man come in or out without your seeing?

Crawford. I should have known him above Stairs when I came in again.

Mr. Cowper. Why, you say, there were two or three above that you did not know.

Crawford. I knew them by Sight, if not their Names.

Mr. Cowper. Were you always in Sight then?

Crawford. No, Sir, I tell you I was up and down.

Sir B. Shower. Was there any Body came in before my Lord of *Aylesbury* went out, that is, any Body besides those that din'd there?

Crawford. No.

Sir B. Shower. My Lord, we are not contending now about a Man's coming up without his Knowledge; but whether any such Man as *Mr. Goodman* came up and staid there, during the Consultation, and we insist upon it; there was no Body there till my Lord of *Aylesbury*, my Lord *Montgomery*, and *Mr. Cook* were gone, but those that din'd there: Now I would ask a Question again of him, Was there any Body but who din'd there, till my Lord of *Aylesbury* went away?

Crawford. No, there was not.

Mr. Att. Gen. Why do you say so? How do you know that?

Crawford. I did not see any Body.

Mr. Soll. Gen. Did you attend upon other Rooms, as well as that, at the same Time?

Crawford. Yes, I did.

Mr. Soll. Gen. Then how is it possible that he can swear that *Mr. Goodman* was not there?

Sir B. Shower. Do you remember when my Lord of *Aylesbury* and they went away?

Crawford. It was about Four o'Clock.

Sir B. Shower. Were you there in the Room when they went away?

Crawford. I went out with my Lord to the Coach.

Sir B. Shower. Did you see him come down Stairs; or did you go up Stairs then?

Crawford. I went up Stairs when the Coach was called.

Sir B. Shower. Was than any Body there but such as din'd there?

Crawford. I did not see any Body there but those that din'd there.

Mr. Cowper. But, my Lord, he does not know all that din'd there neither.

L. C. J. Treby. *Mr. Crawford*, you say my Lord of *Aylesbury* and others went away about Four a-Clock: Pray how long did the Rest of the Company stay there?

Crawford. I cannot remember. They staid there pretty late: It is a pretty While ago.

L. C. J. Treby. About what Hour did they part?

Crawford. I cannot remember what Time the Rest went away: Our House is fuller at Night than at Noon; and I waited upon other Companies. It was pretty late before they went away, that I am sure.

L. C. J. Treby. But he cannot remember whether it were Five, or Six, or Twelve, that they went

away, only he can remember the Hour of Four, that my Lord of *Aylesbury* and they went away.

Mr. J. Rokeby. Was it Light, or was it Dark when they went away?

Crawford. It was Dark.

L. C. J. Treby. Did you attend the Company after my Lord of *Aylesbury* was gone?

Crawford. I went up and down into that Company as I did into others.

L. C. J. Treby. Was you there several Times after my Lord of *Aylesbury* was gone?

Crawford. Yes, I was there once or twice after my Lord of *Aylesbury* was gone, I am sure.

L. C. J. Treby. And did you never see *Mr. Goodman* there?

Crawford. No, I never saw *Mr. Goodman* in my Life, before I saw him on *Saturday* last.

Sir B. Shower. Which is *Mr. Huntley*?

Huntley. Here I am, Sir.

Sir B. Shower. Pray recollect your self, and tell my Lord and the Jury what you remember of any Company that were with *Mr. Porter*, at the *King's Head*, and who din'd there.

Huntley. My Lord of *Aylesbury*, my Lord *Montgomery*, *Sir John Fenwick*, *Sir William Perkins*, *Sir John Freund*, *Mr. Porter* and *Mr. Charnock*.

Sir B. Shower. That was the Company, you say, that din'd there: Did *Mr. Goodman* dine there?

Huntley. No, *Mr. Goodman* did not dine there.

Sir B. Shower. Pray, Sir, recollect your self: When did any of this Company part, or go away?

Huntley. My Lord of *Aylesbury*, and my Lord *Montgomery* went away about Four a-Clock.

Sir B. Shower. Sir, how do you know that?

Huntley. I went down Stairs after them; I was above Stairs when they parted from the Rest of the Company.

Mr. Serj. Darnal. Pray mind, Sir: Was *Mr. Goodman* there at that Time before they went away?

Huntley. No, he was not.

Sir B. Shower. Are you sure of that, upon the Oath you have taken?

Huntley. Yes, I take it upon my Oath, he was not there.

Sir B. Shower. Did you attend them at Dinner?

Huntley. Yes, I did attend them at Dinner.

Sir B. Shower. Did you attend them all the While they were there?

Huntley. I was call'd frequently, and was in and out of the Room very much after Dinner.

Sir B. Shower. Do you think if a fresh Man had come in after Dinner, you should not have known him?

Huntley. Yes, I should have known him.

Mr. Att. Gen. Pray, Friend, let me ask you one Question. Was *Mr. Goodman* there at all that Day?

Huntley. That I don't know; I did not see him at all.

Mr. Soll. Gen. Did you attend upon any other Rooms that Day?

Huntley. No, I attended only upon that Company.

Mr. Soll. Gen. Were you in the Room all the Time?

Huntley. No, I went up and down.

Mr. *Soll. Gen.* What Time did the last of the Company go away?

Huntley. It was about Darkish; it was pretty late to the best of my remembrance.

Mr. *Att. Gen.* Pray, did any Body come to those Gentlemen after Dinner?

Huntley. No, Sir.

Mr. *Att. Gen.* Did you ever see *Goodman* before now?

Huntley. Never in my Life to my Knowledge.

Mr. *J. Rokeby.* Did all the Company, but my Lord of *Aylesbury*, and my Lord *Montgomery*, stay till it was Duskyish?

Huntley. That I don't know.

Mr. *J. Rokeby.* Did you know all the Company that was that Day at Dinner?

Huntley. I knew all but One:

Mr. *J. Rokeby.* And who was that?

Huntley. That was Mr. *Charnock*.

Mr. *J. Rokeby.* And yet you can't tell whether there was any Body else that you did not know, how then can you tell that *Goodman* was not there?

Sir *B. Shower.* He did not know him at that Time, but he might remember him afterwards.

Mr. *Conyers.* Did not the same Company use to meet at other Times, at your House?

Huntley. Not to my Remembrance.

Mr. *Conyers.* How then came you, if they never had us'd to meet there, to know all these People's Names?

Huntley. I have seen Sir *John Freind* there, and Sir *William Perkins*.

Mr. *Conyers.* Was Sir *John Freind* there, or no?

Huntley. Yes, he was.

Mr. *Conyers.* My Lord, he was the only Man that was not nam'd before: You did not name Sir *John Friend* before, as I heard: But pray, did you ever see Mr. *Charnock* there, but at that Time?

Huntley. No, I did not.

Mr. *Conyers.* How came you to know it was Mr. *Charnock*?

Huntley. I knew very few of them before that Time; and I ask'd their Servants the Names of all those Persons that were there?

Mr. *Conyers.* Did you know Mr. *Porter*, pray?

Huntley. Not before that Time: I did see Mr. *Porter*, and I knew him again when I saw him, his *Black* told me his Name that Day.

Sir *B. Shower.* You, *Huntley*, I would ask you one Question more; Was the Door shut or no?

Huntley. No, it was not.

Sir *B. Shower.* Did the Servants go up and down as they us'd to do?

Huntley. Yes, Sir.

Mr. *Att. Gen.* Sir *Bartholomew* would make it that there was no Consultation at all.

Sir *B. Shower.* They were mad Folks if they would consult at that Rate with the Door open. Pray call Mr. *William Cock*, (who was sworn.)

Mr. *Att. Gen.* Sir *John Freind* has own'd it, that's dead.

Sir *B. Shower.* Sir *John Freind's* Confession is nothing to the Prisoner.

Mr. *Att. Gen.* Mr. Serjeant *Darnall* did open, that the Confession of those that dy'd, was an undeniable Proof of the Conspiracy: But go on with your Evidence.

Mr. Serjeant *Darnall.* Pray, Mr. *Cock*, will you recollect your self, about the Time when Captain *Porter*, and some other Gentlemen, din'd at your House.

W. Cock. Yes, very well.

Mr. Serjeant *Darnall.* Pray, Sir, can you tell who din'd there at that Time?

W. Cock. There were my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *William Perkins*, Sir *John Fenwick*, Sir *John Freind*, Mr. *Charnock*, Captain *Porter*, and Mr. *Cock*.

Mr. *J. Rokeby.* Was that all the Company?

W. Cock. Yes, it was.

Mr. *J. Rokeby.* One of them said there were Eight.

L. C. *J. Treby.* And he has nam'd Eight, Brother.

Mr. Serjeant *Darnall.* Can you remember when any of the Company went away, and who went away first?

Cock. My Lord of *Aylesbury* and my Lord *Montgomery* went away in a Hackney-Coach; and their Servants were frequently in the Room, and waited afterwards in another Room, after that they had waited at Table at Dinner; and tho' the Door was shut, as it used to be when any Company is there, yet no Body was forbid to come there at all.

Mr. *Att. Gen.* Do you remember when Mr. *Goodman* came there?

Cock. I never saw Mr. *Goodman* in my Life before to Day.

Mr. Serj. *Darnall.* Did any Body come to this Company before my Lord of *Aylesbury* went away that did not Dine there?

Cock. I did not see any Body there at all: And my Lord of *Aylesbury* was about buying a Hoghead of White-wine, but we could not agree about the Price: And when my Lord of *Aylesbury* went away, I went down with my Lord, and waited upon him to the Coach; and I told my Lord, I hoped he would buy the Wine still. But he answered, he could not tell whether he should or no.

Mr. Serjeant *Darnall.* Who else went with my Lord of *Aylesbury*?

Cock. My Lord *Montgomery*. I don't remember any Body else.

Mr. *J. Rokeby.* Did all the Rest of the Company go away at once?

Cock. Truly my Lord, I can't say they did.

Mr. *J. Rokeby.* By what Time did the Rest go away?

Cock. I believe it might be Eight or Nine a-Clock.

Mr. Serjeant *Darnall.* You saw my Lord of *Aylesbury* when he parted: Was Mr. *Goodman* there then?

Cock. I did not see him.

Mr. *B. Powis.* Did Mr. *Cock* stay till the last?

Cock. That I can't tell truly.

Mr. *B. Powis.* I find they all Swear to Four a-Clock of my Lord *Aylesbury's* going, and go no further.

Mr. *Att. Gen.* Pray, Sir, let me ask you a Question or two: Did you ever see Mr. *Goodman* before now?

Cock. No, I do not remember I did.

Mr. *Att. Gen.* When you went into the Room after Dinner, did you look about the Room to see whether there were any new Company?

Cock.

Cock. I did look about the Room several Times, and so did my Servants, to see if there were any Thing wanting.

Mr. Att. Gen. Can you take it upon your Oath, that he was not there whilst my Lord of *Aylesbury* staid?

Cock. I do: And can take it upon my Oath, he was not.

Mr. Att. Gen. Then if you can, pray distinguish the Time when he came in.

Cock. I do not remember that ever I saw him in my Life before to Day.

Mr. Att. Gen. Why are you not as positive that he was not there at all, as that he was not there before my Lord of *Aylesbury* went away?

Cock. He might come in, and I not see him.

Mr. Att. Gen. Might he not as well come in before they went away, as after, to come in and you not see him?

Cock. No, I do not think he could.

Mr. Att. Gen. Why do you think so?

Cock. Because the Servants were all about, and they did not go to Dinner till Two a-Clock: And I believe those Gentlemen that I named, came in a Quarter of an Hour's Time to Dinner.

Mr. Att. Gen. We do not say he came there before Dinner: But could he not come in after Dinner, before my Lord of *Aylesbury* and my Lord *Montgomery* went away, without your seeing him?

Cock. Yes, Sir.

Sir B. Shower. Then heark ye, Sir, I would ask you one Question: Did you see him, upon your Oath, or not?

Cock. No, I did not.

Sir B. Shower. Might not Mr. *Goodman* come in to them without your seeing him?

Cock. It is possible; but I don't think it was so.

Mr. J. Rokeby. How then can you be positive that he was not there till my Lord of *Aylesbury* went?

Mr. Soll. Gen. You say you may be positive he was not there before my Lord of *Aylesbury* went: Can you be as positive now, that he was not there before Mr. *Cook* went?

Cock. I do not know when Mr. *Cook* went.

Mr. Soll. Gen. How can you be then positive he was not there before my Lord of *Aylesbury* went?

Cock. There were no more than what dined there when my Lord of *Aylesbury* went away.

Mr. Conyers. Pray, Sir, let me ask you a Question: Were you in the Room at any Time after Dinner?

Mr. Conyers. Pray, Sir, How many Times after Dinner, were you there?

Cock. I believe half a dozen Times.

Mr. Soll. Gen. And yet you do confess that Mr. *Goodman* might come in after Dinner before my Lord of *Aylesbury* went, and you not see him?

Sir B. Shower. Ay, but he could not stay there without his seeing him, if he was so often in the Room: You don't take Mr. *Cock's* Evidence right.

Mr. Att. Gen. You named eight Persons that dined at your House: Did you know them all personally before that Day?

Cock. Yes, my Lord, the most of them at least.

Mr. Att. Gen. Did they use to meet at your House?

Cock. Commonly Sir *John Friend* did once a Week. Mr. *Charnock* I knew when I was a Drawer, and so I did Sir *William Perkins*: The Rest I knew by hearing their Names.

Mr. Att. Gen. Did you know them before that Day, Sir, I ask you?

Cock. I had seen Captain *Porter* several Times before that Day; but I cannot say at my own House.

Sir B. Shower. Do you remember the Treaty about the Hog'shead of White-wine?

Cock. Yes, Sir, very well.

Sir B. Shower. Were you by when my Lord of *Aylesbury* went away, and spoke with him about it?

Cock. Yes, I was; and told him, I hoped he would buy the Wine still.

Sir B. Shower. Can you be positive that any Body was there before my Lord of *Aylesbury* went away, that could stay there any Time, and did not Dine there?

Cock. I believe not, Sir; for I came in half a dozen Times after Dinner, and I believe if I had heard Mr. *Goodman's* Name, or seen him there, I should have remembered it; but I did not see any Body but those that dined there.

Mr. Cowper. Where was you when my Lord of *Aylesbury* went away? Where did you meet him going away?

Cock. Upon the Stairs: Seeing my Lord of *Aylesbury* and my Lord *Montgomery* coming down, I met them.

Mr. Cowper. Where did you meet them? At the Middle, or the Top of the Stairs?

Cock. My Lord of *Aylesbury* was at the Top of the Stairs.

Mr. Cowper. Did you meet him just coming out of the Room?

Cock. Yes, Sir, I saw the Coach that was called for my Lord; and so I went up Stairs, and met my Lord at the Top of the Stairs coming down.

Mr. Soll. Gen. Now how can you be positive who was in the Room when he came out of the Room?

Cock. I went up into the Room after my Lord of *Aylesbury* went away.

Mr. Soll. Gen. How long after my Lord of *Aylesbury* went away?

Cock. It was presently after.

Mr. Soll. Gen. How long before my Lord of *Aylesbury* went away, had you been in the Room?

Cock. I had been there just before.

Mr. Serjeant Darnal. Call *Thomas Peachy*, (who appear'd and was Sworn.)

Sir B. Shower. My Lord, we shall prove that after the Plot broke out, and after Mr. *Porter* had made his Discovery, there was no Disturbance of Mr. *Cook* till a good While after *Charnock's* Trial; and Mr. *Cook* was so far from being sensible, or conscious of any Guilt, that he never absconded, but continued for three Weeks in his Father's House, where he was taken by a Messenger. Pray Mr. *Peachy* will you tell my Lord, and the Jury, where Mr. *Cook* was taken, and when, and by whom.

Peachy. He was taken at his Father's House by a Messenger, about Seven a Clock in the Morning.

Sir B. Shower. What Day of the Week was it he was taken?

Peachy.

Peachy. Upon a Sunday Morning, in his own Room, in his Father's House, at Seven a Clock in the Morning.

Sir B. Shower. Did People come to him as they used to do?

Peachy. Yes; and he went frequently abroad as he used to do, and did never abscond from his Father's House.

Mr. Serjeant Darnal. Pray Swear Mr. *Treganna.* (which was done.)

Sir B. Shower. Mr. *Treganna,* Pray do you remember how long after the Plot broke out did you see Mr. *Cook*?

Treganna. After Mr. *Charnock's* Trial, a Week, he was at my Chamber; after the Plot broke out, he was concerned in a Trial at *Winchester* Assizes, upon an Issue out of *Chancery,* Mr. *Nicholls* was the Clerk in Court, and went down to manage it at the Assizes; and Mr. *Cook* came to me a Day or two after *Winchester* Assizes was over, and ask'd me if I had any News from the Assizes? This was long after the Plot broke out: And I remember particularly, that I saw him twice after the Plot was discovered, at my Chamber.

Sir B. Shower. Swear Mr. *Nicholls,* (which was done.)

Sir, Pray will you tell my Lord and the Jury what you know of Mr. *Cook's* appearing abroad after the Plot was discovered?

Mr. Nicholls. I was sent down to the Trial: I was present, and did attend at two Trials indeed, and I suppose Mr. *B. Powis* may remember that I attended at two Trials at *Winchester* Assizes.

Mr. B. Powis. Possibly you might, *Sir:* I can't tell all the Attendance at the Assizes.

Mr. Nicholls. And after my Return from *Winchester* Assizes, Mr. *Cook* was with me several Days, both at my Office and Chamber, and at his Father's Office: And I remember particularly, that he threatened me that I was in Trouble when I was at *Winchester,* and therefore I remember it very well.

Sir B. Shower. Mr. *Nicholls,* you know Mr. *Cook* very well; pray what are his Morals?

Mr. Nicholls. Upon Occasion of the Cause in *Chancery* that went to Trial, I have had the Knowledge of Mr. *Cook* five or six Years; I always believ'd him to be as temperate a Man as ever I met with: I think in five Years Time I was not above once with him in a Tavern.

Sir B. Shower. Did you ever hear him Swear?

Mr. Nicholls. No, never; nor vent a Curse: I believe he drank as little as any Man, and was as godly a Man. I never heard him speak a foul Word.

Sir B. Shower. How do you know that, *Sir,* that he was so godly a Man?

Mr. Nicholls. Upon Occasion of this Cause, I was several Times at *Sir Miles Cook's,* and at Mr. *Cook's* Lodgings there, and we were to go about Business, and after he was dress'd, he has made me stay while he went into his Closet and said his Prayers. And he told me further, that he never went out of his Father's Doors without saying his Prayers; and I was forc'd to stay at the Door while he perform'd his Devotions, as he told me, and I believe he did.

Mr. Serj. Darnal. Now, my Lord, we will call some other Witnesses to prove his good Affection to his Country, how he continually desired Success to the Fleet, and to the Army.

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Sir B. Shower. So that really he had an Aversion to it.

Swear Mr. *Hamond,* (which was done.)

Mr. Serj. Darnal. Pray, *Sir,* will you give an Account what you know of the Prisoner, concerning his Judgment, and concerning his Morals?

Hamond. I have been for some Time acquainted with Mr. *Cook,* the Prisoner at the Bar, and to the Best of my Observation, I always took him to be a conscientious Man, and I have heard him declare great Detestation of a *French* Force: And three or four Days before he was taken into Custody, I ask'd him what he heard of Intelligence? He said he heard what was in the publick Prints, and heard no more, and knew no more; and he had a great Abhorrence of the Conspiracy, and thought it a very monstrous Thing. I never heard him speak a disrespectful Word of the King's Person or Government in my Life. And I say again, I have heard him several Times declare, in common Conversation, that he had an Aversion to *French* Power, and he had a dread of it.

Mr. Serjeant Darnal. What have you heard him say about our Fleet, or Army?

Hamond. My Lord, I have heard him very much wish Prosperity and Success to our Fleet.

Mr. J. Rokeby. What Fleet, pray *Sir.*

Hamond. To our Fleet, King *William's* Fleet against the *French.* Things to this Purpose he has frequently said.

Mr. Serjeant Darnal. Then Swear Mrs. *Hunt,* (which was done) but she was not examined.

Sir B. Shower. My Lord, we leave it here. But I must beg the Favour, that if they give any new Evidence, and there be Occasion, we may have Liberty to answer it. And I have an Observation or two to make when the Evidence is over.

Mr. Att. Gen. My Lord, if they have done with their Evidence, I beg leave to observe, that there is something arises upon that Evidence, that will give us occasion to call a Witness or two more. My Lord, the first Witness which they call'd was *Edwards,* and he is in Custody upon Suspicion of High-Treason in *Newgate,* and he gives an Account of some Discourse that he had with Mr. *Goodman;* and for that, it will be necessary for us to call Mr. *Porter* again and Mr. *De la Rue,* to shew that this *Edwards,* the Witness, as he is committed for Suspicion of High-Treason, so he was in the Conspiracy for the Assassination; he was one in the List that was brought back by *Cranburne* from Mr. *Charnock* to Captain *Porter,* as one of *Charnock's* Men, and he is in Custody for it. Then as to the other Matter, they have called three Witnesses to prove, That Mr. *Goodman* was not in this Place at this Time. The Council indeed opened it, that he was not at the Tavern till after my Lord of *Aylesbury* and my Lord *Montgomery* were gone away; but their Evidence goes further, That he was not there at all: And the Master of the House says, he was not there to his Knowledge at any Time. So that if their Evidence prove any Thing, they prove that he was not there at all; they do not remember that they saw him there: So that the Question will be, whether Mr. *Goodman* was there at that Time, and it will be necessary to call Mr. *Goodman* again, and Mr. *Porter,* to confront these Witnesses, who will tell you when he came in: And particularly as to my Lord

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of *Aylesbury*, that he went with him to the Stairs-head, and my Lord would not let him go further, but he went back again when my Lord of *Aylesbury* went down Stairs. We will begin with the Witnesses, as to this *Edwards*.

Swear Mr. *De la Rue*, (*which was done*.)

Mr. *Conyers*. Mr. *De la Rue*, Pray do you know Mr. *Edwards* that was here?

Mr. *De la Rue*. He goes by several Names; I know him by the Name of *Douglas*: And last Monday I came into the *Presb-Tard*, and saluted him by the Name of *Douglas*, and he said he had taken his own Name again, by which he was known at *St. Germain's*, and that was *Edwards* or *Richards*, as I remember, or some such Name.

Mr. *Conyers*. When was he at *St. Germain's*.

Mr. *De la Rue*. About three or four Years ago.

Mr. *Conyers*. Pray look upon him, see if you know him.

Mr. *De la Rue*. I know him very well, there he stands, that is the Person in the black Wig; he was reputed at *St. Germain's* to be my late Lord *Dumdee's* Chaplain.

Mr. *Att. Gen.* What Name did he go by at *St. Germain's*.

Mr. *De la Rue*. I can't very well tell: But he said he had taken his own Name again; and I think he said it was *Edwards* or *Richards*.

Mr. *Conyers*. Did he go formerly by the Name of *Douglas*?

Mr. *De la Rue*. Yes, here in *England*: Mr. *Porter* knew him to go by that Name.

Mr. *Att. Gen.* What else do you know of him?

Mr. *De la Rue*. The List that Mr. *Cranburne* carried from Mr. *Porter* to Mr. *Cbarnock*, and which he brought back again from Mr. *Cbarnock* to Mr. *Porter*, had in it, among the other Names, the Name of *Douglas*, which I understood to be that Gentleman.

Mr. *Att. Gen.* Did he go by that Name at that Time?

Mr. *De la Rue*. Yes he did.

L. C. J. *Treby*. Pray repeat that again, Sir, that we may understand it, and see whether it be Evidence.

Mr. *De la Rue*. Why, Sir, the List that Mr. *Cranburne* brought from Mr. *Cbarnock* to Mr. *Porter*, at the Foot of the List which Mr. *Porter* had sent to him, there were other Names written, as I believe, in Mr. *Cbarnock's* Hand, and among those Names there was the Name of *Douglas*, which I understood to be this Mr. *Edwards*, as he calls himself. And moreover, when Mr. *Porter* went out of 'Town, going to *Dofors Commons*, I called at Mr. *Cbarnock's*, and he had a great deal of Company with him, four or five Troopers, and among the Rest this *Edwards* or *Douglas* was there sitting by him. Here is a Gentleman that I see upon the Bench, I think he is a *Scotchman*, that knew him at *St. Germain's* as well as I. I think his Name is *Mackdonnel*.

Mr. *J. Rokeby*. What Countryman did you take this *Edwards* to be?

Mr. *De la Rue*. A *Scotchman*, and Chaplain to my Lord *Dumdee* that was killed in *Scotland*.

Mr. Serjeant *Darnal*. Did you see this Gentleman in *France*, Sir?

Mackdonnel. I never was in *France* in my Life.

Mr. *Att. Gen.* You can't ask him the Question:

You know it tends to make him either accuse or excuse himself of a Crime. Pray call Mr. *Porter* again. But in the mean Time, till he comes, we'll examine Mr. *Goodman*, because he is here. Mr. *Goodman* you were by, and heard what these Drawers said concerning your being at the *Old-King's-Head* in *Leaden-Hall-street* that Day. Pray give an Account when you came in, whether you saw my Lord of *Aylesbury*, and what passed between you at my Lord of *Aylesbury's* going away?

Mr. *Goodman*. Mr. *Porter* brought me up; and when I came in they were all sitting; and after Salutation I sat down: And when they had consulted some Time, they came to a Resolution, as I have told you already. The Fellows are so far in the Right of it, that my Lord of *Aylesbury* and my Lord *Montgomery* went away first; for I took my Leave of them at the Head of the Stairs. Says my Lord of *Aylesbury* to me, Pray avoid Ceremony, we will go away privately as we came, in a *Hackney-Coach*. And as to the Master of the House, who says, he does not know me, I have dined several Times there; four or five Times with Sir *John Friend*: And one particular Day above all the Rest, I remember I was not well, and I went down Stairs to the Bar, and said, I pray can you get me a little Brandy. He said, yes; he would help me to some of the Best in *England*. And he brought me up some which I liked very well; and thinking he had a Quantity of it, I ask'd him what I should give him a Gallon for a Parcel. But he said, he had but a little: And I am sure he has seen me there five or six Times.

Mr. *Att. Gen.* Then set up that Master of the House *Cock* again, (*which was done*.)

Come, Sir, You hear what Mr. *Goodman* has Sworn, and mind it; you are upon your Oath. You said just now, that you never saw Mr. *Goodman* before.

Cock. No, upon my Word, Sir: I don't know that ever I saw him before.

Mr. *Att. Gen.* Do you remember nothing of his being with Sir *John Friend* at your House?

Cock. No, upon my Word, Sir.

Mr. *Att. Gen.* Nay, you are upon your Oath. Nor do you know nothing of your giving of him Brandy?

Cock. No, upon my Oath, I do not remember any such Thing.

Mr. *Att. Gen.* That is a very safe Way of Swearing, I profess.

Mr. *Conyers*. He remembers the particular Time when he was Sick, and you offer'd to sell him some Brandy.

Mr. *Att. Gen.* No, he ask'd him what he should give him for it a Gallon. But, Mr. *Cock*, did you ever see *Goodman* in your House since my Lord of *Aylesbury* and they were there?

Cock. No, upon my Word, Sir, I did not: And I never had but two Gallons of Brandy in my Life at a Time: And I never had any Cask, or any Thing of that Nature, to sell any out of.

Mr. *Att. Gen.* Who used to be with Sir *John Friend* at your House?

Cock. There used to be Mr. *Richardson*, and Justice *Cash*, and Col. *Cash*.

Mr. *Goodman*. Mr. *Richardson* was there that Day: I could almost have remembered the particular Day, but I cannot be positive; only we were

were in the same Room where the Consultation was, at the further Part of the Room.

Mr. J. Rokeby. You Friend, the Master of the House, you hear what Mr. Goodman says: He says he was with Sir *John Friend* at your House, and being not well he ask'd for some Brandy, and you told him, you'd give him some of the best in *England*. And he propounded to you then to sell him some of it; but it seems there was no Bargain made. Do you remember any such Thing of one that was with Sir *John Friend*, that spoke of buying of Brandy when he was sick?

Cock. No, upon my Word I do not.

Mr. Att. Gen. Then set up Mr. Porter (*who stood up*.) Pray Mr. Porter, look upon that Man in the Black Peruke; what Name did he use to go by?

Mr. Porter. He used to go by the Name of *Edwards*.

Mr. Att. Gen. Had he any other Name?

Mr. Porter. Yes, *Douglas*.

Mr. Att. Gen. He has so many Names, that we don't know which is his true Name. Mr. Porter, pray what else do you know of him touching his being concerned in the Conspiracy?

Mr. Porter. I know not any thing of my own Knowledge; but his Name was put down in the List that Mr. *Charmock* sent me of his Men, and Mr. *De la Rue* read his Name there.

Mr. Soll. Gen. Mr. Porter, you were a Witness upon the Trials of Sir *John Friend*, and Sir *William Perkins*; did you give Evidence that Mr. *Goodman* was in the Room at the same Time when the Consultation was?

Mr. Porter. Yes, Sir.

Mr. Att. Gen. Well, you hear that these People have sworn, that Mr. *Goodman* did not come till my Lord of *Aylesbury* went away; nay, indeed, that he was not there at all.

Mr. Porter. My Lord, upon my Oath he was there before my Lord *Aylesbury* went away, and Mr. *Goodman* bowed, and took leave of my Lord as he went out of Doors.

Mr. Att. Gen. What time did my Lord of *Aylesbury* go away?

Mr. Porter. It was about an Hour and a Half, or two Hours after Dinner, and he was in the Room when my Lord went away, for he took his Leave of him at the Door.

Mr. Cowper. Do you remember the Manner of Mr. *Goodman's* coming in?

Mr. Porter. Mr. *Goodman* sent up his Name to me, and I told the Company, and promis'd for him, that he was a very honest Man, and much in King *James's* Interest; and then with their Consent I went down and brought him up.

Mr. J. Powell. How long time do you think there was between Mr. *Goodman's* coming in, and my Lord of *Aylesbury's* going away?

Mr. Porter. I cannot tell that, I do not remember exactly how long it was.

Mr. J. Powell. Was it a quarter of an Hour, or half an Hour?

Mr. Porter. A great deal longer, for we had discours'd of the whole Business after Mr. *Goodman* came into the Room.

Mr. Conyers. How long were they there after Mr. *Goodman* came in?

Mr. Porter. It was very near two Hours after he came in, before they went away; they did not go away till six a Clock, and he came in at Four as near as I can remember.

Mr. Att. Gen. Then, my Lord, we have done.

Sir B. Shower. Then I beg the Favour of a Word or two, my Lord, May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the Prisoner at the Bar, and I must beg your Lordship's Patience, and your Favour, Gentlemen, to make a few Observations upon the Evidence that has been given; for we humbly insist upon it in point of Law, that here is not sufficient Evidence before you to convict the Prisoner. You are, Gentlemen, to have respect and regard to your Consciences and the Oaths which you have now taken, to give a Verdict, and make true Deliverance between the King, and the Prisoner; you are not to go according to your own private Opinions, nor according to publick Fame, nor according to common Report, nor according to the Verdicts in other Cases, nor according to the Confessions or Dying Speeches of Criminals who have been Executed, *whether made by themselves, or by others for them*, but you are to go by the Testimony of Credible Witnesses, and if you have not the Evidence of two Credible Witnesses before you, my Lords the Judges will inform you how the Law stands. That by the Statute of *Edward* the Sixth, and the new Statute for Trials of Treasons, there must be two Witnesses to prove the Prisoner guilty of the Overt-Act of the Treason that is laid in the Indictment; and whether there have been two Credible Witnesses produced before you, is the Question that you are to consider upon your Oath and Conscience; that is, whether you are satisfied here be two such as the Law requires. The Question is not merely whether Mr. *Cook* be guilty, but whether in your Consciences he be legally proved guilty; whether there be Evidence to satisfy your Consciences, according to the Laws of the Land, that he is guilty; and we insist there is not; and therefore I beg leave to recapitulate what has been sworn against him, that we may see how far it reaches, and wherein it is defective.

Gentlemen, Mr. Porter he swears that about the Beginning or middle of *May*, he cannot tell which, there was this Meeting at the *Old-King's-Head* Tavern in *Leaden-Hall-street*; in which, I would observe to you, that he confines himself to a certain Month; the Reason is very plain, and therefore I ask'd him whether it was not in *April*; for if he had said it had been then, there had been no danger to the Prisoner, because of the Act of Indempnity, therefore he was careful to fix it in *May*; and he would not lay it in *June*, for the Tenth of *June* is a famous Day; and then, or soon after *Newgate* had him; he was confined there for a Riot on that Day, and so they have restrained it to a Month, and the only Month that he is capable of swearing to, as to any Act done the last Year till they came in *January* to the Assassination Plot, which the Prisoner is not accused to have had any Concern in; but it shou'd seem he cannot tell what Day of the Week, or of the Month, but about the Beginning or the Middle of *May* Eight Persons dined at this Place, and then after Dinner Mr. *Goodman* came in, and they discours'd about this Matter.

First, Gentlemen, we insist upon it, that it is very improbable that *English* Protestants of pious Conversation and good Morals, should agree, as he says, to send such a Message to the late King, to invite over a *French* Popish Force; we may easily

easily see the horrid and mischievous Consequences that wou'd have followed such a Practice, such as must affect every *English-man* with a Concern, so that it is improbable a Man of Virtue and Piety cou'd engage in such an Enterprize; and if it be improbable, you will never believe it, unless the Conviction or Proof be irresistible: And if you have any other Reasons to distrust this Man's Truth, then we hope you will go upon the Side of Probability; and not let popular Prejudice, Common Fame, or any Thing else but legal and undeniable Evidence have the Ascendant over you. If you are not satisfied that Mr. Cook did assent (as from the Character of the Man it is not probable he shou'd) to send *Charnock* into *France*, to persuade King *Lewis* and King *James* to send Ten Thousand Men to invade our Country, then he is not guilty.

In the next Place, Gentlemen, he is not guilty we say in the Eye of the Law, if they have not two Witnesses; and for that we say you have but one, or but one that is to be believed; and if you have but one that is to be believed, that in Law is but one, and consequently my Client is not guilty; so the King's Council agree, that if there be but one Witness, he cannot be convicted, the Law is plain in the Case. Now to make it out that here is but one Witness at most, we have offered you several Objections, and made them out by Evidence, against the Testimony of Mr. *Goodman*; that he is not a Person fit to be believed; and if he be out of the Case, then does Mr. *Porter's* stand alone, and all will amount but to one Witness, suppose it shou'd be granted that his Testimony were true.

Erst, We have read a Record of Conviction against him, of a Crime, one of the Greatest next unto Treason, that is known in our or any other Law. That he hired a Man to poison two Dukes, Branches of a Noble Family, to which he had such great Obligations, as all Mankind do know, and he himself cannot but acknowledge; and if there were not that Aggravation in it, of his Obligations to that Family, yet to lie in wait to Murder and Poison, is such an Offence as any Age can seldom show the like. And the Objection is not so very easily answered as they would have it; nor can it be so soon passed over as they think, by saying He is a Witness of a Confederacy with which the Prisoner is accused, a Crime greater than the Thing objected. It is true, none can bear Testimony in such a Business, but he that is a Party: But, we say, if these Persons who come and set up themselves for Witnesses, were not *probi Homines*, and did not appear to be Persons of indifferent Credit between Man and Man, and did not stand impartial in the Eye of the World in other respects before, then they are not to be believed, as to what they charge themselves and others to be guilty of. Now, if Mr. *Goodman* stand convicted of such an Offence as this that is alleged against him, tho' he is pardoned by the Act of Parliament, or Satisfaction acknowledged upon the Record, though it be even the very next Term, yet that does not purge him from the Infamy and Disgrace, or from the Imputation of being concerned in so Villainous a Design. It is impossible that he should be a good Witness that wou'd be engaged in such a Matter, especially when we have those various Witnesses, and such a concurring Testimony, that what he has Sworn is absolutely false.

Gentlemen, if there were nothing but his own Testimony in the Case, there would be no Question at all in it: And as to Capt. *Porter's* Testimony about his being there, we have produced three Witnesses, who, if they be of Credit, then Mr. *Goodman* is not to be believed, but is falsified throughout; for, it is not the Question, whether Mr. *Cook* went away before the Consultation and the Resolution; for if my Lord of *Aylesbury*, or my Lord *Montgomery* went away, Mr. *Goodman* is falsified in that, and consequently you ought not to believe him in the rest; for he actually swears, that my Lord of *Aylesbury*, my Lord *Montgomery*, and those other Gentlemen, were all present, and at the Consult, and did consent and agree to the Resolution, by using these Words; *Yes, you may; Yes, you may.* Now, we say, there are three Witnesses that swear, That my Lord of *Aylesbury* was gone before he came there. I do not care whether he came there, or not; that is not material: For if there were no Body there when my Lord of *Aylesbury* was there but those that were at Dinner, then Mr. *Goodman* was not there at any such Consultation, as they would insinuate was at that Time, in that Place, and that Company.

My Lord, we have proved to you Mr. *Cook's* Abhorrence and Declaration, which, we think, ought to go a great Way in Satisfaction of his Innocence, at least to induce you to the favourable Side; for, Gentlemen, you are not brought hither to Convict a Man only, but to Try and Examine him; and it is your Duty to Acquit, as well as Convict, according as the Evidence stands: It is your Duty to go according to your Consciences, and to declare whether he be Guilty, or not Guilty, upon the Evidence you have before you: You are to examine the Truth of the Fact in all its Circumstances, and upon your own Consciences to declare, whether he is Guilty or not Guilty; now we propose it to you, and submit it to your Consciences, that here are three Witnesses, that speak upon their Oaths, against whom there is no Objection, that ever they were guilty of lying in wait to Poison any Body, nor in any Plot for an Assassination, nor any Conspiracy for inviting an Invasion from *France*, nor any other Objection against them, but they stand upright in the Face of the World, and they three swear, That he was not there at that Time. The Answer that we expect, is, That he might be there, and they not see him: And because it was possible he might be there, and they not see him, therefore it is no Evidence: But, my Lord, because it may be so, is no Evidence that it is so; that's no Objection; for you will take it as the Nature of the Thing will afford, and the Matter itself allow. Now there can be no better Evidence than this; that they went in and out continually; the Drawers, and the Master of the House five or six Times himself, were in the Room, and they say, there was no such Person there. Why then it is very improbable, if not impossible, that any such Man should be there. The one swears, he came down from my Lord of *Aylesbury* just before he went away; and another says, he followed him out of the Room; and the Master says, that he met my Lord of *Aylesbury* at the Stairs-head. All which falsifies Mr. *Goodman* in that Particular, that he was with my Lord of *Aylesbury* at the Stairs-head, when he went away. These

These are incompatible; and if we falsify him in any one Thing, he is not to be believed in any other.

Then, Gentlemen, we offer to your Consideration an Answer to another Objection: They say these Witnesses seem to swear, that he was not there at all. We are not concerned whether he was there afterwards, or not: If you are satisfied, that he was not there, as our Witnesses swear, while my Lord of *Aylesbury* was there, that's enough. But then they make an Objection, how comes the Master of the House to remember my Lord of *Aylesbury's* going away, more than any Body else? Gentlemen, you know the Nature of the Thing shows, not only that it was more probable the Master of the House should make his Observations near the Time of Dinner, rather than afterwards at Night, when there is more Hurry: But it is more probable he should take notice of it from the Quality of the Person, from the Discourse he had with him about the White-wine, which was a good *Medium* to refresh a *Vintner's* Memory, it being a Matter in his own Trade, and that might make him call it to Mind.

Therefore, Gentlemen, we think these three Witnesses stand free and clear in their Credit; and being so, are inconsistent with Mr. *Goodman's* Testimony; and, we hope, in favour of Life, the Credit inclines on their Side, especially when the Question is, whether a Man shall be executed for *Treason* who never fled for it, who was never charg'd with any *Treason* or *Treasonable Practices* before; nay, not so much as with any particular *Crime* or *Immorality*: And whether three Witnesses shall be believed, against whom there is no Objection, rather than Two, against One of which there are such Objections.

My Lord, we are not now debating or attacking the Evidence of the *Plot*, or arraigning the former Judgments against the *Conspirators* that have suffer'd; but, Gentlemen, we are putting you now upon a serious Enquiry, (as God and your own Consciences shall incline you) whether our Client be guilty or not guilty upon this Evidence; that is, whether Mr. *Goodman* swears true, or not. We hope that we have given you sufficient Satisfaction, that upon Mr. *Goodman's* Part the Evidence is insufficient; and we hope you will accordingly find our Client not guilty.

Mr. *Att. Gen.* If Mr. *Cook* have any thing to say himself, I desire he may say it now, before we begin.

Sir *B. Shower.* No, pray go on, Sir.

L. C. J. *Treby.* Mr. *Cook*, wou'd you say any Thing your self, before the King's Council sum up?

Cook. The little I have to say, my Lord, I'll speak now, or by and by, which you please.

L. C. J. *Treby.* You must do it now, because after they have summ'd up, there is nothing more to be said by you.

Cook. My Lord, I thank God, I have lived, a Life, I hope, as good as any Man, and have often received the Blessed Sacrament; I have done it constantly, and shall do it speedily, by the Grace of God, as soon as I can have a Minister come to administer it to me. I did offer it to my own Father, when he came to me, and told me, *If I would confess this Thing I should not come to Trial*: I told my Father, I would not for Ten Thousand Worlds take away the Blood of an in-

nocent Man to save mine. I thank God, I am in a very good Way to die; I have, for at least this last Year, frequently received the Blessed Sacrament; and how I have liv'd, every Body in the Court that knows me can tell my Life and Conversation has been as regular as any Man's, and I am as ready to die to-morrow, if Occasion was for it (I thank God) as any one; I will receive the Blessed Sacrament upon it; and it is not for Life that I would do any Thing that is wrong or unjust: I do love my Nation, and I love the Quiet of the Nation; I never was for disturbing the Government that now is; and I ever was against Foreign Forces or an Invasion, for I never thought of one, or heard of it, but with Abhorrence and Detestation: And I do assure faithfully, I shou'd be sorry to disparage Mr. *Porter's* Evidence, because I would have every Body that was concerned in that Horrid and Barbarous Crime to suffer; in God's Name, let them all suffer. I thank God, I never knew any Thing of it, nor of a *French* Invasion: And I would say more of it, but that I would not hurt Mr. *Porter's* Evidence, whose Discovery of that bloody Business has done so much Service. As for Mr. *Goodman*, as I hope to receive the Blessed Sacrament, and may I perish when I do it, if I speak an Untruth; I would not for any Thing, no, not for the Good of my Country, have innocent Blood spilt; I would lay down my Life to serve my Country, but I would not have my Blood be lightly lost; and how little a Man soever I am, my Blood will lie as heavy upon the Nation as any the weightiest Man's can do. I do not doubt your Lordship's Justice, nor the Jury's, but I pray, my Lord, observe; though it is usual not to own Things at the Bar, yet I do not make this Denial as of Course, but out of Truth; and I assure you, in the Presence of the whole Court, if I should suffer for this, I must at my last Moments either confess or deny something: And, I say, I do assure, in the Presence of the whole Court, and I will take the Blessed Sacrament upon it, that I must, at my Death, deny this whole Matter, and that ever I did see Mr. *Goodman* at all there; I do not think I saw him; I do not remember I saw Mr. *Goodman* at all, except once in *Germain-street*, when the Coach broke, and that must be but in passing by neither, and he would have hurt or kill'd the Coachman, and we kept him from it; and I walk'd with him half the Length of *Germain-street*, before I knew who Mr. *Goodman* was. If ever a one of those Gentlemen, that are Men of Credit and Honour, can say I was any ways so inclined, or that they ever saw me, or knew me, that I ever bought a Pistol or a Blunderbuss, or the like, may God sink and strike me dead; and the Blessed Sacrament, which I intend to receive, be my Curse and Damnation, if I knew of King *James's* Coming, till after the whole Town rang of it: I had no Hand in the Invasion; and, besides my Abhorrence of introducing foreign Force, I desire your Lordship and the Jury to consider the Circumstances of my Case, that I had but a very small Allowance from my Father, and therefore it is not probable I shou'd take upon me to join with my Lord of *Aylesbury*, and my Lord *Montgomery*, and those other Gentlemen, to send Mr. *Charnock* into *France*, to invite over a Foreign Force: And I call God to witness I had no Hand in it. I beg your Lord-

ship's Pardon for all this Trouble; I would not hurt Mr. *Porter's* Evidence, for the Reasons that I have told you; but this is for my Life, and I don't so much value that as I do Truth and Sincerity; and I shall receive the Blessed Sacrament, if I die, that I never did do so. Indeed I never did take the Oaths, nor did I ever refuse them, because they were never offer'd me; but I would take the Oaths now if they were offer'd me. My Lord, I beg your Pardon for this Trouble.

L. C. J. *Treby*. Have you done, Sir? Have you said all you would say?

Cook. Yes, my Lord.

L. C. J. *Treby*. Then, you Gentlemen of the King's Council, will you conclude?

Mr. *Soll. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King, and I could have been very glad that this Gentleman's Defence that he has made had been stronger than in Truth it has been: And I should have been very glad too that his Council had been able to have made it better for him; but that he and they may be satisfied as much is done as the Case will bear; they have had all the Liberty in the World to make his Defence they could desire, nay, more than in Strictness could be allowed them.

Gentlemen, our Evidence is very positive against the Prisoner at the Bar, and for the highest Crime that the King's Subjects can be guilty of, by the Confession of the Gentleman himself and of his Council. We have, I say, two positive Witnesses against him; they say they are not legal ones: I must own, if we have not two Witnesses, we have never an one; for whatsoever falsifies Mr. *Goodman's* Testimony, falsifies whatsoever Mr. *Porter* has sworn. Now, the Evidence that Mr. *Porter* has given against him, is this: He says, There was to be a Meeting at the *King's-Head Tavern* in *Loaden-Hall-street*, and there they consulted of the Methods to bring back King *James* hither; and it was thought the best Way to send to King *James* to invite the *French King* to send 1000 Horse, 1000 Dragoons, and 8000 Foot, to Land here in this Kingdom, where they would meet him with 2000 Horse. They pitch'd upon a very proper Messenger, Mr. *Charnock*, a Person that has been attainted, and has suffer'd for High-Treason; he was to be sent into *France* upon this Errand; Mr. *Cook*, the Prisoner at the Bar, was one of the Persons that were there at that Time, and he was consenting to this Message; and Mr. *Porter* gives you a particular Token relating to the Prisoner, for he remembers the Prisoner did kneel upon the Chair, and lean'd his Elbows upon the Table when he consented.

Mr. *Porter* goes further, and tells you, That Mr. *Charnock* would have another Meeting, to know and see whether all the Company were of the same Mind they had been; and, That afterwards they met at Mrs. *Mountjoy's* House, and there the Prisoner at the Bar was present, and consenting to the same Thing: Thereupon Mr. *Charnock* went into *France*, and came back again, and said, The *French King* could not spare so much Force. Mr. *Goodman* gives the same Evidence that Mr. *Porter* had given: It's true, he was not at Mrs. *Mountjoy's* Tavern, but he tells you withal, He spoke with Mr. *Charnock* when he came back from *France*, and *Charnock* return'd him the same Answer he did to Mr. *Porter*, That the *French King* could not spare so many Forces. This is the

Evidence in short, Gentlemen, that is given against the Prisoner; and if this Evidence be true, then is he guilty of the Crime for which he is indicted.

Against these Witnesses they have produced, first, a Record of Conviction against Mr. *Goodman*, and that was for Hiring one *Amydei* to poison the Duke of *Grafton*, and the Duke of *Northumberland*: They have produc'd the Record, whereby it appears, he was Convicted, and Fined 1000 *l.* and was to find Security for his good Behaviour during Life; and he was to lye in Prison till the Fine paid, and Security given: But it happens, in that very Record it appears there was Satisfaction acknowledg'd upon that, even the very next Term; and that gives a great deal of Suspicion to believe, that the Evidence that was given was not much credited; for, tho' the Council for the Prisoner has said, that it was the Payment of the 1000 *l.* that was the Satisfaction; no, it is not so, it is a Satisfaction of the whole Judgment, for finding Security as well as the Fine. They say he was not able to pay the Fine, and there is nothing appears of the other Parts of the Judgment being complied with, but the whole Judgment is set aside.

But all this does not make a Man *no Legal* Witnesses; if they thought this Conviction tended to set aside his Evidence, they would have produc'd it at another Part of the Trial, then where they did: That is, when Mr. *Goodman* was first call'd to be sworn as a Witness, then they should have produced this Record, and said he had been no Witness: But they knew well enough that that was no Exception against the Legality of his Evidence, but tends only to his Credit, and nothing else. Now, tho' it be a black Crime to endeavour to poison another, yet that does not totally destroy any Man's Credit; if it did, then the other Gentleman, Mr. *Porter*, has confess'd himself guilty of a greater Crime than that for which Mr. *Goodman* is convicted by this Record; for, he owns himself one that was in that Design of Assassinating the King. And Mr. *Goodman* owns himself too guilty of a greater Crime than what's objected to him, which is that of *High-Treason*; and I hope, if he may be believed, when he owns himself guilty of *High-Treason*, which is a greater Crime than Poisoning a private Subject; or guilty of such a Design as the Assassination of the King, which Mr. *Porter* has charg'd himself with, and notwithstanding which, they have not offer'd that as an Exception against Mr. *Porter's* Evidence, (for they very well know, his Evidence has been receiv'd, and credited:) Mr. *Goodman* may be credited, tho' guilty of the Crime objected to him: And the constant Practice in all Trials of this kind hath been, that it does not take away the Witness's Evidence, however it affects his Credit, which in this Case is supported by the concurrent Testimony of Mr. *Porter*. And so then, I say, we have two legal Witnesses (notwithstanding all the Exceptions) to prove Mr. *Cook* guilty of the Crime for which he is indicted.

Then they go on further, and produce other Witnesses: First, they produce one *Edwards*, a Person that is committed for *High-Treason* himself, and under Suspicion of his being to be one of those that was to have a Hand in the Assassination; but his Evidence goes no further, than that Mr. *Goodman* told him he was to be a Witness against

gainst Mr. Cook, and either he the Witnesses, or Mr. Cook must suffer; and, That it was a foolish thing to be hang'd. My Lord, there is nothing at all in this Matter that takes away Mr. Goodman's Evidence: It is very plain Mr. Goodman had forfeited his Life, and must do something to save it, and I think he could not do a better Service to entitle himself to the King's Mercy, then to discover those that were equally guilty with himself. 'Twas his Duty to have done it, if he had not been in Danger; and if he hath done no more then what was his Duty, I hope that is no Objection against his Testimony.

They have produced likewise a Drawer of the King's-Head Tavern, one Crawford, and he says, he attended in this Room while this Company was there. But then he goes a little further than the Council, or the Prisoner would have had him; for they called him to prove that Mr. Goodman was not there when my Lord of Aylesbury, my Lord Montgomery, and Mr. Cook were there. But when the Drawer comes, he knows nothing of Mr. Goodman's being there at all: He says, Mr. Cook was there, but not Mr. Goodman; and yet he does acknowledge, that Mr. Goodman might be there, and he not see him come up. He acknowledges he attended upon other Company as well as this; so that it is plain in the Nature of the Thing, and his own Confession, that Goodman might be there. This cannot take off the positive Evidence of Mr. Goodman, and Mr. Porter, who both swear, That Goodman was there.

But then they produce another Drawer, and that is one Huntly; and he gives the same Account, only indeed he says; He was there all the while they were at Dinner: But that is nothing, because it is acknowledg'd both by Mr. Porter, and Mr. Goodman, That he was not there at Dinner-Time, but he might be there after Dinner, and yet Huntly could not see him at Dinner: He tells you likewise, he pass'd up, and down in the Room afterwards, and did not see Mr. Goodman there; but yet he might be there, and he not see him.

Then they produce the Master of the House, and he gives much the same Evidence in Effect which his Servants do, That he did not see Mr. Goodman there all the while; but he says something that is a little incredible; He can be positive that Mr. Goodman was not there while my Lord of Aylesbury was there, but he cannot be positive he was not there afterwards. He tells you, he met my Lord of Aylesbury, and my Lord Montgomery upon the middle of the Stairs coming down, and he is sure Mr. Goodman was not in the Room at that Time. Now, is that possible that he can be sure of that, when he owns, (and cannot but own) That Mr. Goodman might go into the Room, and he not see him: So that he has made a strain in his Evidence that it is very little to be credited, which was not designed so much for the Advantage of Mr. Cook as for the Advantage of somebody else: And, in itself, it is almost an impossible Thing that it should be true, by what he offers as the Reason of his Evidence.

But then, Gentlemen, you are to consider, that all these three Witnesses, if they swear true, do falsifie not only Mr. Goodman, who swears, That he was there; but they likewise falsifie the Evidence of Mr. Porter, and for that Reason I

ask'd Mr. Porter the Question, Whether he did not give the same Evidence against Sir John Friend? And if what he swears now be not true, neither was it true when Sir John Friend was try'd, for he was the only Witness at that Time against Sir John Friend, for this Meeting; and therefore these Mens Testimony tends to overthrow both Witnesses as well as one: And I must tell you, that if Mr. Goodman be not a legal Witness, because he has sworn a Thing that is not true, then Mr. Porter is not a good Witness, who has sworn the same Thing, *viz.* That Mr. Goodman was there; and then you ought to acquit the Prisoner, because there is no Witness against him at Law; for, there is the same Evidence against Mr. Porter, that there is against Mr. Goodman as to this Matter.

Then, Gentlemen, as for the Character of Mr. Cook, they say he is a good English Protestant, I hope he is so; but it is plain, that Religion does not vary the Case: 'Tis within the reach of every Man's Memory that is here, that the same Things have fallen upon other Gentlemen that have had the same Character, particularly Sir John Friend, and Sir William Perkins, who both said the same Things, in the same Place, That they were True Protestants of the Church of England. But that is no Manner of Evidence that will be Weight against positive Oaths.

Now, Gentlemen, it is fit likewise you should reflect upon another Thing: What is it that should engage Mr. Porter, and Mr. Goodman, or invite either of those two Gentlemen to give a false Evidence against the Prisoner at the Bar? It does not appear that there was any Injury done by him to them, to provoke them to it; so that it could be for nothing but for the sake of Truth.

It has been further said on the behalf of Mr. Cook, That he abhorred the French, and any Invasion upon his Country, and the like: It is a Matter that is easily said; and it has been said by others that have been in the same Place where he now stands; That they hated all Plots, and they might punish them if ever they caught them. But these are only Sayings, and nothing else. If there can be any Constructions made of the Evidence given by these two Witnesses, that does not directly prove the Indictment, then the Prisoner ought to be acquitted: But if there can be no other Construction made, but only, That there was a plain Design to send Charnock into France, to King James, to persuade him to prevail with the French King, to come and invade us with a Foreign Force: And if our Witnesses are legal Witnesses, (as, I doubt not, my Lords the Judges will tell you they are; if there be no Exception to the Credit of Goodman, but only that he was in such a Design of Poysoning the two Dukes, which is really no Objection of Discredit to his Testimony;) then, with Submission, I think there is no Room left for you, Gentlemen of the Jury, to doubt, but that the Prisoner is as guilty of this Crime laid to his Charge, as any others that have been try'd and condemn'd for the same. And so, Gentlemen, I leave it to you.

L. C. J. Treby. Mr. Conyers, and Mr. Cowper, will you say any Thing to this Matter.

Mr. Conyers, and Mr. Cowper. No, my Lord, we submit it entirely to your Lordship's Direction; we have done on all Sides, we think.

L. C. J. *Treby*. Gentlemen of the Jury, the Prisoner at the Bar, Mr. *Cook*, stands indicted here for *High-Treason*; there are laid in the Indictment two Sorts of *Treason*; the one is, *Compassing* and *Imagining* the Death of the King, the other is *adhering* to the King's Enemies. The Evidence to prove these *Treasons* seems to be joyn't; for, as to that of *Compassing* and *Imagining* the King's Death, as well as to the other, the Overt Acts are meeting and consulting about the *Treason*, and then agreeing and resolving to invite and procure an Invasion from *France*, and to meet that Invasion with an Insurrection here. And the Evidence is apply'd *entirely* to prove these Acts.

Gentlemen, that these are proper *Overt Acts* of *Compassing* the King's Death, I need not inform you, the Law is very well known; and the Prisoner's own Council do acknowledge, that these are sufficient *Overt Acts* of *Compassing* and *Imagining* the King's Death: So that all which they defend him by is, the *Improbability* of the Testimony given against him.

Now, Gentlemen, you are to consider and weigh well the Evidence that has been given. By Law, it is true, as they observe, there must be two Witnesses. Here is no Defect of Number; that's acknowledg'd too, here are two Witnesses; but the Question is, whether here be two Witnesses that deserve Credit, and upon whose Testimony you can find that the Prisoner is guilty. The Witnesses, Gentlemen, are Mr. *Porter* and Mr. *Goodman*.

First, For the Matter of their Testimony, it is positive from them both; that you'll do well to observe. Mr. *Porter* tells you, That in *May* last, (which is now just a Twelve-month) there was a Meeting of eight Persons, that is, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Perkins*, Sir *John Friend*, Mr. *Charnock*, Mr. *Cook* the Prisoner at the Bar, and the Witness himself Mr. *Porter*; and this was at the *King's-Head* Tavern in *Leaden-Hall-street*, and there these Eight dined, and this was in Order to consult about an Invasion, together with an Insurrection intended to be made for the Restoring of the late King. After Dinner comes in Mr. *Goodman*, he says, and then they pursued this Consultation, and came to a Resolution, to send Mr. *Charnock* into *France*, and the Message was agreed upon which he should carry; and he was to go to the late King, and sollicite him to obtain 10,000 Soldiers from the *French* King, whereof 8000 should be Foot, 1000 Horse, and 1000 Dragoons. These were to make up the 10,000 Men to invade this Kingdom. And they resolved also, when this Force should land, they should meet and assist this Invasion with a joyn't Force, that should consist of 2000 Horse. And to acquaint and assure him of this, was the Message. But, he says, That Mr. *Charnock* was very cautious in it, and would not presently go upon this Errand, but he would have further Assurance that they were in Earnest, and would make good what they did send him to propose, therefore he would have a second Meeting; and a second Meeting was had, and that was at Mrs. *Mountjoy's* Tavern, and there they did renew the same Resolution, and there were present my Lord of *Aylesbury*, Sir *William Perkins*, Sir *John Fenwick*, Sir *John Friend*, Mr. *Charnock*, the Prisoner at the Bar, and himself; he does not know or re-

member whether my Lord *Montgomery*, or Mr. *Goodman* was there. He says, Mr. *Charnock* did accordingly go into *France*, and he did return and bring back King *James's* Thanks to them, but their Desire could not be comply'd with; and he had his Share of the Compliments.

Now comes Mr. *Goodman*, and he says, That about the same Time, *viz. Mid. May*, Mr. *Porter* acquainted him, there would be a Meeting of some of King *James's* Friends, at this Tavern in *Leaden-hall-street*. He says, That he did tell Mr. *Porter*, he doubted he should not be there at Dinner, but he would come as soon as he could after Dinner; and according to Appointment, he did come after Dinner, and there was this Consultation and Resolution that Mr. *Porter* speaks of, and says, That Mr. *Charnock* afterwards told him, he had been in *France* with the late King, and brought back the same Answer that Mr. *Porter* speaks of; and he had the Honour of Thanks from the late King too.

Gentlemen, I must observe one Thing to you, which does go very much towards the Confirming what these Witnesses say, and that is the Agreement in their Testimonies, tho' they were examin'd *apart* at the Desire of the Prisoner: You will find they agree in these several Circumstances, in the Time, that it was this Time twelve-months; in the Place, that it was at this Tavern; in the Number of Persons that were there, which was Eight before Mr. *Goodman* came in; in the Number of Horse, Foot, and Dragoons that were to be brought from *France*, and in those Horse that were to meet them here; and besides, in those Words of Discourse upon the Consultation and the Resolution. And there is one Circumstance more in which they do agree, and which is very particular; That when they came to deliver their Consent to this Message that Mr. *Charnock* was to carry, the rest sate, and Mr. *Cook* the Prisoner did kneel upon the Chair, and lean'd upon the Table. And this both of them do agree in. And after all the many Questions ask'd in their separate Examination, I do not find they disagree in any Part of their Evidence. So that, Gentlemen, there can remain no Question now, but Whether these two Witnesses are Men of Credit; or, whether there has been opposed to them any such Evidence as will make you believe, that (if not both) at least one of them has sworn himself. They do produce nothing against Mr. *Porter*, whatsoever may have been produc'd at former Trials against his Credit: Perhaps what has been before, has satisfied the Objectors, and there is nothing appears against his Credit; but he is not only a *competent* but a very clear, good, credible, and undoubted Witness.

But against Mr. *Goodman* they offer several Things which they say amount to a violent Presumption, that he is not to be look'd upon as a credible Witness: And first, they produce a Record of a Conviction upon an Information against him, for attempting to poison two Noble Dukes: This he was convicted of, and fin'd 1000 *l.* and ordered to find Sureties for his good Behaviour during his Life. But, to this it is answered, that it appears in the same Record, that Satisfaction was acknowledged of the 1000 *l.* and all the rest of the Judgment the very next Term, and he was forthwith discharged, and that without paying the Money, which (twas observ'd) the Prisoner's Council said

Mr. Goodman was not able to pay at that Time, no more than he could 20,000*l.* and thereupon the King's Council say, that the Government was convinc'd that he was wrong'd by a causeless Prosecution, and the Evidence against him was found not to be credible. And besides, Mr. Goodman stands pardoned by several Acts of Pardons, as well as other Subjects.

Then they produce one *Edwards*, who is a Prisoner here, and committed for Suspicion of High-Treason, and for Treasonable Practices: He is, no doubt of it, a Witness for all that: For that is but an Acculation upon him, and does not take away his Credit. He tells you of a Discourse that he had with Mr. Goodman, and that Goodman ask'd him when the Prisoner was to be try'd; and he told him he wou'd be try'd such a Day; and when it was ask'd what it was for, it was answer'd, not for the Assassination, but for sending Mr. *Charnock* into *France*. He ask'd then who were the Witnesses against him? Mr. Goodman said, Mr. *Porter* and himself. And further said, that he understood that Mr. *Cook* had sworn against him (though he would give an Account of no Body else) and had no Pardon, and either he must hang, or himself. And then he talk'd lightly of the Business of Hanging, and said it was a foolish Thing to be hang'd, for all that People would say, was, that such an one hang'd handsomely or dy'd bravely. This indeed is a Sort of Discourse as if Mr. Goodman did apprehend himself in Danger from Mr. *Cook's* Evidence; and yet I cannot see that it does at all falsifie the Evidence of Mr. Goodman: He may be a true Witness, and yet he might say he was to give Evidence against Mr. *Cook*, and it was in Mr. *Cook's* Power to give Evidence against him, and that truly; and if both were in the Guilt, they were in Danger of one another. But for a further Answer, the King's Council have produced Mr. *De la Rue*, who says, that he knew Mr. *Edwards*, and that he was a Scotchman, and reputed Chaplain to the Viscount of *Dumdee*, that he went formerly by the Name of *Douglas*, and by that Name he was set down and described in the List that Mr. *Charnock* sent to Captain *Porter*; and to that Name he answer'd in the *Press-Yard* lately. Now it is certain, that Mr. *Charnock's* putting of his Name in that List, is no Evidence of his being guilty in Mr. *Charnock's* Treason. But his going by two Names doth justly lay him under some Suspicion. But the Evidence that the Prisoner seems to rely upon most, is what Evidence has been produc'd against Mr. Goodman in that Point of Fact, by the Master and the two Drawers; the first of the Drawers Name was *Crawford*, and he does tell you, that about twelve Months ago there was this Company at Dinner there: My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Friend*, Sir *John Fenwick*, Sir *William Perkins*, Captain *Porter*, Mr. *Charnock*, and the Prisoner, though he did not then know his Name, or the Name of one or two more of them. I observe by the Way, that his Testimony so far does verifie theirs, that there were eight of them there, but he says he did not see Mr. Goodman there, nor any but those that dined there. And my Lord of *Aylesbury* went away, as he thinks, about Four o'Clock. He cannot say that the Prisoner was there, or was gone at that Time before Mr. Goodman came in; for he did not see Mr. Goodman there at all, he was not in the Room all the Time, but he was to and fro attending till my

Lord of *Aylesbury* and my Lord *Montgomery* went away in a Coach that was called, and when they were gone, the rest of the Company staid there a good while; being urged to tell how long, at last he said it was dark, and that agrees with Mr. *Porter*, who says, it was about nine a-Clock when they went away. He says he was there once or twice after my Lord of *Aylesbury* went away, but he never saw Mr. Goodman that he remembers at all, till last *Saturday*, in all his Life. As to this, the King's Council say, that it is only a negative Evidence, and in which a Man cannot be absolutely positive, but can only speak according to his Observation and Memory, which might not be perfect, and Mr. Goodman might be there in the mean Time of his going in and out: That is possible; and so it must be left to you to consider of it.

Then there is *Huntley* the other Drawer, and he says my Lord of *Aylesbury* went away about that Time, and that he did not see Mr. Goodman there at all, nor ever in his Life till now; neither does he remember that any Body came to them after Dinner, and if any fresh Man had then come in, he thinks he should (going often in to them) have known him; and says, that he attended this Company only: And he had seen Sir *John Friend* and Sir *William Perkins* there before.

Then Mr. *Cock*, the Master of the House, was produced, and he names all the eight Persons that did dine there, and so far he confirms the King's Evidence: He thinks that my Lord of *Aylesbury* and my Lord *Montgomery* went away privately (as it seems they had come) in a Hackney Coach, and that it was about 4 o'Clock; and he says, he did not see Mr. Goodman there, and he does not know that he ever saw him till now: But when he was cross-examined by the King's Council, he does acknowledge that he might possibly come in after Dinner, and before my Lord of *Aylesbury* went away, and he not see him, because he was not there all the Time; he says, Sir *John Friend* used to dine at his House, and came to his House once a Week; and he had seen some of the rest, but they did not frequent his House as Sir *John Friend* did: He says, the Company din'd about Two a-Clock, and the last of them staid till about Eight or Nine, and that the Door was shut as is usual when Company is in a Room, but no Body was forbid to come there.

But to establish the Credit of the Evidence on the King's Part, they did produce Mr. Goodman and Mr. *Porter* again: Mr. Goodman does acknowledge so far to be true, that my Lord of *Aylesbury* went away first; but says, that himself was not wholly a Stranger to this House, for he had dined there four or five Times with Sir *John Friend*, and particularly one Time, he being sick, and asking for some Brandy, the Master of the House said he would help him to some of the best in *England*, and Mr. Goodman would have bought some of him. But the Master seems not to own that, and says, he does not remember any Thing of it.

But then comes Mr. *Porter* again, and he says positively, that Mr. Goodman was there, and that he did speak with the Company, and complimented my Lord of *Aylesbury* when he went away, and went Part of the Way towards the Stairs with him; and he does well remember it by this Token, that when Mr. *Porter* was told Mr. Goodman was below, he mentioned him in the Company as a trusty

Man, that was fit for the Conversation, and then Mr. Porter went and fetched him up, and Mr. Goodman was there near two Hours, and they discoursed all this Matter in that Time in the Presence of the Prisoner and the rest; and he says it was about six a-Clock before my Lord of Aylesbury, and my Lord Montgomery went away, and then there was Opportunity enough for this Discourse, and Consult that they speak of.

The Prisoner has offered another Sort of Evidence: First the Confidence of his own Innocence, that he was abroad three Weeks after this Conspiracy was discovered; and they have produced Mr. Tregenna, Mr. Peachy, and Mr. Nichols, who prove that he never absconded, but was abroad, and appeared openly (for three Weeks after) till such Time as he was taken. This the King's Council say is no Proof that he is not Guilty, and their Evidence untrue. They say he might have a Confidence, and the rather because he is not charged with the Assassination; for, at that Time these Witnesses speak of, nothing was discovered, and publick but the Assassination; for it was before Sir John Friend's Trial; and then was the great Discovery of the Secret of the Invasion.

Then he shews further as to his Conversation, that he is a Man of a very sober Life, never was known to swear, that he drinks but little, and is a Godly Man, and often says his Prayers. As to that, the King's Council on the other Side tell you, that has been pretended to by other People too; and the Question is not about Religion, but this Fact that you are now to try. Whether he be so Religious, or no as he pretends, or whether he be sincere in his Devotion, that is not so much the Matter now, but the Question is, whether he has offended in this Kind as he stands accused? They produce a Gentleman, one Mr. Hammond, and he says that he is a very Conscientious Man, and particularly is a great Lover of his Country; and he has often heard him declare a Detestation of an Invasion by a French Force, and wish Success to the Fleet; but that which he remembers chiefly, was about the Time of the Discovery of this Plot. The King's Council answer to this, that a Man may use such kind of Expressions, perhaps to cover his Guilt; and in the Reply to Sir Bartholomew Shower's Observations, it was taken Notice of by Mr. Solicitor, (what we all cannot but remember) that the like Evidence was given as to Sir John Friend, that he did detest an Invasion, and was present at the Common-Prayer when King William was pray'd for, and declared against Plots; and that if they catch'd him in the Corn they might put him in the Pound. These Things a Man might say, and it is the lightest Evidence that can be given, being Discourses out of Mens own Mouths, who will never proclaim their own Guilt; and therefore it is the weakest Defence that can be offered. But, Gentlemen, you are to consider the other Evidence that has been produced by the Prisoner, given by several Witnesses, and who are upon their Oaths now as well as the King's Witnesses. And his Council say their Witnesses, but particularly the three upon whom they chiefly rely, have no Objection made out against them; and no Man's Testimony ought to be presumed to be false. And it must be taken Notice of, that they can speak only according to their Belief, grounded on their Observation, and Memory, that they did not, so far as they observed, or remember, see Mr. Goodman there, as 'twas

most probable they should if he had been. But 'tis possible they might overlook, or forget; the rather for that they were not of the Company, but in and out, up and down; and Mr. Goodman was not there at Dinner, when their Attendance was fix'd and constant.

It ought to be considered also, that here are several Circumstances, some of which seem very pregnant. It is agreed on all Hands, that the Prisoner dined there with those other seven Persons, concerning Four of whom we must conclude nothing; but concerning Three of them we in this Court may take Notice, they are Attainted of High Treason, and so it is evident that the Prisoner was for a long Time a Companion of three Traitors, and had a Conversation with them. I do not find that he had any Occasion to be there; nor any of the rest of the Company. Concerning my Lord of Aylesbury, indeed it is said he propos'd to treat about a Hoghead of White Wine. But that seems to be casual, and not the End of his Coming, and Dining with this Company there. But, be that how it will, that relates to his Lordship alone. But, for the others, I do not find they do pretend any Occasion of Meeting there; and therefore it leaves it the more suspicious: And 'tis the more so, because it was managed so privately, and cautiously. They were not attended according to their Qualities. The Lords went away together in a Hackney Coach that was called, as they had come thither in another. The rest thought fit to stay there till it was dark; and as soon as it was so, went away. There was some extraordinary Cause for all this. It did import the Prisoner to shew, that it was for some good Cause, and Purpose.

And further, it is observable that this House was a Place which, as the Master says, none of this Company did use to resort to, except Sir John Friend; which makes it probable (this being a House that Sir John Friend frequented, and none of the others) that He bespoke this Place, and brought the rest thither: And if it were so, that makes it more probable that there was such a Treason there to be hatch'd, as is evidenced by the King's Witnesses; for you may remember, and it appears by the Record in this Court, that Sir John Friend was indicted and attainted (not for the Assassination, but) for the Treason for which the Prisoner is now a Trying, an Invasion that was to be supported with an Insurrection. Now if Sir John Friend was chiefly acquainted with this House, and brought this Company together, it is very probable it was about this Business which Sir John Friend was so concerned in. And that he is Attainted for it, appears upon the Record before us; which should be read, but that the Prisoner's Council admit it, and are so far satisfied in it, that they won't Arraign the Verdict; nay, they did acknowledge that there was a Plot; and there was no Doubt of it, there was such a Plot.

Now then, Gentlemen, here it is certainly proved by these two Witnesses, (and not gain-said by the Prisoner's own Witnesses) that there was such a Meeting, and that the Prisoner was there; and they both have positively sworn that this Treason was committed there. You have heard what has been objected to their Credit; they have delivered their Testimony upon their Oaths, and so, Gentlemen, you are upon your Oaths: If you are satisfied, and can take it upon your Con-

sciences,

sciences, that these two Witnesses are; or any one of them is, (if such Distinction can possibly be made in this Case) then you are to acquit the Prisoner; but if you are satisfied, and think they have sworn true, you are to find him Guilty.

Mr. J. *Rokeby*. Nay, if one be forsworn, both are; for the Evidence is intirely in all Parts the same; and if Mr. *Goodman* be perjured, Mr. *Porter* is so too.

Sir B. *Showers*. Forsworn and Perjured are hard Words; we only say mistaken.

Mr. J. *Rokeby*. Well, that Objection goes to one as well as t'other.

L. C. J. *Trelby*. It must be so, since they speak of the same joint Matter, viz. their being together in Company. If Mr. *Porter* says true, when he swears that Mr. *Goodman* was there with him and the rest, Mr. *Goodman* must say true when he swears that he was there with Mr. *Porter* and the rest. There was one Thing that I forgot: Sir B. *Showers* observed, that it might be an Invention of Captain *Porter*, because he fixeth it in Point of Time to the Month of *May*; that he does not say it was in *April*; for that then it would be within the Pardon, which extends to *April* 29. last Year; nor would he lay it in *June*, for then he was in *Newgate*, and others of them were dispersed by reason of a Riot committed in *Drury-Lane*; and this Sir *Bartholomew Showers* alledges, was a Piece of Skill and Contrivance: But, really, this is a Piece of Ingenuity in himself: For, besides that the King's Witnesses affirm positively that it was in *May*, and remember it by a certain Token, viz. That it was within a very few Days after the King went beyond Sea, one, or two of the Prisoner's Witnesses (*Crawford* I am sure) did say that this Meeting was this Time Twelve-month, and you know we are now near mid-*May*.

Mr. Serj. *Darnal*. If you believe our Drawers for Part, you must believe them for all.

Mr. *Att. Gen.* No, not so: My Lord speaks only where they concur with our Evidence. It were strange to expect we should disbelieve, or doubt what the Witnesses on both Sides affirm to be true: But, I do not think it would be to the Advantage of the Prisoner, if what his Council propofeth were agreed to, viz. That the Drawers (and their Master too) should be believed for all they say, provided equally the King's Witnesses should, in like manner, be believed for what they say. For, the main Thing controverted, is, Whether Mr. *Goodman* were at this Meeting? These Witnesses for the Prisoner say, they did not see him there; at least they do not remember it. Mr. *Porter*, and Mr. *Goodman* himself says, he was there. Now, these Things agreed, and admitted, would make a very consistent clear Evidence, that Mr. *Goodman* was there, tho' the Master, and Drawers did not observe, or do not remember his being there.

Then an Officer was sworn to keep the Jury, who withdrew to Consider of their Verdict, and about Three Quarters of an Hour after returned into Court.

Cl. of Arr. Gentlemen, answer to your Names. *Henry Sherbrook*.

Mr. *Sherbrook*. Here. And so of the Rest, &c.

Cl. of Arr. Are you all agreed of your Verdict.

Jury. Ycs.

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Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Set *Peter Cook* to the Bar, (which was done) *Peter Cook* hold up thy Hand, (which he did.) Look upon the Prisoner; how say you, Is he guilty of the High-Treason whercof he stands Indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods, or Chattels, Lands, or Tenements had he at the Time of the Treason committed, or at any Time since?

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it: You say that *Peter Cook* is guilty of the High-Treason whercof he stands Indicted, but that he had no Goods, or Chattels, Lands, or Tenements at the Time of the High-Treason committed, or at any Time since to your Knowledge, and so you say all.

Jury. Ycs.

Cl. of Arr. Gentlemen, the Court dismisses you, and thanks you for your Service.

Then the Court adjourned 'till Five a Clock in the Evening.

POST MERIDIEM.

About Six a Clock, the Court being, by Proclamation, resum'd, the Prisoner, convicted, was brought to the Bar, in order to Judgment.

Cl. of Arr. *Peter Cook*, hold up thy Hand (which he did,) thou stand'st convicted of High-Treason, for compassing and imagining the Death of his Majesty King *William* the Third, and for adhering to the King's Enemies: What can'st thou say for thy self, why the Court should not give thee Judgment to die according to the Law?

Cook. My Lord Mayor, my Eyes are very bad, therefore I desire your Lordship would be pleased to take this Paper, and that it may be read.

Cl. of Arr. Have you any Thing to say in Arrest of Judgment?

Cook. I desire my Paper may be read.

[*It was handed up to the Court, and then delivered down to Mr. Attorney General, and the King's Council, but not openly read.*]

Mr. Recorder. Sir *Salathiel Lovell*. Mr. *Cook*, the Court have read your Paper you sent up, and have communicated it to the King's Council; if you have any Thing to move in an Arrest of Judgment, this is your Time, and we will hear you; but as for any Representation of your Case to any others, that must be considered of afterwards, you are now called to your Judgment.

Cook. I did not know that I might offer any Thing afterwards, but if your Lordships think fit to communicate that to my Lords Justices, I submit it to you.

Mr. Recorder. Mr. *Cook*, there is nothing appears upon this Paper that is Matter of Law, and so not serviceable to you now, and therefore what you desire in it, the Court will consider of afterwards.

Cook. I do not understand the Law, my Lord, but I have heard the Court ought to be of Council for the Prisoner, and I desire I may not suffer by my Ignorance.

Mr. Recorder. I declare it, for my Part, I know nothing that you can have any Advantage of, in Arrest of Judgment; if I did, you should not lose

the Benefit of it, and you have had your Council assigned, who have pleaded for you without restraint; and if there had been any Matter of Law that would have availed you in Arrest of Judgment, no doubt, they would have laid hold of that Advantage for you.

Cook. I can't tell, my Lord, what is Matter of Law.

Mr. Att. Gen. Your Lordship observes, they took all the Objections that they could to the Indictment, but there was none that they could fix.

Cl. of Arr. Then Cryer make Proclamation, (*which was done on both Sides of the Court.*)

Cryer. Oyez. All Manner of Persons are commanded to keep Silence while Judgment is in giving, upon Pain of Imprisonment.

Cook. My Lord, may I have my Paper again?

Mr. Recorder. If you think it may be any Service to you to leave it with the Court, you may do so; or if you desire it, you shall have it again.

Cook. I desire your Lordship to keep it.

Mr. Recorder. I will receive it, and it shall not be buried, I assure you.

Cook. I don't hear what the Court says.

Mr. Recorder. You say you did not hear what was said to you: If you desire to have your Paper again, you shall have it; but if you desire to have it communicated Above, the Court will consider it, and take care of that too.

Cook. I desire your Lordship would do it.

Then the Recorder proceeded to give Judgment.

Mr. Cook, I think it useful to the Publick, and also at this Time to you, to observe, That the Reign of the late King *James,* was, throughout, one intire Design and Project form'd, in conjunction with the *French King,* totally to subvert our Religion, Laws, and Liberties, which grew so apparent to the Subjects of these Nations, in so many Instances of fatal Consequence, manag'd in such a Method, and advanc'd so far, that the People of these Kingdoms, of all Qualities, Ranks and Degrees, did find it absolutely necessary for the Preservation of themselves and the neighbouring Nations now in Alliance with us, to pray in Aid of the then Prince of *Orange,* as a Person not only nearly allied to this Crown, but also intirely in the Interest of these Kingdoms, and those neighbouring Princes, and Countries that lay exposed to the Violence and ambitious Insults of *France.* And the Love which that noble Prince did bear, not only to us, but to our Neighbours also, dispos'd him to embrace that Invitation, upon whose Arrival here, that Predecessor, from Motives that were invisible, declin'd the Kingdom and the Government, and left the People to themselves; whereupon his present Majesty was necessarily and rightfully placed upon that Throne he so well deserved: And this is now that King, for whose Preservation all good People have associated, and spare neither Lives nor Treasure to support and to continue in the Government; and this is that King whom you have traiterously conspired, not only to dethrone, but also to destroy; and this is that People that you would have to swim in Blood, and lose their Religion, Liberty, and Property: These Matters need a History to relate at large, I only touch them shortly, to move good Men to rejoyce in their Deliverance, and to move you seriously to reflect upon the Heinousness of your Crime.

Mr. Cook, you are an *English Man,* and must

needs know that in this Place we frequently condemn to Death, Clippers, Coiners, Thieves, and Robbers, and other such like Criminals, and that justly and necessarily too, for the Preservation of the Innocent, and for the common Good. Of what Condemnation must you, and such as you, be worthy then, who have so horridly endeavour'd and design'd the fatal Ruin and Destruction of your own native Country, and to render your Fellow-Subjects a miserable Prey, and at the Best to become Slaves and Vassals to a foreign Prince?

Let me also mind you, that nothing is more sure, than that after this, you must receive a Judgment in another World; and if that pass against you too, that Sentence will be most Terrible, and your Sufferings without End: And therefore I do advise you to employ the few Days you have yet to live, in Preparation for your future Happiness, which cannot be duly done without a full Confession of this, as well as other Crimes you have been guilty of: I therefore charge it to you, as your Duty, and leave it with you at your utmost Peril, that you honestly and faithfully discover all you know of this inhuman and traitorous Conspiracy, and all the Persons that you do know to be guilty of it: This will be the greatest Service you can do in this World, and will be the best preparatory Step that you can take towards a better.

And, Sir,

There now remains no more for me to say, but to pronounce that Sentence on you which the Law directs: And that is this,

That you, Peter Cook, be taken hence to the Place from whence you came, and thence be drawn upon a Hurdle to the Place of Execution, where you are to be hang'd by the Neck, and cut down before you be dead; that your Bowels be taken out, and your Privy Members cut from your Body, and both burnt in your Sight; that your Head be cut off, and your Body divided into four Quarters, which Head and Quarters are to be at the King's Disposal; and God Almighty have Mercy upon your Soul.

Cook. I beg, if your Lordship please, that I may have my Relations and Friends come to see me, and some Divines, the better to prepare me for another World.

Mr. Recorder. *Mr. Cook,* if you'll give the Names of those that you would have come to you, to the Officer, Care shall be taken in it; and you will not be denied any reasonable Helps that may be had for your Preparation for Eternity.

Mr. Att. Gen. It is not fit he should be deny'd any reasonable Help; but in the mean Time there is Reason for the Government to be cautious, upon the Account of what has notoriously pass in the Case of some others.

Mr. Recorder. If he give in the Names, it will be consider'd of, and Care taken that nothing be done, but what is reasonable and safe.

Then the Prisoner was taken from the Bar, and the Court proceeded to what was remaining of the Business of the Sessions.

He was afterwards pardon'd, upon Condition of transporting himself, and never returning any more to England.



CLVII. *The TRIAL of ALEXANDER KNIGHTLEY, at the King's-Bench, for High-Treason, May 20. 1696. Paschæ 8 Will. III.*

Thursday, April 30. 1696.

HIS Day the Keeper of *Newgate* brought to the Bar of the Court of *King's-Bench*, *Alexander Knightley*, by Virtue of a Writ of *Habeas Corpus*, Issuing out of that Court for that Purpose, to be Arraigned upon an Indictment of High-Treason, found against him at the Sessions of *Oyer and Terminer*, holden for the County of *Middlesex*; which Indictment by Writ of *Certiorari* was removed into the *King's-Bench*. The Return of the *Habeas Corpus* was delivered, and then the Prisoner was Arraigned thus.

Cl. of Arr. Alexander Knightley hold up thy Hand (*which he did.*) Thou standest Indicted by the Name of *Alexander Knightley*, late of the Parish of *St. Paul Covent-Garden* in the County of *Middlesex*, Gent. For that you not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor against the most Serene, most Illustrious, and most Excellent Prince, our Sovereign Lord *William the Third*, by the Grace of God of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. Your supreme, true, rightful, lawful, and undoubted Sovereign Lord, the cordial Love and true and due Obedience, Fidelity, and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King should bear, and of right ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all your Force purposing and designing the Government of this Kingdom of *England*, under him our said Lord the King that now is, of right duly, happily, and very well-established, altogether to subvert, change, and alter, as also the same our Lord the King to Death, and final Destruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery to *Lewis the French King* to subdue and intral, the tenth Day of *February*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *St. Paul Covent-Garden*, aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and Traiterously you did compass, imagine, and contrive, purpose, design, and intend, our said Sovereign Lord the King that now is, to slay, kill, and murder, and a mise-

erable Slaughter among the faithful Subjects of our said Lord the King, throughout this whole Kingdom of *England*, to make and cause; and your said most wicked, most impious, and devilish Treasons, and traiterous Compassings, Contrivances and Purposes aforesaid, to fulfil, perfect, and bring to effect, you the said *Alexander Knightley* afterwards, to wit, the same tenth Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, traiterously, and with Force and Arms, with very many other Traitors to the Jurors unknown, did meet, propose, treat, consult, consent, and agree, him our said Lord the King that now is, by lying in wait and deceit, to assassinate, kill, and murder, and that execrable, horrid, and detestable Assassination and killing, the sooner to execute and perpetrate, afterwards, to wit, the same Day and Year, and divers other Days and Times at the Parish aforesaid, in the County aforesaid, traiterously you did treat, propose, and consult with those Traitors, of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what Manner, our said Sovereign Lord the King, so by lying in wait, might be slain and killed, and that you did consent, agree, and assent with the same Traitors, that forty Men on Horseback, or thereabouts, of whom you the said *Alexander Knightley* were to be one, with Guns, Muskets, and Pistols, charg'd with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Arms, armed, should lie in wait and be in ambush, the same our Lord the King in his Coach being when he should go abroad to attack, and that a certain and competent Number of those Men so arm'd, upon the Guards of our said Lord the King, him then attending, and being with him should set upon, and should fight with them and subdue them, whilst others of the same Men so armed, him our said Lord the King should assassinate, kill, slay, and murder; and you the said *Alexander Knightley*, your Treasons and all your traiterous Intentions, Designs, and Contrivances aforesaid, to execute, perform, fulfil, and bring to effect, afterwards, to wit, the aforesaid tenth Day of *February*, in the seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, diverse Horses, and very many Arms, Guns, Muskets, Rapiers and Swords, and other Weapons, Ammunition, and warlike Things, and military Instruments, falsely,

fallſely, maliciously, ſecretly, and traiteroſly you did obtain, buy, gather together, and procure, and to be bought, obtain'd, gathered together, and procur'd, did cauſe with that Inten't to uſe, employ, and beſtow them in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murther, of our ſaid Lord the King that now is, as aforeſaid; and the ſame Premiſſes, the more ſafely, and ſurely to execute, do, and perform, you the ſaid *Alexander Knightley*, with one *Edward King* late for High-Treaſon, in contriving and conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attain'd, by the Conſent and Aſſent of divers of the Traitors and Conſpirators aforeſaid in the ſaid tenth Day of *February* in the ſeventh Year aforeſaid, traiteroſly did go and come to the Place propos'd, where ſuch intended Aſſaſſination, Killing, and Murther of our ſaid Lord the King, by lying in wait ſhould be done, performed, and committed, to view, ſearch, and obſerve, the Conveniency and Fitneſs of the ſame Place for ſuch lying in wait, Aſſaſſination, and killing, there to be made, performed, and committed, and that Place ſo being ſeen and obſerved, afterwards, to wit, the ſame Day and Year, your Obſervations thereof to ſome of the ſaid Traitors and Conſpirators, you did relate and impart, to wit, at the Pariſh aforeſaid, in the County aforeſaid, againſt the Duty of your Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in this Caſe made and provided. How ſay'ſt thou, *Alexander Knightley*, art thou guilty of the High-Treaſon whereof thou ſtands indicted, or not guilty?

Knightley. Not guilty.

Cl. of Arr. Culprit. How will you be Try'd?

Knightley. By God and my Country.

Cl. of Arr. God fend you a good Deliverance.

Knightley. With Submission to your Lordſhip, I did not expect, in this weak Condition that I am in, to be brought at this Time to the Bar; That having taken me off extremely from the Application that I ſhould have otherwiſe made of my ſelf to my Defence; but ſeeing there is no Mercy to be had here, I will endeavour to have Patience, and undergo my Fate as well as I can.

L. C. J. Holt. Mr. *Knightley*, you have no Reaſon to find fault; for when I was acquainted you were ill, and deſired a Phyſician, I ordered one to be ſent to you; and Yeſterday in the Afternoon you ſent Word you were ſo ſick, that you could not be brought hither to Day; but your Doctör was with me laſt Night, and upon Diſcourſe with him, I did apprehend you were not ſo ill, but that, eſpecially conſidering the Weather, you might very ſafely be brought to the Bar to Day.

Knightley. The Gentleman that brought me the Copy of the Indictment found me very ill, and I have been ill ever ſince this Day ſeven-night.

L. C. J. Holt. Well, now let us ſee what Time we ſhall appoint for the Trial.

Mr. Att. Gen. Sir Thomas Trevor. When your Lordſhip pleaſes to appoint.

L. C. J. Holt. I think you cannot Try it till *Wednesday* Fortnight.

Mr. Clark. That Day is free, my Lord.

L. C. J. Holt. It being upon a *Certiorari*, the *Venire facias* may be returnable upon a common Day; and there muſt be fifteen Days between the *Teſte* and the Return.

Mr. Att. Gen. May it not be *Tueſday* then, that the Jury appear?

L. C. J. Holt. You cannot have it before *Wednesday*, for that is the Return-day.

Mr. Clark. *Tueſday* Fortnight is appointed for the Trial between *Pride* and the Earl of *Bath*.

Mr. Att. Gen. Then it muſt be upon *Wednesday* for there muſt be fifteen Days between the *Teſte* and the Return.

L. C. J. Holt. Well, take back your Priſoner; and bring him here again on *Wednesday* Fortnight, you ſhall have a Rule for it.

Then the Priſoner was carried back.

Die Mercurii Viceſimo Maij, 1696. In Banco Regis. Dominus Rex verſus Knightley.

THIS Day being appointed for the Trial of the Priſoner, he was brought to *Weſtminſter-Hall*, and the Jury were call'd over as ſoon as the Court appeared in the Hall, and the Defaulters recorded; and about Eleven of the Clock the Priſoner was brought to the Bar.

Clerk of the Crown. Alexander Knightley, hold up thy Hand, (*which he did*.) Thoſe good Men that thou ſhalt here call'd, and perſonally appear, are to paſs between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death: If therefore thou would'ſt challenge them, or any of them, thy Time is to ſpeak unto them as they come to the Book to be Sworn, before they be Sworn.

L. C. J. Holt. Mr. *Knightley*, I perceive you have a Deſire to ſpeak ſomething; let us hear what you have to ſay.

Knightley. I humbly beg your Lordſhip's Leave, that I may ſpeak before the Jury be called. What I have to ſay, I beg I may have your Leave to read, becauſe I have a bad Memory.

(*Reads*.) MY Lord, I hope to ſave the Jury and the Witneſſes againſt me a great deal of Trouble, and deſign to take up very little of your Lordſhip's Time: But in the firſt Place I think my ſelf oblig'd to thank your Lordſhip for your great Indulgence, in granting me ſo much Time between my Arraignment and Trial; the greateſt Part of which I have employ'd to appear before the great Tribunal of Heaven.

I ſpeak in the Face of the World here, That I am convinc'd I cannot hope to be happy hereafter, without a juſt Abhorrence of, and a ſincere Repentance for that Crime for which I here ſtand Indicted.

And ſince Confeſſion is an eſſential Part of Repentance, I do acknowledge I was to have been concern'd in ſome Part of the barbarous Aſſaſſination, and was unhappily ſurpriz'd into a Conſent to act in it, though in my Heart I did abominate the Fact as much as any Man living; but under ſome honourable and fair Pretences I was drawn in at firſt, and then of a ſudden became ſo far engag'd, that by a miſtaken Notion of Honour, I thought I could not retreat without the Infamy of Cowardiſe.

My Lord, I humbly crave your Lordſhip's Permiſſion, to acquaint you, how that ſome Time ſince

since I was brought before some of the Lords of his Majesty's most Honourable Privy Council, where I do assure your Lordship I did freely own and fully discover my being concerned in that horrid Design; and I here openly confess the same with that Sorrow and Repentance as becomes a Man of Honour and Conscience.

My Lord, there is one Circumstance particular in my Case, I most humbly beg leave to insinuate upon, and urge to your Lordship in my behalf, which is, that it was upon my Confession (as I conceive) that Mr. *Harris*, now a principal Evidence against me, was first discovered; so that my own Confession has been a great Means to take away my Life.

I expect after a few Words now in this solemn Court to receive from your Lordship the Sentence due upon the Conviction, from my own Mouth, of a Crime for which I cannot in modesty hope, so much above my Deserts, the King's most Gracious Pardon; yet the Greatness of my Offence does not rob me of all Thoughts of Mercy, whilst I throw my self absolutely and entirely at his Majesty's Feet for it; and I humbly beg of your Lordship as a Privy-Councillor, that you would represent my unfortunate Case to their Excellences the Lords Justices of *England*, as an Object of his Majesty's Favour.

And now, my Lord, I shall not detain your Lordship and the Court any longer, but my next Words Convict and lay me under the just Sentence of Death: So to my Indictment I beg Leave to plead guilty, and throw my self entirely upon the King's Mercy, and do desire my former Plea to my Indictment may be withdrawn.

Cl. of the Crown. Thou hast been Indicted and Arraigned of High-Treason, in compassing and imagining the Death and Destruction of the King; how say'st thou *Alexander Knightley*, art thou guilty of the High-Treason whereof thou stand'st indicted, or not guilty?

Knightley. Guilty, my Lord.

Cl. of the Crown. Art thou content to withdraw thy Plea, Not guilty.

Knightley. Yes, Sir.

Cl. of the Crown. Do you plead to the Indictment guilty or not guilty?

Knightley. I am guilty.

Mr. Att. Gen. Then my Lord we desire, since he relinquishes his Plea of Not guilty, that you will record his Confession; and since he has confessed the Indictment, we have nothing more to do but wait the Judgment of the Court.

L. C. J. Holt. We shall not give Judgment now.

Mr. Att. Gen. If the Prisoner have any thing to say for himself your Lordships I suppose will hear him to it.

L. C. J. Holt. But I say we cannot by the Course of the Court give Judgment now, for after a Person is convicted here, whether by Confession or Verdict, he ought to have four Days from the Time of such Confession or Verdict, to move in Arrest of Judgment, if there be so many Days of the Term remaining, if not, then the longest Time that can be had in the Term is allow'd: In (*Trial 74.*) *Stayley's* Case it was otherwise practised, Judgment was given the same Day, that was in the Time of the Popish Plot, and is a Case not to be imitated, because not justified by any Precedent before that Time or since, but it has been always observ'd to have four Juridical Days

for moving in Arrest of Judgment, if so many remain of the Term.

*Die Luna Vicesimo Quinto Die Maij
An. Dom. 1696.*

Being the last Day of the Term, the Prisoner was brought from Newgate to the King's-Bench-Bar.

Mr. Att. Gen. If your Lordship please, I desire the Judgment of the Court to be pronounced upon Mr. *Knightley* upon his Conviction.

Cl. of the Crown. *Alexander Knightley* hold up thy Hand; (*which he did.*) thou has been Indicted and Arraigned for High-Treason in compassing and imagining the Death of the King, and adhering to the King's Enemies; what canst thou say for thy self, why Judgment should not be given against thee to die according to the Law?

Knightley. I have nothing more to say, my Lord, than what I have said.

Cl. of the Crown. *Cryer*, make Proclamation for Silence. *Which was done on both Sides the Court.*

Cryer. Oyez: Our Sovereign Lord the King straitly charges and commands all manner of Persons to keep silence while Judgment is in giving, upon pain of Imprisonment.

L. C. J. Holt. Mr. *Knightley*, You are by your own Confession convicted of High-Treason in designing the Murder of the King and the Subversion of the whole State of *England*, in promoting an Invasion from the *French*, its most antient and inveterate Enemies.

It hath appeared before your Arraignment, not only by the Evidence that hath been given at former Trials; but even by the Signs of the Times and the Manner of some Mens Actings, that there hath been for some Years last past a Train of Plots and Conspiracies against this Government, and when the various Means which the Conspirators did project among themselves for its Ruin proved ineffectual, it was at last resolved among some of the Conspirators to assassinate the King, as the most certain Way of accomplishing their End.

In which Design you were deeply engaged and was an active Instrument in the carrying it on, being sent to view the Ground on both Sides the Water, and with others that were sent with you reported your Opinion, which was the most convenient Place to attack the King and his Guards.

And though you did the last Time you were at the Bar, urge by way of Extenuation of your Crime, that you being engaged in the Interest of the late King, and thereby supported, you was surprized into this barbarous Design, which being proposed to you, you thought your self obliged in Honour to engage in it; which is so far from an Extenuation, that it is an high Aggravation: For Men of honourable Principles, tho' most zealously disposed to the Advancement of any particular Interest, yet always detest the Use of base and vile Means. Therefore when the Assassination of the King was proposed, you had an Opportunity to have retreated with Honour; and might have refused to be further concerned;

cerned; but you rather pursued this wicked Enterprize with great Zeal.

And tho' you are by your Profession a *Roman Catholick*, and may for that Reason think that your Crime is mitigated, because you acted in the Behalf of a Prince of your own Religion, which you hoped thereby to introduce: Notwithstanding all which, your Offence is highly aggravated in respect of the Ingratitude and Folly with which it is attended. For there is no *English* Papist that is Master of any Property, but he is interested in the Preservation of this Government, to which the whole Party of them hath been, and still are continually obliged for its Moderation and Justice; for instead of being exposed to the Severity of those Laws to which they are obnoxious, they have had the same Indulgence in the Enjoyment of their Religion, and the same Protection, and as much Benefit in the Distribution of the Common Justice of the Realm, as any other of the King's Subjects; therefore none of them could ever expect to mend their Condition under a *French* Domination. But the contrary is foreseen by all considering Men; for the *English* Papist, as well as Protestant, would have been reduced to a most dismal State if you had obtained your End.

For it is against all the Rules of Reason, and the Experience of all Ages, to imagine, that the *French* King would spare *English* Papists more than Protestants; for it is not Zeal to Religion, or Affection to the Interest of the late King, that hath excited him to invade *England*, but it's his Pride and Ambition to conquer the three Kingdoms, and to reduce this to be a Province to *France*: Indeed the Pretence of restoring the late King, and introducing the *Papish* Religion may serve to delude some warm and unwary Zealots to engage in his Assistance, who do not consider, that if they should be successful they would be as certainly destroyed as others, but with more Disadvantage to themselves. For after they shall have survived the Liberty of their Country, have embred their own Hands in their Countrymen's Blood, they will be at the Mercy of their Conqueror, who can never think it his Interest to trust them, but will despise them for being such villainous Traitors to their own Country. Nay, rather, these *Englishmen*, who by their Courage and Resolution shall endeavour to defend their Country, though they should be unfortunately vanquished, will meet with a much better Reception, for they will have given Assurances that

they may be confided in, when the others have by such a wicked Treason given a Demonstration to the contrary.

There being then nothing to be said that can palliate such a Crime as that of which you are convicted; but you having taken a different Course the last time you were at the Bar from what you took at first, you have relinquished your Plea of Not guilty, and have confessed the Indictment; I wish out of Charity to your Person it was as sincere as (I think it) it was prudent in you; for after several Convictions of others that were your Accomplices, you could not be a Stranger to the Evidence upon which they were grounded, you must therefore in all Probability have expected to have undergone the same Fate. If your Confession be a real Effect of your Repentance, you will reap the Advantage of it in the next World, but what Consequence it will have in this I cannot say, *For the Heart of the King is in the Hand of the Almighty, which as the Rivers of Water, he turneth whithersoever he will.* Live therefore for the Time to come in expectation of a speedy Death, and prepare your self to appear before another Judgment-Seat; to the making of which important Preparation I shall dismiss you, first discharging the Court of the Duty now incumbent upon it, in giving that Judgment which the Law hath appointed. And the Court doth award,

That you be conveyed from hence to Newgate, the Prison from whence you came, and from thence you are to be drawn upon a Hurdle to Tyburn; where you are to be hanged by the Neck, and while you are alive to be cut down, your Privy Members are to be cut off, and your Bowels to be cut out of your Body and burnt in your View; your Head is to be cut off, and your Body is to be divided into four Parts, and your Head and your Quarters are to be disposed where his Majesty shall appoint. And I pray God to have Mercy upon your Soul.

Knightley. My Lord, I am truly sorry for what I have done, and I humbly thank your Lordship, and the rest of the Judges for your Favour to me.

Then the Prisoner was carried back to Newgate, and afterwards was graciously pardon'd.

*Proceedings between the King and the City of London,
on an Information in nature of a Quo Warranto
in the King's Bench, 1683. Hil. 35 Car. II.*

Mich' 33 Car. II. in B. R. Rot. 137. Sir Robert Sawyer, Knight, His Majesty's Attorney General, against the Lord Mayor, and Commonalty, and Citizens of London.

The Information in nature of a Quo Warranto sets forth,

THAT the Mayor, and Commonalty, and Citizens of the City of London, by the space of a Month then last past, and more, used, and yet do claim to have and use, without any lawful Warrant, or regal Grant, within the City of London aforesaid, and the Liberties and Privileges of the same City, the Liberties and Privileges following, *viz.*

- I. To be of themselves a Body Corporate and Politique, by the Name of *Mayor and Commonalty, and Citizens of the City of London.*
- II. To have Sheriffs *Civitat' & Com' London' & Com' Midd'* and to name, elect, make, and constitute them.
- III. That the Mayor and Aldermen of the said City should be Justices of the Peace, and hold Sessions of the Peace.

All which Liberties, Privileges, and Franchises the said Mayor and Commonalty, and Citizens of London, upon the King did by the space aforesaid usurp, and yet do usurp.

Plea. **T**HE Mayor and Commonalty, and Citizens, appear by their Attorney, and plead,

I. As to their being a Body Politique and Corporate, they prescribe, and say,

1. That the City of London is, and time out of mind hath been, an ancient City, and that the Citizens of that City are, and by all that time have been, a Body Corporate and Politique, by Name of *Mayor and Commonalty, and Citizens of the City of London.*

That in *Magna Charta de libertatib' Angliæ*, in the Parliament holden 9 Hen. 3. it was enacted, *Quod civitas London' habeat omnes libertates suas antiquas, & consuetudines suas.*

That in the Parliament 1 E. 3. that King by his Charter *De assensu Prelatorum, Comitum, Bar-*
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ronum, & totius communitatis regni sui, and by Authority of the same Parliament, having recited that the same Citizens, at the time of the making *Magna Charta*, and also in the time of *Edward the Confessor, William the Conqueror,* and other his Progenitors, had divers Liberties and Customs, Wills and Grants by Authority aforesaid, That the same Citizens shall have their Liberties according to *Magna Charta*— — And that for any personal Treipsals *alicujus ministri ejusdem civitatis, libertas civitatis illius in manus ejusdem Domini Regis Ed. 3. vel beredum suorum, non caperetur, sed hujusmodi minister prout qualitatem transgressionis puniretur.*

They plead also,

That in the Parliament holden 7 R. 2. *Omnes consuetudines, libertates, franchesia, & privilegia civitatis predicti tunc civibus civitatis illius, & eorum successoribus, licet usi non fuerint, vel abusi fuerint, auctoritate ejusdem Parliamenti ratificati fuerunt.*

Then they plead the Confirmations of several later Kings by their Charters; as of

King *Henry VI.* by his Charter, dated 26 Octob. 23 H. 6.

King *Edward IV.* by his Charter, dated 9 Novemb. 2 E. 4.

King *Henry VII.* by his Charter, dated 23 July, 20 H. 7.

King *James I.* by his Charter, dated 25 Sept. 6 Jac. 1.

King *Charles I.* by his Charter, dated 18 Oct. 14 C. 1.

King *Charles II.* by his Charter, dated 24 Jan. 15 C. 2.

Ac eo Warranto they claim to be, and are a Body Politique, &c. and traverse their usurping upon the King.

II. As to the having, electing, making, and constituting Sheriffs of London and Middlesex, they plead,

That they are, and time out of mind were, a Body Politique and Corporate, as well by the Name of *Mayor and Commonalty, and Citizens, quam per nomen Civium London.* And that King *John*, by his Letters Patents under the Great Seal of England, in Court produced, dated 5 Julii, anno regni sui primo, granted to the Citizens of London, that they should have the electing,

5 F making,

making, and constituting Sheriffs of *London* and *Middlesex* *imperpetuum*.

Then they plead this Liberty and Franchise confirmed to them by all the aforementioned Statutes and Charters, *ac eo Warranto* they claim to make and constitute Sheriffs.

III. As to the Mayors and Aldermen being Justices of the Peace, and holding Sessions, they plead,

That the City is, and time out of mind was, an ancient City and County, and the Citizens a Body Politique.

That King *Charles* the First, by his Letters Patents dated 18 *Octob.* 14 *Car.* I. granted to the Mayor and Commonalty, and Citizens of the City of *London*, That the Mayor and Aldermen of *London*, such of them as had been Mayors, should be Justices of the Peace, and should hold Sessions, *& eo Warranto* they claim to be Justices, and hold Sessions.

TO this Plea the Attorney General replies. And as to the Mayor, and Commonalty, and Citizens of *London*, being a Body Politique and Corporate,

First takes issue, that they never were a Body Corporate, and for this puts himself upon the Country. And then goes over and pleads,

That the Mayor, Commonalty, and Citizens, assuming upon themselves to be a Body Politique and Corporate, and by reason thereof to have Power and Authority to convocate and assemble, and make Laws and Ordinances, not contrary to the Laws of the Kingdom, for the better Government of the City and Citizens, and for preserving the King's Peace— Under Colour and Pretext thereof, but respecting only their private Gain and Profit, and against the Trust in a Body Corporate by the Laws of this Kingdom reposed, assumed an unlawful and unjust Authority to levy Money upon the King's Subjects, to their own proper Use, by colour of Laws and Ordinances by them *de facto* ordained and established; and in prosecution and execution of such illegal and unjust Power and Authority by them usurped, 17th of *Septemb.* 26 *Car.* II. in their Common Council assembled, made, constituted, and published a certain Law, by them *de facto* enacted, for the levying of several Sums of Money of all the King's Subjects, coming to the publique Markets within the City to sell their Provisions, *viz.* Of every Person for every Horse-load of Provisions into any publique Market within the said City, brought to sell, 2 *d.* *per* Day. For every Dorser of Provisions, 6 *d.* *per* Day. For every Cart-load not drawn with more than Three Horses, 4 *d.* *per* Day. If drawn with more than Three Horses, 6 *d.* *per* Day. And that these Sums of Money should be paid to the Use of the Mayor, Commonalty, and Citizens: And if any refused to pay, then to be removed from his Place in the Market. And that by colour of this Law, the Mayor, Commonalty, and Citizens, for their own private Gain, had illegally, by the space of seven Years next after the making this Ordinance, received divers great Sums of Money, in all amounting to 5,000 *l.* *per* *Annunum*, in Oppression of the King's Subjects.

And further, That whereas a Session of Parliament was holden by Prorogation, and continued to the 10th of *January*, 32 *Car.* II. and then prorogued to the 20th of *January* then next:

The Mayor, Commonalty, and Citizens, 13 *Jan.* 32 *Car.* II. in their Common Council assembled, unlawfully, maliciously, advisedly, and seditiously, and without any lawful Authority, assumed upon themselves *ad censendum & judicandum dictum Dominum Regem, & prorogationem Parliamenti per Dominum Regem sic facti*. And then and there in Common Council assembled, did give their Votes and Order, that a certain Petition under the name of the Mayor, Aldermen, and Commons of the City of *London*, in Common Council assembled, to the King should be exhibited; in which said Petition was contained,

That by the Prorogation, the Prosecution of the publique Justice of the Kingdom, and the making necessary Provision for the Preservation of the King, and of his Protestant Subjects, had received Interruption. And that the Mayor and Commonalty, and Citizens in the same Common Council assembled, did unlawfully, maliciously, advisedly, and seditiously, and with Intention that the said Petition should be dispers'd amongst the King's Subjects, to induce an Opinion in them, that the said King, by proroguing the Parliament, had obstructed the publique Justice, and to incite the King's Subjects to Hatred of the King's Person and Government, and to disturb the Peace of the Kingdom, did order that the said Petition should be printed, and the same was printed accordingly to the Intent and Purpose aforesaid.

By which the Mayor, Commonalty, and Citizens aforesaid, the Privilege, Liberty, and Franchise of being a Body Politique and Corporate did forfeit, and afterwards, by the time in the Information, that Liberty and Franchise of being a Body Politique did usurp upon the King. *Et hoc, &c.*

And as to the other two Pleas, *viz.* The making and having Sheriffs and Justices of the Peace, the Attorney General imparles to *Mich.* Term.

Rejoynder. **T**H E Mayor, Commonalty, and Citizens, as to the Plea of the Attorney General, pleaded in assigning a Forfeiture of their being a Body Politique and Corporate,

Protestando, That those Pleas, by the Attorney pleaded, and the matter in the same contained, are insufficient in the Law to forejudge or exclude the Mayor and Commonalty, and Citizens from being a Corporation.

Protestando etiam, That no Act or Deed, or By-Law made by the Mayor, Aldermen, and Common Council is the Act or Deed of the Body Corporate.

Protestando etiam, That they, the Mayor and Commonalty, and Citizens of *London*, never took upon them any unlawful or unjust Authority to tax the King's Subjects for their own private Gain, or did ever levy or exact from the King's Subjects coming to Markets such yearly Sums as in the Replication are alleged— For Plea say,

That

That *London* is the Metropolis of *England*, and very populous, & *Celeberrimum Emporium totius Europæ.*

That there are, and time out of mind have been, divers publique Markets for Provision and Merchandise within the said City to be sold.

That the Mayor and Commonalty, and Citizens have been, time out of mind, and yet are, seiz'd of these Markets in Fee, and by all the said time at their own Costs and Expenses have provided and have accustomed, and ought to provide at their own costs Places for the holding the said Markets and Stalls, and Standings, and other Accommodations for Persons bringing Provisions and Merchandises to the said Markets, and Supervisors and other Officers for the better preserving and ordering the said Markets, and of the great concourse of Persons coming to the same; and for the sustaining and supporting of the said Costs and Expenses, by all the time aforesaid have had, and ought to have, reasonable Tolls, Rates, or Sums of Money, of Persons coming to the said Markets for their Stalls, Standings, and other Accommodations by them for the better exposing their Commodities had and enjoyed.

They further say, That the Citizens and Freemen of *London* are very numerous, (*viz.*) 50,000 and more.

That within the said City there hath been, time out of mind, a Common Council assembled, as often as necessary, consisting of the Mayor, Aldermen, and of certain of the Citizens, not exceeding 250 Persons thereto annually elected, called the Commons of the said City.

That there is a Custom within the said City for the Mayor, Aldermen, and Common Council, to make By-Laws and Ordinances for the Regulation and Government of the publique Markets within the City.

That these Liberties and Customs of the City were confirmed by *Magna Charta*, and the other Statutes in the Plea abovementioned.

That by reason of the burning of the City in *Septemb. 1666.* and the Alterations in the Market-Houses and Places thereby occasion'd, for the establishing and resetting the Markets within the City, 17 *Septem. 26 Car. II.* the then Mayor, Aldermen, and Commons, in Common Council assembled, according to the said Custom, for the better Regulation of the said Market, did make and publish an Ordinance, entituled, *An Act for the Settlement and Well-ordering the publique Markets within the City of London*, by which said Ordinance reciting that for the accommodation of the Market-people with Stalls, Shelters, and other Necessaries for their standing in the Markets, and for the amendment, paving, and cleansing the Market-places, and for the support and defraying the incident Charges thereof, there have been always certain reasonable Rates and Duties paid for the same. And to the intent that the said Rates may be ascertain'd and made publique to all Market-people, and the Collectors restrained from exacting—It was enacted and ordain'd by the said Common Council, that the Rates and Sums in the Replication should be paid to the use of the Mayor and Commonalty and Citizens; or upon refusal, to be removed out of the Market. And they aver, that these are all the Rates or Duties paid, and

were reasonable Sums to be paid; and these they have demanded and received for the Use and Purpose aforesaid, as was lawful for them to do.

As to the other matter alledged by the Attorney General in assigning the Forfeiture, they say,

That within this Kingdom (*viz.*) at the Parish of *St. Michael Bassishaw, London*, there was an execrable Plot and Conspiracy prosecuted by Papists to destroy the King, and to subvert the ancient Government, and suppress the true Religion in this Kingdom established.

That Sir *Edmundbury Godfrey* took Examinations of Witnesses, and Informations of the same; and also of the burning of *London* by the *Papists*.

That divers of these Conspirators had lain in wait for him, and murdered him, to the intent to suppress his Examinations, and to deter other Magistrates from acting in the Discovery.

That *Green*, and others were try'd, and hang'd for this Murder.

That *Coleman*, and others were also try'd, and executed for the same Conspiracy.

That *William Lord Powis*, Lord *Arundel of Warder*, Lord *Petre*, Lord *Bellasis*, were impeached by the Commons in Parliament of *High Treason* for the same Conspiracies, and sent to the *Tower*.

That the King, in his Speech to that Parliament had recommended to them the further pursuit and examination of that Conspiracy, declaring he thought not himself nor them safe, till that matter were gone through with; and therefore that it was necessary that the said Lords in the *Tower* should be brought to their Trials, that Justice might be done; and the Parliament having made an Address to the King, wherein both Lords and Commons declared their being deeply sensible of the sad condition of the Realm, occasioned chiefly by the Conspiracies of a Popish Party, who had plotted and intended the Destruction of the King, and Subversion of the Government and Religion of the Kingdom; and thereupon a Solemn Fast kept pursuant to the King's Proclamation, grounded upon the said Address, and divers Bills prepared to be pass'd into Laws for preservation of his Protestant Subjects.

These Impeachments and Bills being thus depending, and the Lords in the *Tower* not tryed, the Parliament was upon the 10th of *January* prorogued, as the Attorney General above in his Replication hath alledged, by reason whereof the Citizens and Inhabitants of the said City, being faithful Subjects to the King, were much disquieted with the sense and apprehensions of the Danger threatening the Person of the King, His Government and Realm, by reason of the Conspiracies aforesaid, as is by both King and Parliament affirmed and declared; and conceiving no better means to prevent, than by the sitting of the Parliament; and having received a Petition from divers faithful Subjects, Citizens of *London*, to the same effect: And it being lawful to petition, the Mayor, Sir *Patience Ward*, and the Aldermen and Commons, in Common Council assembled, for the preservation of the King and His Government, did cause to be written the Petition in the Replication mention-

ed, which is set forth in *hæc verba*; and did Order, that after the same was presented to the King, it should be printed for the satisfaction of the troubled Minds of the said Citizens; and traverse the writing or making any other Petition, or making this to any other end or intent than they have pleaded.

Surrejoyn-der. **T**HE Attorney General as to the Plea of the Mayor, and Commonalty, and Citizens pleaded to the making and publishing the Ordinance about the Markets,

Protestando, That the Mayor, and Commonalty, and Citizens were not seiz'd of the Markets, nor at their charges provided Stalls and Necessaries, or Market places.

Protestando etiam, That the said Rates and Sums were not reasonable.

For Plea saith, That by a Statute made 22 Car. II. it was enacted that Places for Markets should be set out, and 2 *d. per* Chaldron upon Coals for the Charge of that, and many other things, was given; and that they received a great Sum out of that Duty for the Purpose aforesaid; and yet for their own private Lucre took the Money by the Ordinance.

And traverse, That the Mayor, and Commonalty and Citizens, time out of mind, *habuerunt & habere consueverunt Tolnetas, Ratas, sive denariorum summas per ipsos Majorem, Communitatem, & Cives superius supposit. per prefatam Legem, sive Ordinationem predictâ Affess. & in cer-*

titudinem reduct. prout per placitum suum superius rejungendo placitat' supponitur.

And to the Plea of the Mayor, and Commonalty, and Citizens, pleaded to the Residue of the Attorney's matter assigned for a Forfeiture, as aforesaid,

The Attorney *Protestando*, That the aforesaid Prorogation of the Parliament was for urgent Causes concerning the good of the Kingdom, and thereby the prosecution of publique Justice not interrupted.

And demurrs to the said Plea of the Mayor, and Commonalty, and Citizens by them pleaded as to the Petition.

THE Mayor, and Commonalty, *Rebutter.* and Citizens, as to the making and publishing the Ordinance for the Payment of Monies by those that come to the said Markets, say as before,

That the Mayor, and Commonalty, and Citizens have, time out of mind, had, and accustomed to have, reasonable Tolls, Rates, or Sums of Money of all Persons coming to these Markets with Victuals and Provisions there to be sold, for Stalls, Standings, and other Accommodations, by them had for exposing their Victuals and Provisions to sale. And of this they put themselves upon the Country, &c. To this Mr. Attorney demurrs.

And as to the Plea by the Mayor, and Commonalty, and Citizens pleaded to the Residue of the matter by the Attorney General, assigned for Forfeiture, they joyn in Demurrer †.

This great Case was only twice argued at the Bar: First, by Mr. Finch, the King's Solicitor, for the King; and Sir George Treby, Recorder of London, for the City. And next by Sir Robert Sawyer, the King's Attorney General, for the King; and Henry Pollexfen, for the City.

The First Argument was in *Hilary Term* on *Wednesday, Febr. 7.*

Mr. Solicitor. **T**HE Questions in this Case, as I think, will be,

- I. Whether any Corporation can be forfeited?
- II. Whether the City of *London* differ from other Corporations as to point of Forfeiture?
- III. Whether any Act of the Mayor, Aldermen, and Common Council, in Common Council assembled, be so much the Act of the Corporation, as can make a Forfeiture?
- IV. Whether the Acts by them done in making the By-Law, and receiving Money by it; or in making the Petition, and causing it to be printed and published, be such Acts, as if done by the Corporation, will make a Forfeiture of the Corporation?

I. The First of these Questions truly I should not make any Question at all, but that this Case has been a Case of so great expectation, every man hath discoursed about it, and the prejudice that some have entertained concerning it, have drawn them to assert the Negative Proposition. Therefore, my Lord, because this strikes to the whole, though I think it hath no Foundation in Law, I will beg leave to remove this Objection out of the Case.

1. First of all, No Corporation hath any other Creation than any other Franchises have, and subsist upon the same Terms that other Franchises do.

2. There is a Trust or a Condition in Law, that is annexed to, and grows upon all Franchises, that they be not abused, and the Breach of them is a Forfeiture of the very being of the Franchise.

3. And as there is no Foundation of that Opinion in Law, so the Mischiefs would be great, if the Law were otherwise. For,

† When the Demurrer in this Case was joyn'd (*viz. Mich. Term 34 Car II.*) Mr. Sergeant *Pemberton* was Chief Justice of the *King's Bench*. But before *Hilary Term*, when it came to be argued, he was removed, and made Chief Justice of the *Common-Bench*; and Sir *Edmund Saunders*, who had been Counsel for the King, in drawing and advising the Pleadings, was made Chief Justice of the *King's Bench*.

1. First, That no Corporation hath any other Creation than other Franchises have; 'tis undoubtedly true that the King is the Original and Commencement of all Franchises; they have their beginning from him, the Books are clear and full in it: I need not quote them, though there are many, *Kelway* 138. 17 *Ed.* 2. 530. in the Reports of those times set forth by Mr. Serjeant *Maynard*. Now, my Lord, there can be no Corporation, but by the King's Letters Patents; for even the Prescription doth suppose there was the King's Patent to create it at first. And therefore the proper Inquiry will be about the Second thing.

2. How far the Breach of Trust that is annexed to a Franchise, is a Forfeiture of that Franchise.

First of all, There is no Rule in Law more certain, than that the Mis-user of a Franchise is a Forfeiture of that Franchise. This the Statute of 18 *Ed.* 2. does very well prove, which was an Act of Grace to restore Franchises to those that had lost and forfeited them. There it was restrained *Ita quod libertat' non sint abusæ.* And my Lord *Coke* 2 *Inst.* in his Observations upon the Statute of *Westm'* 1. that Chapter of it that concerns Towns that exacted more Murage than was granted, *fol.* 223. says, They shall lose that Grant for ever; says the *Mirror of Just.* which my Lord *Coke* there quotes, that is no more than the Common Law; for the Law wills that every Man should lose his Franchise, that does misuse it: So the Abbot of *St. Albans* Cafe, 8 *Hen.* 4. 18. The King seized the Franchise into his hand, because the Abbot, who had the Gaol, would not give Pledges to make Deliverance, and for detaining his Prisoners a long time without making a lawful Deliverance. And so 20 *Ed.* 4. 6. The Abbot of *Crowland's* Cafe for detaining Prisoners acquitted after Fees paid, the King seized the Gaol for ever. These two are cited by my Lord *Coke* 2 *Inst.* 43. And in Sir *George Reynel's* Cafe, 9 *Report*, *Fitzberbert's* *Abridgment*, *Til' coron' placit'* 233. A Layman was taken in a Robbery, the Ordinary challenges him as a Clerk, whereas he was a Layman: It was ruled, that for his false challenge the Ordinary should lose his Temporalities to the King, and lose his Franchise to challenge Clerks, for him and his Successors for ever. Thus far is plain, That Franchises, if misused, are forfeited; and that though enjoyed by Persons in a corporate capacity, as appears by the Cafes put. And then as a Corporation may forfeit any Franchise they are seized of in right of the Corporation, so may a Corporation forfeit the Franchise of the Corporation it self, upon the same ground and reason in Law: unless any one will say, The Franchise of being a Corporation cannot be misused; and that would be a very strange matter to assert.

Every Corporation is entrusted with a Franchise to make Laws for governing the Subject within its Jurisdiction. If that Power be exercised to the Subjects prejudice, as it may be, it were an hard matter if there were no Law to redress that Grievance. Suppose a Corporation under their common Seal should authorise a Rebellion, would any Man say that were no Forfeiture? 'Tis said indeed by *Pigott*, 21 *Ed.* 4. *f.* 13. *Arguendo* upon a Cafe (where the Question is,

Whether a Corporation should avoid a Bond entered into by the Mayor by Dures) That a Corporation can neither commit Treason or Felony; but upon the same Reason that he urges, That a Corporation cannot act at all, that is, abstractedly from all the Members of it; for so this Notion is, that a Corporation is a Body in consideration of Law only, and not Reality; and therefore the particular Act even of the head of that Body shall affect him personally only. But this is only a Notion of his arguing; but it is the best Opinion of that Book, that *Dures* to the Members did so affect the Corporation, that it should avoid the Bond.

Now, my Lord, a Corporation may be surrendered; and surely that that may be surrendered, may be forfeited; and I shall offer you some Authorities in this case, 12 *E. 3. rot. claus. memb.* 36. a Writ is directed to the Constable of *Dover*, reciting, That the Cinque-Ports had seized divers Goods of several Merchant Strangers *Portugueses*, and others; and the Writ commands that Right should be done, or else the Franchise should be seized into the King's Hands, 6 *Ed.* 2. *rot. claus. No.* 5. The Liberties of the City of *Bristol* were seized, and the Custody of it granted to _____ for divers Contempts and Injuries done *per Majorem, Ballivos, & Communitat'* to the King; and so the close Rolls of *R. 2. m.* 6.

There is another Cafe that comes further, *Pasch.* 9 *Ed.* 1. *Majus rot.* 25. I find it likewise among my Lord Chief Justice *Hales* Collections, that he has given to *Lincoln's-Inn* Library; I took it out of that Book: 'Tis in the Collection of the *Adjudicata* in the time of *Ed.* 1. *fol.* 28. *a.* Thus it was: There was the Abbot of *St. Austin* in *Canterbury* had made an Agreement with the Men of *Sandwich*, about paying Ten Hogheads of Wine yearly to the Abbot; and there was due to the Abbot some Thirty Marks, and he had Judgment, and Execution went out; and thus 'tis in the Book, *Vic. de — mandatur, quod levari fac'* 30 *Marcas de bonis ipsius, ad opus Abbatis, pro pretio 10 Doleorum Vini annuatim solvend'* And they made Rescue when the Sheriff came to execute the Writ, and they were sued for that; and the Judgment of the King and his Council, which was by Parliament, for it was adjourned into Parliament, was, *Quod libertas de Sandwich forisfact'* *fit.* And there is this Observation, tho' it be written with the same Hand, which is not his, but the Clerk's that transcribed it, *Judicium illud extendit contra Barones 5 Portuum, & eorum libertates, ut mihi videtur.* These are the Words of that Book: And this will go a great way with the City of *London*, as to their Confirmation of *Magna Charta*; for the Cinque-Ports are confirmed by Act of Parliament, as well as they.

But, my Lord, there are many Cafes of like nature, and that even in the Cafe of the City of *London* too, as I shall shew you by and by. Now tho' these are not Judgments in *Quo Warranto's*, to out a Corporation of a Franchise of being a Corporation, yet it shews, that these things were Forfeitures of all the Franchises of a Corporation; for a Seizure is never but where there is Matter for Forfeiture found upon Record, as in Sir *George Reynel's* Cafe; or to ground a Forfeiture, upon which to bring a *Quo Warranto*,

Warranto, as in our Case. But in the Case of 9 *Ed. 1.* there it does appear Judgment was given by the Parliament, that the Liberty should be forfeited, not that it should be seized into the King's Hands only.

Now, my Lord, where all the Franchises of a Corporation are forfeited, what is the Corporation? Truly, 'tis nothing, 'tis but a Name; a Corporation without a Power to act, is nothing at all. Indeed, I do not find any Judgment in a *Quo Warranto* of a Corporation being forfeited; yet, my Lord, it doth not follow from thence that this cannot be by Law; for many *Quo Warranto's* have been brought against *London*, and other Places too, to out Corporations of their Franchises, but it hath always ended in Submission to the King, and so they have been at quiet. All the *Quo Warranto's* in Mr. Attorney *Palmer's* time, after the King's Restauration, against the several Corporations, they all submitted; and yet that was to question the very Being of their Corporations.

Now, my Lord, pray consider a little upon the Rule of Law. It should seem very strange, if a Corporation should neglect to come into *Eyre*, or into the King's Bench, the same Term that a *Quo Warranto* is brought against them, they must be outed of their Franchise for ever, as 'tis said 15 *Ed. 4.* 6 & 7. And yet, when all the Contempts and Oppositions imaginable are found upon Record, that this should not be a Forfeiture, that seems absurd that a Neglect in *Eyre* should do it, but all the Oppressions and Offences in the world, when found upon Record, should not do it.

3. But, my Lord, the Mischiefs that would follow from hence are very great. How many Oppressions and Offences would be daily committed, if every Corporation were a Franchise and Jurisdiction independent upon the Crown? and the Punishment truly of some particular Men for those Offences would not be adequate, where the Power of offending and misgoverning should still remain; sure that were no adequate Redress of such an Inconvenience. And to this purpose, my Lord, I shall humbly offer a Case, and 'tis that great Case between the Earls of *Gloucester* and *Hereford*, *Hil. 20 Ed. 1.* in *B. R. rot. Wallie 14.* 'Tis likewise in *Riley's Placita Parliamenti*, 83, 86. The Case is this in short: They both claimed the Liberty of *Returna Breivium*, and they had incurred great Contempts in refusing to obey the King's Writs; and Judgment was given against them, that the Liberty should be seized for this Reason, which, I think, will go a great way in this Case, and for which I offer it, *Quia puniendus est Dominus libertatis in eo quo deliquit.* I think, my Lord, as I said, that will go a great way in this Case to shew the Reason of the Law.

My Lord, if the granting of too many and too large Franchises were a Mischief, as certainly it was by Law, and as appears by the Commons Petitions 21 *Ed. 3. rot. Parl. No. 17.* where they pray, That new and large Franchises may not be granted, because it tended to the overthrowing the Common Law, and great Oppression of the People. And the King's Answer was, That Care should be taken for the time to come. I say then, if this were such a Mischief, that there ought not to be granted new and large

Franchises, much more would it be a Mischief, if these Franchises should not be under the Controul of the Law, when they exercise such Oppression. And so, my Lord, I shall leave that Point; for I think it will be pretty clear, that a Corporation may forfeit their Being of a Corporation.

II. I shall next consider, *Whether the City of London be in any other Plight than any other Corporations.* I think, truly, there is no Difference at all. Now this Question doth depend upon what they have set forth by their Plea; and that is, the Confirmation of *Magna Charta, cap. 9. Civitas London' habeat omnes libertates suas antiquas, & consuetudines suas.* And then the Act of 1 *E. 3.* upon which my Lord *Coke*, in his 4 *Inst. 253.* says, that the Franchise of this City shall not for any Cause be seized into the King's Hands. And then that of 7 *R. 2.* which says, that the City shall enjoy its whole Liberties, *licet non usi vel abusi.* This is their Foundation, upon which they would distinguish this City from all other Corporations. Now as to these things, I give these Answers:

First for *Magna Charta*, That plainly is no more a Confirmation to them, than 'tis to other Cities and Corporations. For not only the City of *London* is named to have its ancient Liberties and Customs preserved, but 'tis likewise *omnes alie Civitat' &c.* and all Cities, Burroughs, and Towns, and the Barons of Cinque-Ports, and all other Ports, should have all their Liberties and free Customs. So my Lord *Coke* agrees it in his Comment. And in what he cites out of the *Mirror of Justice*, and other ancient Authors of our Law, they should enjoy their Franchises which they had Right to by lawful Title of the Gift and Confirmation of the King, and which they had not forfeited by any Abuse. So that the Act which confirmed them, did not purge former Forfeitures, much less did it license other Abuses.

Then for their Acts of 1 *E. 3.* and 7 *R. 2.* I shall humbly offer this, That as they are in truth no Acts of Parliament at all, so they will not concern this Question, whatsoever my Lord *Coke* says concerning them. But I shall give some instances before these Acts, to shew that they never had such an unquestionable Power as they now dream of, and then some Instances in after times, that there either were no such Acts, or no such Sense at least is to be put upon them, as they have strained to make.

First it appears 15 *E. 1.* that the Franchise of the City of *London* was seized into the King's Hand, and *Johannes de Britton* was made *Custos Civitatis London'*, who was no Freeman; and this implies, that the Franchise was seized into the King's Hands, for they had a Power to choose *de seipsis*, by Charter from King *John*, a Citizen to be Mayor or chief Governour; but here was another Governour appointed them.

Then *Rot' Pat' 26 E. 1. Rex pro bono servicio civit' London' reddit eis civit' suam London' habend' dit' civibus ad volunt' Regis. Teste Rege.* So that both the City, and all its Franchises, were seized at that time; for he restored the very City of *London* to the Citizens *habend'* during his Will and Pleasure. Thus, my Lord, it stood

in the time of *E. 1.* Then in the time of *E. 2.* seized again; 14 *E. 2. membr. 21.* of the Pat' Rolls, in 21. *Rex dimisit civibus London' officium Major' civitatis London'.* 15 *E. 2. Rex dedit licentiam eligendi Major' London'.* And in the second part of Pat' Rolls 15 *E. 2. m. 5.* the King recites, That whereas in the Fourteenth Year of his Reign he had replevied to them the Office of Mayor, *usque quindenam Sancti Martini,* and also recites, which Office was seized into the King's Hands by the Justices of Eyre in the Tower of London, and he was willing to continue it longer to them, *ex gratia speciali* he did grant them the said Office, *quandiu, &c.*

Then the second part of Pat' Rolls in 20 *E. 2.* it is recited, That the King had seized the Office of the Mayoralty, and had replevied it from time to time; and that one *Hamond de Chigwell* was made Mayor, the King had accepted of him for Mayor, *Et Rex volens eis gratiam uberiorem facere,* grants him the Office of Mayor.

Now, my Lord, these Seizures show plainly, that the Franchises of the City were forfeitable; for either they were seized upon Matter of Record found for a Forfeiture, or else upon some Matter which was to be a Ground of a Forfeiture. So then they were absolutely gone, and I do not find that these were ever taken out of the King's Hands by Process of Law, but were restored by Grace and Favour; for till the 20 *E. 2.* it appears, that they so long continued in the King's Hands, and he absolutely disposed of them.

Here is now a Favour to them, and a plenary Restitution. Thus it stood in the Reigns of *E. 1.* and *E. 2.*

Now the next thing will be for their Act of 1 *E. 3.* which they back with my Lord *Coke's* Observation upon it, that it was *Auctoritate Parliamenti.* Now truly, my Lord, there is no such Act of Parliament that is any where extant. For it is not in Print, neither are there any Parliament Rolls of *E. 3's* time till 4 *E. 3.* And he that cites it, my Lord *Coke* himself, cites no Roll at all for it; so that where we shall find this Act of Parliament, truly I do not know. But this Act at best amounts to no more, than that for any personal Trespas of Officers the Liberties of the City should not be seized; but that signifies nothing, for that is not our Case. There are Acts of the Corporations, not of particular Officers; though I cannot but observe how the Law was taken to be at that time, before this their pretended Act, even for the Offence of private Officers; and that appears to be the Law too in the Case of 9 *E. 1.* which I cited before, which was only the Offence of the Mayor of *Sandwich*, who refused to answer for a Trespas, and a Rescue was committed, and the whole Liberty seized.

Now this Act of 1 *E. 3.* be it what it will, though they would take it in that Sense, that no Forfeiture should be incurred for the Trespas of an Officer, yet I find quite the contrary thereunto, and that it hath not prevailed even in that Sense. For 5 *E. 3. rot. claus. 14.* there the King did discharge one from the Office of Mayor, and commands the Aldermen and Commonalty to choose another. Now this, my Lord, I take to be not so much a punishing of the Officer, as a breaking in upon the Franchise it

self. But I shall shew more fully in the Reign of *R. 2.* that this was done.

Yet I will first take notice of the Statute of *R. 2.* which is the next thing that they rely upon; and this, with Submission, is no Act of Parliament neither; for though my Lord *Coke*, in his 4th Inst. 205. says, this is the Statute mentioned in our Books, which supports the Customs in London to devise in *Mortmain*, and other Customs against Acts of Parliament, and cites Authorities in the Margin; yet, my Lord, I have looked, and can find none of them to speak to the purpose for which they are cited, but the Book of 7 *H. 6. fol. 1.* where the Custom of London to devise in *Mortmain* is in question; and there it was ruled a good Custom, because of the Statute that confirms it after the Statute of *Mortmain*, but says that Book, *Quere the Statute*; so that they were not well apprized of the Statute in those Days, though this were the Foundation of all the Resolutions of that kind.

It appears by the Roll, that it is no Act of Parliament in the Nature of it, for it is 7 *R. 2. No. 37.* 'tis a Prayer of the Commons, That there might be a Patent granted to the City, confirming their Liberties, *licet non usi vel abusi fuerint.* And the Answer was, *Le Roy le veult*; but this is no Act of Parliament, it is no more than a Confirmation of the Letters Patents, which had been *primo R. 2.* Besides further, there never was any Patent granted in pursuance of this Act: And yet 'tis plain, that if it had been so, it would only have extended to Forfeitures that were past, but could never amount to a Dispensation or License for the future. And, my Lord, this appears by these Authorities and Records that I shall now cite. The first part of *Pat' Rolls* 16 *R. 2. membr. 36, 37.* whereby it fully appears, That notwithstanding these pretended Statutes, there was no such Privilege in the City, but that for the Offences of their Officers, or themselves, the Franchise should be seized.

But, my Lord, I must a little observe, that truly the City have attempted to raise themselves above the Fear of any Judgment in any of the King's Courts; for in *primo R. 2. Parl. Roll 126.* there they petition for a Confirmation of their Charter, with a Clause of *licet non usi vel abusi,* which was that they then would have to be done in Parliament for them. But they do likewise desire in their Petition, that notwithstanding any Statute, Privilege, Charters, Judgment made, or to be made to the contrary, their Liberties might be confirmed; of this, 'tis said, The King will advise. There is in 1 *R. 2. Parliament Rolls 121.* as pleasant a Petition as the other; they there do desire, that the Interpretation of their Charter may be left to themselves; and where it is doubting, such Meaning as they should put upon it should be allowable. But to that the King's Answer was, That he would make the Interpretation of his own Charters, according as his Counsel should advise. So that I observe, they would feign have been absolute, but they could never do it; it hath always been denied them. So that from what was done at this time, and after 7 *R. 2.* it does appear plainly, that there was no Difference between the City of London and any other Corporation, only this is really the greatest. But as all Greatness is the King's

King's Favour; so when Men forget their Duty, in abusing the King's Favour, this great Court is the place to put them in mind of it. I come then to the Third Question:

III. *Whether the Act of the Mayor, Aldermen, and Commonalty, in Common Council assembled, be an Act of the Corporation, so as to make a Forfeiture of the whole?* And with Submission, my Lord, that will be pretty clear too upon these Reasons:

1. First of all, the whole Corporation is fully represented by them, notwithstanding the Disparity of Number set forth in their Rejoynder.

2. Again, All By-laws and Ordinances made for the good Government and Order of the City, are certainly the Acts of the Corporation; but the sole Power of making those Laws is in the Mayor, Aldermen, and Common Council; and therefore sure the whole Power of the Corporation is in the Common Council.

3. They have the sole Power of the Corporation-Seal. They can bind all the whole Corporation by any Alienation to, or Charge upon their Inheritance; and by Consequence they may surrender all or any of their Franchises, and then, as I said, they may forfeit them.

4. They have pleaded that there hath been time out of mind a Common Council, consisting of the Mayor, Aldermen, and Two hundred and fifty Citizens, who are called the Commons of the City. So that it shall be intended now, that as they have prescribed for it as incident to their Corporation, it was part of their Original Constitution to be thus represented by them, and ruled and governed by their Laws: But there is another reason for it, and that is, that it is an inseparable incident to a Corporation, implied in Law without grant, that they have a power to make By-Laws to bind the Corporation, without which there were no Government in a Corporation; and therefore a misuser of that power must be a Forfeiture of their Corporation, because 'tis a breach of their Original Trust: 22 *Affis. pl.* 34. there is this Rule given, and a true one it is, Where there are many Franchises granted, which do not depend one upon another, there the misuser of one is a Forfeiture of that one which was misused; but where there are several parts of a Franchise depending all upon the said Franchise, if any part be misused, the entire Franchise shall be forfeited. As for instance, if a Man have a Fair, a Court of Pypowers is incident to it, the misuser of that Court of Pypowers is a Forfeiture of the whole Fair it self; for where any part is abused that is incident to an entire Franchise, that abuse forfeits the whole.

And this is the Opinion of *Palmer's Reports* in the Case of the Corporation of *Maidenhead*, where 'tis doubted whether the Market was forfeited for taking too much Toll, because the Toll was not inseparably incident to the Market, and so was not dependent upon the entire Franchise, and there the rule is taken, as I have said before, that the misuser of a part of an entire Franchise, or a power that is incident to it, is a Forfeiture of the Franchise.

Then, my Lord, if they cannot forfeit here, the whole power of the Trust of the Corporation is reposed in them, and may be misused by

them, to the Oppression of the King's Subjects, and there is no remedy, if they shall not be punished at all. For it is much harder to say, that several Acts of all the particular Persons should forfeit the Corporation, than that their joynt Act should do it. But this, my Lord, is an Act contrary to the trust upon creating the Corporation, and may be a misuser to the prejudice and oppression of all people; and if this should not forfeit the Corporation, there is no remedy at all, but the power remains of oppressing as it did before.

Now, my Lord, I think, with submission, I have made it pretty plain; and as they are not distinguished from other Corporations in point of Privilege as to Forfeitures, so this is their Act, and shall bind them, being done by their Representatives.

IV. Then the fourth Point will be, *Whether these Offences set forth in the Replication are Forfeitures?*

1. The first is the making of that Law in the Common Council for the levying of Sums of Money upon the King's Subjects, and the actual levying of those Sums accordingly; and this they justify under their prescription to have reasonable Tolls, as they set forth in their Pleadings, from all Persons that come to their Markets to sell Provision there, and power to reduce their Tolls to a certainty by an Act of Common Council. This is their Justification; so that, my Lord, the first thing to be considered is,

(1.) What right they have to these Tolls or Sums of Money assessed by the By-law; and then

(2.) Whether if they have no right, their taking upon them to make a Law be a Forfeiture?

(1.) For their Right, that depends upon a prescription to have reasonable Toll, as they set it forth, and this, as they have pleaded it, appears to be no Right at all; for a prescription to have Toll and Tollage, not shewing how much in certain, is void; for reasonable Toll is not incident to a Market, but the Party has it by the King's Grant, and so 'twas adjudged in this Court, *Mich.* 39 & 40. *Eliz.* cited by my Lord *Coke* in his *Second Inst.* 220. So if the King grant a Toll, if he do not in his Grant ascertain how much shall be taken for Toll, that Grant is void, and so is the Prescription too, as you may see in the Corporation of *Maidenhead* in *Palmer's Reports*, fol. 79. grounded upon 9 *H. 6.* 45. & 11 *H. 6.* 19. and so he cites the Opinion of *Popbam* in the Case of *Heedy* and *Weeldbous*, for no Subject can prescribe to have Toll, but by the Grant of the King.

But, my Lord, this is not properly a Toll neither, nor in the nature of a Toll; for that is always paid by the Buyer, and never paid before a Sale; but here all that comes to the Market, whether they buy or not buy, sell or not sell, they must pay by this Law. My Lord, I confess there may be a custom for Persons to pay for Standings in a Fair or Market, as that Case was 9 *H. 6.* 45. but yet that must be prescribed for in a certain Sum, which is not done here. And this customary Payment is in the same nature as a Toll traverse, or a Toll through, which cannot be in an uncertain Sum; for they are all by Prescription, and a Grant

Grant of them now uncertain would not be good.

But, my Lord, however, Judgment upon these Pleadings must be given against the City; for either the Prescription as they have set it forth, is good; or it is not good; if it be good, then the Traverse that is taken, is well taken, *to wit*, that they have no such Custom, and they ought to have taken issue upon that which they have not done; for, my Lord, they have taken Issue thus, That, time out of mind, they have had reasonable Toll of all Persons coming to the Market to sell their Provision, without tying of it to the reasonable Toll assessed and reduced to certainty by the Law; and this is naught: For tho' they had a reasonable Toll in general, taking the Prescription to be good, yet if either that reasonable Toll in the use of it were not taken in that manner, or to that Value that they assess by their By-law, then have they done wrong; and therefore our Traverse is proper to their reasonable Toll, that they had not, time out of mind, such a Toll as they set forth; for it must be such a reasonable Toll as may answer to that which is assessed in the By-law; and that they have not put in issue. For the King, when once he hath granted a Market, cannot after grant Toll to that Market, because it is a free Market, and the People have right to come to it as a free Market; neither can they, when once by Custom they have exercised their Power of assessing reasonable Toll, alter that at their pleasure; for it being once set, all People have right to come upon such Terms: And if they increase the Toll, under pretence to reduce it to certainty, it will be void; for they may lower their Price if they will, but they can never come to increase the Penalty. If therefore they have done ill in not taking Issue upon the Traverse, which does take in the full substance of their Rejoinder; if it be good, then Judgment must be given against them upon that reason; so then, my Lord, the Question will be,

(2.) *Whether the making of a Law to raise Money at large upon the Subject be a Forfeiture of the Charter?* And truly, my Lord, that it is. For

First, It is the usurping of a Power that they neither can have, nor have by Law.

Secondly, It is a Breach of the Trust annexed to the Corporation; for 'tis a misuser of the Franchise, to the oppression of the King's Subjects; and therefore the Charter must be forfeited, and not the other Franchise; not the Franchise of a Toll, for they have none; not the Franchise of the Market, for that would be nothing. If the Market be forfeited, it must either be extinguished, or kept; if it be extinguished, 'tis a Punishment to others that did not offend; and if it be kept, tho' it be forfeited, 'tis no Punishment to them that do offend: And 'tis a Question whether a Market may be forfeited for taking unreasonable Toll; and that appears in the Case of *Maidenhead*. And, as my Lord *Coke* says upon the Statute about taking Outrageous Toll, the Franchise should be seized only till it be redeemed by them.

But, my Lord, however, without going far into that matter, this Offence lies not only in taking the Money, but in taking upon them, and usurping a Power to make Laws to raise Money. They have taken upon them a Legislative Power to oppress their fellow Subjects, that is their Offence, and that is a misuser of their Franchise.

My Lord, in the Case of Ship-money it was not the *Quantum* of Money that was raised, that was complained or quarrelled at, but it was the manner of levying of it without an Act of Parliament. The Logick and Consequence of that was it, which was so much debated and stood upon. So here, the Abuse and the Offence is the making the Law, and the consequence of that; for by the same reason that they have a Prescription to lay so much, they may have a Prescription to lay ten times as much. So that upon what I offer upon this point, I conceive it ought to amount to a Forfeiture of their Charter, and the Loss of their Corporation.

Then the next thing will be that which is the last matter, that is the Petition, and that is of a strange Nature; where the Offence is not only in presenting, but in printing and dispersing of it; it charges the King with interrupting the publick Justice of the Nation, and the making the necessary Provisions for the Security of his Protestant Subjects; for, my Lord, to say, that the Prorogation of the Parliament, which is the King's Act, who solely has alone, and none but he, the undoubted Prerogative of calling, proroguing, and dissolving Parliaments; to say that Act of His was an Interruption of Justice, is all one as to say, the King did interrupt: And 'tis done by them as a Corporation; 'tis the Act of the City in their Common Council in the Name of the Corporation; and, as we have pleaded it, the Mayor, Citizens, and Commonalty, in Common Council did do it, which sure is the Corporation, as they would have it. And that I rely upon for the Reasons I offered before upon that point.

Then the matter of this Petition is the taking upon them to censure the King and his Government by this Petition. The printing and dispersing it is now publicly scandalizing and libelling the King; for 'tis in the nature of an Appeal to the people: 'Tis unlawful to print any man's private Case, while it is depending in any Court of Judicature, before it comes to Judgment, because 'tis an Appeal to the people. And that was my Lord Chief Justice *Hales's* Opinion in Colonel *King's* Case. And the ill consequences of such proceedings are so many, and the danger so evident in these licentious Days, that I do not know indeed whither it may tend.

The Fact is confessed by them in their Rejoinder; but they say they did it to alleviate mens fears, and quiet their minds *abfq; hoc*, that they did it *aliter vel alio modo*. Surely, my Lord, this is no sort of excuse in the world, nor is it capable of any. They have owned the thing, but they have excused it in the manner of doing thereof. And I may venture to say the Traverse is impertinent: Suppose a man be indicted for publishing a Libel, and he owns the Fact, but doth traverse *abfq; hoc*, that he did it *malitiose*, or with an intent to defame, that surely would be an idle thing; for those are constructions that the Law puts upon it, and are not matters traversable, or to be put in issue. But if the Fact be done, the Law says, 'tis maliciously done, and with such an intention. Therefore a confession of the Fact is a confession of all the consequences that the Law puts upon the Fact.

My Lord, this can amount to no less than the Forfeiture of their Charter, not only for the greatness of the Offence, but because otherwise the Law would be unequal; for if this were the

Case of a private common Person, he must be fined and imprisoned during the King's pleasure, as was the Case of *Harrison* in I. Cr. 503. for words spoken of Justice *Hutton*. Now, my Lord, a Corporation is not capable of suffering this Imprisonment; and therefore 'tis a much greater Offence in them, as the Body is greater than any particular Member: And then, that which is a greater Offence would have a less Punishment, if the Charter it self were not forfeited, than it would if a particular Person were punished. And give me leave to apply here the Reason of the Earl of *Gloucester's* Case, that I cited before, *Quia Dominus Libertatis puniretur in eo quo delinquit*. So they shall lose their Charter for the Abuse of that Power that was intrusted with them by their Charter. Therefore upon the whole matter, I do humbly pray your Judgment for the King, that they may be outed of their Franchise of being a Corporation.

May it please your Lordship,

Sir George I Am of Counsel in this Case for
Treby. the Mayor, Commonalty, and Citizens of *London*.

The Record hath been truly opened by Mr. Solicitor in all particulars, except an omission of one or two, which I shall mention.

The Information sets forth and charges, That the Mayor, Commonalty, and Citizens of *London*, had, by the space of a Month before the Information, used, or claimed to use, without any Warrant or Royal Grant, the Liberties therein set forth; that is to say, to be of themselves a Body Politick and Corporate with such a Name, and by that Name to plead and be impleaded, to answer and be answered; and likewise to make Sheriffs and Justices of the Peace: But as to these there are only Imparances, and I suppose Continuances. But as to the first Article, the Defendants plead and prescribe, That they are a Body Politick time out of mind; and then they set forth indeed several Acts of Parliament, and Charters of Confirmation. To this Mr. Attorney General doth reply two things:

First, He takes Issue upon the Prescription, That they are not time out of mind a Body Politick with such a Name; and then he assigns a Forfeiture, which Mr. Solicitor indeed does call two Causes; but they rather seem to be but one joyn't Cause; but yet take them to be two.

The first is, That the City did assume upon themselves a Power to meet and make Laws for the Government of the City, and thereupon did make the Law which is now in question; and thereby did levy, and order to be levied, for one Horse Load of Provision so much, &c. and that this should be paid to the use of the City, and for Default of paying, the Persons denying to pay this Rate, should be removed from their Standings in the Market.

The second Branch is, *The Petition*, and therein are those Words which Mr. Solicitor hath repeated about the Prorogation of the Parliament.

And to all this the Defendants do rejoyn, That the City of *London* has, time out of mind, been seized of these Markets; and they say, That the City of *London* is the Metropolis of the Kingdom, and consists of above Fifty thousand Citizens and Inhabitants; and that (at their proper Costs and Charges) they are to provide,

and always have provided a Market-place to sell Provision in, and also Officers for the preservation of good Order, and Regulation of that great concourse of People that comes thither, and that they have always amended and cleansed the Markets; and for these Charges of the Market-places, and Officers, and cleansing of the Markets, they have always received, and ought to receive reasonable Tolls. They say that time out of mind there has been a Common Council in the City, and that for the like time there has been a Custom, that they should make By-Laws for the better Regulation of the Markets, for the ordering where such and such Markets should be held, and for the assessing and reducing to certainty the Tolls and Rates that are to be paid by Persons coming to the Markets, so as such Laws be profitable to the King and his People, and agreeable to the Laws of the Kingdom; and then again they set forth the several Confirmations of their Customs and Privileges by Acts of Parliaments and Charters.

And then, as to the second Branch of their Forfeitures, they set forth, that there was such a Plot, and such Proceedings in the Courts of Justice against the Conspirators, and that there were several Judgments and Executions upon it; and they set forth several of the King's gracious Speeches to his People in Parliament; amongst other things, that he did there, in His Speech therein mentioned, recommend to the Lords and Commons in Parliament assembled, to pursue the further Examination of the Plot; adding, that he thought not Himself nor them safe, till that Matter was gone through with, and that the Lords in the *Tower* might be brought to their speedy Trial, that Justice might be done. They set forth likewise an Address of both Houses for a Fast, wherein they desire that the King would issue forth his Proclamation, which Proclamation is accordingly issued; and in that it is expressed (I cannot repeat the words, but to this purpose) *That the Dangers impending could not be prevented, but by the Blessing of God upon the Councils of His Majesty and the Parliament.* Then they set forth, that the Parliament was preparing several Bills for the preservation of His Majesty's Person and the Protestant Religion, and the Peace of the Kingdom; and those Bills could not be enacted elsewhere, and that they were then depending: And they set forth further, that the Parliament was prorogued before those Bills were enacted: And they set forth also, that the Lords impeached could not be tried, but in Parliament; and, that by the Law of the Land it is lawful for the King's Subjects in their Distresses, and for redress of Grievances, humbly to petition the King for Remedy in that behalf; and that for satisfaction of the Citizens, who had made their Applications to the Common Council, and for the alleviating of their Fears; and out of their Zeal for the preservation of the King's Person, and the Protestant Religion, they did give their Votes to this Petition, as is charged; and they give their Reasons for it, that is, it was ordered to be printed, to the intent that false Rumors (concerning the Citizens petitioning of the King) might be prevented, and the Enemies of our Lord the King from proceeding in their Conspiracy be deterred, and the Fears and Perturbations in the minds of the King's Subjects might be allayed, and that the Citizens and Inhabitants of the said City

City might better know what was done upon their application to the Common Council.

My Lord, I have taken some Notes of what Mr. Solicitor has said; but I beg your Lordships leave, that I may first deliver what I have prepared upon the Argument; and afterwards I will talk upon my Notes, and give particular Answers to the particular things he has insisted upon, for so much of them as I shall not answer in my Discourse, which I must beg your Lordship's patience in; for I fear I shall be pretty long.

I shall go on upon the same Points Mr. Solicitor has done, and endeavour to meet him, and give an Answer in all particulars, and shall add a Point or two which he has not mentioned; as particularly, that this Information (as it is here laid upon this *Quo Warranto*) is not brought against right Persons; for it is brought against the Mayor, Commonalty, and Citizens of the City of *Lonaon*. Whereas it ought to be brought against particular Persons for usurping such a Corporation, if it can be brought at all.

The first thing that I shall go upon, is, *That a Corporation cannot be forfeited*; for now we must begin as it were from the Replication; for there is disclosed all the Matter, upon which the stress of this Point lies.

And that a Corporation cannot be forfeited, I think will appear by opening the notion and nature of a Corporation, which you may find in my Lord *Coke's 1st Inst. fol. 202, 250.* he says, It is a Body to take in Succession, framed as to that Capacity by the policy of Man, and called a Corporation, because the Persons are made into a Body, and so are of Capacity to take or grant, &c. And he says, *That Persons capable of purchasing are of two sorts; Persons Natural created of God, such as private Men, as J. S. and J. N. and Persons created by the Policy of Man, as Persons incorporated into Bodies Politick.* So then if this be the true Notion of a Corporation, then all the question is, Whether there shall remain such a Person in the World as this Corporation of the Mayor, Commonalty, and Citizens of *London*?

And that this is a meer Personality and Capacity will further appear even by this *Quo Warranto* itself, which says, *That we did claim and usurp to be a Corporation under such a Name, and thereby to plead and be impleaded, to answer and to be answered*: So that there is no more now can be considered in this Record, but whether we have or can have the Capacity of being Plaintiff and Defendant.

My Lord, in *Brooks Abridg. tit. Corporation* (I cite not what is said there as an Authority, but only as an Opinion) he joyns the Titles Corporations and Capacities together: I say, it is only the Judgment and Notion of the man, who your Lordship knows never uses to joyn any words as Titles, but what are synonymous; and there he joyns Corporations and Capacities, to shew the nature of a Corporation is a Capacity. And suitable to this is, what Justice *Windbam* says in *Dr. Patrick's Case*; *A Corporation is a meer Capacity, a civil Capacity*, says he, *I do call it an Ens ratiouis*; whether he did affect that Word because it was in the Case of a Man in the University, I cannot tell; but the meaning was, that this was the Notion of a Corporation, that it

was an invisible Person and Capacity only.

Now, my Lord, I do not love to litigate about Words: I must confess that Mr. Solicitor does not speak without some Authority, when he calls a Corporation a Franchise; but I say it is not properly a Franchise to have a Power to be impleaded and to plead; for as to that they are Consequents, which belong to the Person rather than a Liberty or Franchise that is superadded to it. Therefore in *Hobart 210. Norris and Stap's Case*, the Case of the Wardens and Fellowship of the Weavers of *Newbury*; I think it unnecessary to cite the whole Case, but there my Lord *Hobart* says, *Tho' Licence or Power to make Laws is given to a Corporation by a special Clause*, yet it is needless, for I hold it to be included by Law in the very Act of incorporating; and so is also the Power to sue and be sued: Such Body is a Person that must answer the Law as a Defendant, and sue as a Plaintiff.

But I do agree, I say, that there is one Case, and yet but one in all the World, wherein a Corporation is called a Franchise; and it is in *Coke's Entries*, tit. *Quo Warranto, Placito primo*; a *Quo Warranto* is brought against several Persons, to shew by what Warrant they claim divers Liberties, Privileges, and Franchises, as to be of themselves a Body Politick and Corporate, by the Name of the Burgesies of *Helmestey* in the County of *York*. So that under that general word I confess it may be called a Franchise; and the rather, because Mr. *Noy* (a Man of great Learning) in his great Argument of *Fulcher* and *Haywood's Case* in Mr. Justice *Jones Reports*, says it is a Franchise, for it was called so in such a Plea.

But now, my Lord, that it is not in its own nature forfeitable, is made plain by all those qualifications that have been attributed to it, and Expressions in our Law Books about it: As, that a Mayor, and Commonalty, or Body Corporate, can never die, *1st Inst. fol. 9. b. 3 Coke 60. a. 2 Bulstr. 233. 21 Edw. 4. fol. 13.* a Mayor and all the Officers; but the Commonalty have Succession *in perpetuum*, and can never be said to die: And this Notion, my Lord, has gone further than *England*: I beg your Lordship's pardon if I take the liberty to cite a very Learned Author *Grotius*, in his Book *De jure Belli & Pacis, lib. 2. cap. 9.* he says, *Cities are Immortal*; and a City does not therefore cease to be a City, tho' all the Citizens of it should die.

But the dissolving of a Corporation by a Judgment in Law, as is here fought, I believe is a thing that never came within the compass of any Man's Imagination till now, no, not so much as in the putting of a Case. For in all my search (and upon this occasion I have bestowed a great deal of time in searching) I cannot find that it ever so much as entered into the conception of any Man before; and I am the more confirmed in it, because so learned a Gentleman as Mr. Solicitor, has not cited any one such Case, wherein it has been (I do not say adjudged, but) even so much as questioned or attempted; and therefore I may very boldly call this a Case *primæ impressioms*.

1 Inst. fol. 13. b. there it is said, If Lands holden of *J. S.* be given to an Abbot and his Successors; in this case, if the Abbot and all the Convent die, so that the Body Politick is dissolved, the Donor shall have again his Land, and not the Lord, by Escheat. So that he does allow

a Body Politick may be dissolved indeed; but it is not properly a dissolving, nor a dying of that Body, but a taking away of the Subjects in which it did subsist, or to which it did adhere. And therefore unless it be by such an Accident, as all of them dying, or by Violence, as in the Case of the Monks of *Bangor*, I never heard before that a Corporation was dissolved; to be sure not by a Judgment in Law. My Lord *Rolls*, in his *Abridgment*, Part 1. fol. 514. tit. *Corporation*, at the Letter *I*, makes it a Head of one of his Titles, *How a Corporation can be dissolved*; and therefore was led very properly to enquire into all things that might dissolve a Corporation; for that Book is in the nature of a Common Place Book. Now under that Head he cites not only the common Case, if all the Members die, then 'tis a Dissolution; but he says further, and he cites an Authority for it, If a Corporation consists of so many *Confratres*, and so many Sisters, and all the Sisters die, this Corporation is dissolved; for both the Brothers and Sisters are integral Parts of the Corporation, and it cannot subsist by halves. But he does not go further, he does not say, If they shall levy too much Money upon the Market, nay, he does not say, if they should commit Treason (if it were possible they could do so) which had been more proper to have instanced in, he being naturally led to it under that Title; for that is a thing that happens a thousand times oftner than the Death of all the Members. And, under Favour, if the Law be so as they would have it, every Penalty levied upon a By-Law does endanger the Corporation every whit as much as this of the Rates upon the Markets.

Littleton, my Lord, in his *Sett*. 108. (it is a general Rule, but commonly taken notice of, and may be in this Case) says there, upon the Statute of *Merton*, An Action will not lie against a Guardian for the Disparagement of his Ward, because it was never heard of from the time of the making of that Statute, that such an Action was brought; and yet he adds, that the Words of the Statute might very properly ground such an Action. Now, my Lord, that was a matter of Two hundred Years before *Littleton* wrote, that that Statute was made; and 'tis possible such an Action might have been brought, but not remembered, and that is an Action brought by an Inferior against a Superior, the Ward against his Guardian; but here this Suit, if it can be brought, is brought by the King, who is supreme, and therefore there can be no reason to think, but he would have brought many of these Suits to have dissolved Corporations, if by Law it might have been done.

Besides, my Lord, Acts of Parliament can never be antiquated, because a Statute is a Law in Writing; but the Common Law is not a Law unless it be repeated and practised. And so is *Davis's* Opinion in the Preface to his Book, and in the Body of his Reports too: He says, That when People have tried and used such an Act, and found it useful and profitable to the Publick, and fit to be practised, that Act of Repeating begets a Custom, and so becomes in its Name and Nature the Common Law of the Land. But now, my Lord, if I can challenge all the Times, and all the Precedents that ever were in this Kingdom, to shew me where ever there was a Forfeiture of a Corporation, or a Judgment given

against a Corporation to forfeit it, no, nor ever thought of till this last Year, I think I may assert 'tis not Law: And if it extend to this Corporation of *London*, it must have extended to all Corporations formerly, and it must do so to all still.

In the Case of Ecclesiastical Leases, in the fifth Report, and in several other places, there is a large Discourse of what Bishops and other Spiritual Corporations might do at Common Law; 'tis said, They might grant for Years, for Life, in Tail, or in Fee. But what might they grant? Their Lands and Tenements, their Possessions and Revenues; but never one word, that they could grant away themselves, or Politick Capacity; still that which was their very Being, was not in their own Power to grant away; and, if it were not to grant, much less were it in their own power to forfeit: For if it should be so, there is never an Hospital in *England*, but if it have taken too much Toll, were to be destroyed; and never a Bishoprick, Deanry, and Chapter (nay, almost particular Parsonages, for they are Spiritual Corporations too, and all the Corporations of *England* are under the same Rule of Law) if they have transgressed in any of the kinds assigned here for a Forfeiture, but were to lose their very Being.

That these were in the Power of these Spiritual Corporations at the Common Law, no man doubts; and if any man does tell me, that the restraining Statutes do extend to the Corporation, truly, I must deny it; for it is Lands, Tenements, and such things, that are mentioned, and there is Provision made only against Grants, and not against Forfeitures. A Forfeiture, Mr. Solicitor says, must be a great Breach of Trust; and so it must indeed! and how then should they answer for it? If a Bishop, or a Dean and Chapter, have Lands in Fee upon Condition, and they break the Condition, their Lands are gone: But if that Breach of Condition should amount to a Forfeiture of their being a Corporation, that were very strange; this would dissolve and destroy all the Colleges in the Universities, and all the Charity in the Kingdom; for every Breach of such Condition would be a Breach of Trust.

My Lord, there was a very proper time when this might have been thought of, if it could have been maintained for Law, and that was in the time of *H. 8.* He sent out *Dr. London* and others with a Commission of Inquiry, to examine into all the Misdemeanors of the Monasteries, Convents, and Colleges. To what Purpose was all this done? Could he not have brought *Quo Warranto's* against them? He needed not have hunted much for Misdemeanors and Offences; if they had but raised Five Pounds, nay, for ought I know, if they had but raised Five Pence upon a Market, or the like, they had all been dissolved; and 'twas so much the worse in this Case then, for this Reason: In those Regular, Religious Houses and Corporations, the Body of them was dead, and the Abbot or Head was only to appear for them, and plead and defend for them. Therefore 'tis said in the 1 *Inst.* 103. a. that in a *Quo Warranto* against an Abbot, or Bishop, or a Prior, for Franchises and Liberties, if the Abbot or Prior disclaim alone, this shall bind their Successors; and if it were possible that there might have been a Forfeiture, yet, without so much as troubling himself to assign that Forfeiture, he

might have gone that way by *Quo Warranto* to get a Disclaimer.

And 'tis very well known, there were Men put in those Houses to be Heads of them, on purpose to try if they could surrender them: And that they needed not to have done, nor have asked the Consent of the Members to have surrendered; for they needed only to have brought a *Quo Warranto*; for after the Renunciation of the Pope's Power and Supremacy, King *H. 8.* did grant his *Conge d'eslire* to choose the Heads of those Corporations; and when they were once there, and a *Quo Warranto* issued, the Abbot or Prior might say, This Corporation is but a Liberty or a Franchise, and I am the King's Creature, I will disclaim the Liberties, and there is an end of the Franchise: But this was not thought of in *diebus illis*.

I think, my Lord, that in case of a Town the Law is clear; though I shall not at present much contend with Mr. Solicitor upon that Point, that *London* stands upon greater and better Circumstances than other Corporations and Towns. It is all one as to the main Points, whether it do, or not; tho' I shall say enough as to the particular Reason, to answer what he says to the contrary, by and by. But yet this I will say, A Corporation in a Town is more protected in Law, than others are: For, says my Lord *Coke*, if a Town or Borough does decay, yet it shall remain a Town or Borough; as is plain in the Instance of the Burgeffes of *Old Sarum*, and the like. So that it seems, that though the Death of the Abbot and his Convent does destroy that Corporation, yet the Dilapidations and Decays of a Town does not destroy it, but it remains a Town still; nor is the Liberty of sending Burgeffes to Parliament destroyed, or forfeited.

I confess, my Lord, I do not see but that at this rate a *Quo Warranto* may be brought against a particular Man, to know by what Authority he claims to have the Liberty of a Subject, to sue and be sued, to plead and be impleaded: 'Tis a Capacity that's born with him, and belongs to him as he is born in *England*, or as he is by Act of Parliament naturalized, and made a Subject; especially in the case of Denization it comes home to the Point. Why should not a *Quo Warranto* be brought against a Man, to know by what Warrant he claims to be a Denizen, and in that respect to plead and be impleaded, to sue and be sued? These are relative Capacities, that stick and adhere to the Person; and if you once constitute the Person, you shall never say he shall not have the Incidents to such a Person.

This Case indeed, my Lord, that I put last, is so gross a thing, that it was never drawn in question, though some others have, as Dignities, Lordships, and the like; and yet no *Quo Warranto* was ever brought, or can lie in these Cases. And that is the Opinion upon that great and solemn Argument of the Case of the Earl of *Oxford*, in Mr. Justice *Jones's* Reports; where it was held, that an Earldom, or the like, is a personal Dignity, and such a one is in the nature of a publick Person, and by no means can part with or surrender that Capacity. And so your Lordship knows it was adjudged lately in the House of Lords in Parliament, upon the Petition of the Lord *Purbeck*: They all voted there, that Peerage could not be determined, nor surrendered; no, although there was a Fine levied, and all the

Instruments of Law that could be contrived to annul it; and I cannot see, but that if this Capacity of a Corporation be liable to a Forfeiture, all others must be so too.

There is one Capacity indeed, and a small one, that a Feme Covert has by the Custom of *London*, That she shall trade without her Husband, as sole Merchant, and be sued for, and shall sue: The Husband indeed is named, but only for Conformity; the Action is against her, and the Judgment against her severally, and the Debt must be levied of her Estate; can it be thought that a *Quo Warranto* lies for such a meer Capacity? No more than it can lie to know, by what Warrant such an one claims to be an Executor, or Administrator, or an Overseer of a Will; and yet there an Action is brought against them in such a Capacity, and as such they sue and are sued, though perhaps they would be glad to be rid of that Capacity too.

My Lord, 'tis true what my Lord *Coke* says in his 2 *Inst.* 664. there was a Custom to take Tithes of Marriage Goods within the Dominion of *Wales*, which is taken away by a Statute; and there he says, If a Custom, that was once reasonable and tolerable become grievous, and not answerable to the Reason whereon it was grounded, yet it cannot be taken away but by Act of Parliament; for an Inheritance once fixed cannot be taken away but by Parliament. If this be so of a little Custom in *Wales*, how much more is it so of this great Corporation of *London*, and, which is more yet, of all the Corporations in *England*?

My Lord, Mr. Solicitor was pleased to say, that a Corporation might be surrendered. I must confess, I should not willingly have meddled with that Point at this time; but since it has been mentioned, I will only endeavour to say so much as may answer him in what he intended it for, as a Ground for the better proving the point of Forfeitures. I believe Mr. Solicitor (because he cited no Authority for it) might rest very much upon the supposed Surrenders in the time of *H. 8.* the Surrenders that were made of the Monasteries then; and I do believe he does presume, as others have thought, that those were Surrenders of their Corporations: Truly, my Lord, I believe they were not; and to prove that they were not, I shall rely upon the Dean and Chapter of *Norwich's* Case, 3 *Coke* 73. which is also reported in 2 *Anderson* 120. and I shall at the same time mention another Case, and that is the Case cited before of *Fulcher* and *Haywood*, in *Jones* 166. and in *Palmer* 491. where the same Question comes to be debated, *Whether the Deanry and Chapter of Norwich was given up and destroyed by their Surrender?*

My Lord, in the Report of that Case in *Palmer*, I will first remember your Lordship of what is said by *Whitlock* in his Argument of that Case; it is *fol.* 501. of that Book; there *Whitlock* sitting in this very Court, says, That although the King can create and grant a Corporation, yet he cannot dissolve a Corporation; and a Dean and Chapter being a settled Corporation, by their own Act cannot dissolve themselves; being once a settled Corporation cannot be *felo de se*. But I say further, those Acts of Parliament made in *H. 8.'s* time (they are all in your Lordship's Memory) that of 27 *H. 8.* gave all the Monasteries under Two hundred Pounds a Year to the King; that of the 30 *H. 8. cap.* 13. recites, that several other

other Monasteries had been granted, surrendered, and forfeited to the King; and it says, that the King shall have them, &c. I do allow there are the words *surrendered* and *forfeited*, and I mention them on purpose to answer them; and this is the Answer I give them:

First, for the word *Surrender*. When the Monasteries were surrendered, that was only a Grant of the Lands, and nothing else; the word *Monastery* can carry nothing else in it. And so is *Wortley* and *Adams's Case in Ploverden's Com.* 194. where there is a great Discourse of the Surrenders of the Monasteries, and the Acts of Parliament about them, and what ensued upon them; but in all that Book it was not by any means admitted, that the Corporation, or any of that, was by these Surrenders dissolved. And, my Lord, as to the word *Surrender*, it is fully satisfied by the words *Lands and Tenements*.

Secondly, as to the word *Forfeited*, my Answer is this: The Corporation is not named in the Surrender, and therefore cannot be presumed to be intended to be surrendered; and then there are other things, as Leets, Liberties, and Franchises, which are named, and are capable of being forfeited, and so the word *Forfeited* may be applied to them, and very properly; for they are liable to a Forfeiture, but the word *Corporation* is not at all mentioned.

But for another understanding of the word *Forfeited*, I desire your Lordship would give me leave to cite a Case in the 2d Part of *Rolls's Reports*, fol. 101. (which is called the *Continuation* of his Reports) and it agreeth exactly with the History of those Times: There were some Abbots, as the Abbot of *Glastenbury*, the Abbot of *Redding*, and the Abbot of *Colchester*, that were stiff Men, and would not surrender; thereupon the King gets them indicted of Treason (the Story is well known how he handled those Men) and thereupon they did graft a kind of Opinion, that their Land was forfeited by this means; for a small Pretence would serve then to put people into an Act of Parliament of Attainder; and he tells you, that was the Reason why they put the word *Forfeited* into the Act of Parliament; and then dis-bottom themselves upon the Statute 26 *H. 8. cap. 13.* that Statute that gives to the King any Estate of Inheritance, whereof any one is seised that commits Treason: Though I do not by any means allow it to be Law, that those Clergymen by their own Acts could forfeit so much as the Lands of their Corporation; but it was taken for a Pretence, and so they put in the word *Forfeited*.

Besides, another thing is this, the same Statute says, *The King shall have and enjoy the Things there given him, in the same manner as they the Abbots, Priors, &c. should have enjoyed them.* Now if the King shall enjoy all as they did, and in the same manner, what then must he enjoy? It may well extend to Lands, to Leets, and to Markets, and particular Franchises; all those things the King may have: But shall the King have their very Corporate Capacity? Shall the King have and enjoy the Liberty of suing, and being sued, by the Name of the Abbot and Prior, or the like? That Office, sure, he cannot execute; it is inconsistent with Sense or Reason to say, that he shall have it, or can have it. And in these Statutes they did doubtless accumulate Words to make them look

the bigger; because they were to make a great Present to *H. 8.* by these means.

Then comes 32 *H. 8. cap. 24.* that relates to the Corporation of the Knights of *St. John* at *Jerusalem*; and it seems by the penning of that Statute, that this very Question had been taken notice of since the time of the making of the last Statute in 30; for there it is declared, That that Corporation of *St. John* at *Jerusalem* shall be dissolved, and that the King shall have their Lands. So that their taking notice, and providing directly to dissolve it, shews, that they had by that time considered, that neither the Surrender of their Lands, nor the vesting of them in the King, had done any thing to the Corporation; save only they had deserted their House, and fancied themselves dissolved, because they were turned out of their Possessions.

My Lord, in the great Case of *Haywood* and *Fulcher*, 'tis again and again said there, That the Surrender of the Dean and Chapter (where they surrendered all their Church, and all their Franchises and Hereditaments) was no Surrender of the Corporation, no, though the King did take it to be a Surrender, for he accepted it as a Surrender, and granted them a new Incorporation of the same Name, only adding, *Ex fundatione Regis Edwardi Sexti.* So that he did take it to be a good Surrender, but it was adjudged that it was not a good one; and so it is held in 3 *Coke* 73. And so says the Dean of *Wells's Case* in *Dyer* 273. the Surrender is, *Diaconatus Ecclesie Cathedralis de Wells*: One would think it impossible to have surrendered any thing by a stronger Word; but yet there they say, 'tis not good without an Act of Parliament.

And whereas it hath been sometimes said, as it is there, they were dissolved, and they have been dissolved by the Surrenders, and the like; there is a very good Answer given to all that Discourse in *Palmer* 495. where 'tis said, When they speak of a Dissolution by Surrender, 'tis a Relation of Fact only, and not of Law; that is, they were dissolved in Fact, so as that they did desert their House, and did demean themselves as if they were incorporated, but they were not so in Law; for they fancied a Corporation could not be without Lands, and so, when their Lands and Church were given up, they thought all was gone and dissolved: For (said they) a Dean and Chapter must be a Dean and Chapter of some Place, and when the Land is gone, how can they be said to be of such a Place? No, said the Judges there, that is no Reason at all; for the Corporation was before they had any Lands; and if those Lands were all evicted, or they all disseised of them, yet they are a Corporation still. And in *Rolls's Abr. 2. Part* 185. 'tis said, the Abbies came to the King by the Statutes of Dissolution; so that they had no Opinion that the Surrender did carry even their Lands, though I do admit they did carry their Lands; but I may say they could carry no more, they could not carry their Being of the Corporation.

There is a Case in *Dyer* 282. and 'tis the only Case that seems against us in this point; there were Two Deans and Chapters of *St. Patrick* and *Christ Church* in *Dublin* in *Ireland*; and these both, and not one of them, were together One Chapter of the Archbishop of *Dublin*, time out of mind, and One of these surrendered, and then their

their Houſe was uſed for a Place for the Courts of Juſtice, and continued ſo ; and then a Leaſe is made by the Biſhop, and that confirmed by the only remaining Dean and Chapter, which was that of *Chriſt Church* : And whether that Leaſe was good or no was the queſtion, and truly that was the only queſtion that is made there in that Book ; and ſo 'tis of little Authority as to any thing elſe ; but 'tis true, that that Book does ſay in the end of the Caſe, that the Leaſe was held good, *quia Corporatio & Capitulum Sancti Patricii prædicti fuit per donum & ſurſum redditionem Decani & Capituli prædicti legitime diſſolutum & determinatum.* My Lord, to that I Anſwer :

Fiſt, There was no occaſion for this Reaſon, becauſe it did digreſs from the main Point in the Caſe, as it is truly obſerved in *Palmer fol. 502.* next,

Secondly, It was a private extrajudicial Opinion ; it was the Opinion of but Five Judges, and for ought appears Seven might be of another Opinion, and yet the Caſe was ſent for the Opinion of all the Judges here, becauſe the Lawyers in *Ireland*, it ſeems, did make a great doubt of it. And it was alſo an Opinion and Judgment of the favourable Side, for it was to confirm a Predeceſſor's Leaſe. But,

Thirdly, Certainly, my Lord, the Caſe is miſtaken, for the Surrender could not be good without the conſent of the Biſhop, which is alſo added in the end of the Caſe there : He is the Patron, and muſt neceſſarily confirm their Acts to make them valid, eſpecially they being intituled, and given to him for his Advice in the Government of the Church, and the Diſpoſal of its Lands.

Fourthly, my Lord, I have this further Anſwer to give it, that my Lord *Coke* ſays in *1 Leon. 234.* (and 'tis not denied) that this Surrender was by Act of Parliament, or elſe it had not been good. And beyond that,

Fifthly, I have by me a Manuſcript of my Lord *Dyer's* Reports, the moſt Authentick one, which was my Lord *Coke's*, and has his own hand to it in ſundry Places ; and by that he does often correct the Prints of *Dyer*, and ſo alſo he might have done in this Caſe ; for there all theſe Latin Words are left out, there is not one of them, nor any ſpace left to put them in, nor any blot for their being raſed out, it is an Addition of the Publiſher, and printed in another letter than the reſt of the Caſe is ; 'tis not in that Book, which I take to be the trueſt Original of *Dyer* : Beſides, my Lord *Coke's* Anſwer, that it was by Act of Parliament makes an end of all. And truly, my Lord, that the Determination of ſuch things ſhould be by Act of Parliament I ſhall cite you one Authority, and I borrow it from Mr. Solicitor, who has mentioned it before, 'tis *Rot. Parl. 8. R. 2. m. 11.* and it is taken Notice of by my Lord *Coke*, who cites it in his *4 Inſtit. 228.* To which I add alſo, that the Liberties were ſeized, and the Caſe determined in Parliament : There the Caſe was this, the Mayor, Bailiffs, and Commonalty of *Cambridge*, had committed a Notorious Uproar and Tumult ; they had aſſaulted the Colleges of the Univerſity, they had imprifoned the Vice-Chancellor, and ſome of the Scholars, they had extorted from them two Releaſes, and a Bond of 3,000 Pounds ; and after all this great Uproar and Tumult a Writ went out, but whence ? From

the Parliament, and there they are ſummoned to appear, and there they are to ſhew cauſe why the Liberties ſhould not be ſeized, as forfeited ; and there upon full hearing it was adjudged by the King, with the full Conſent of the Lords and Commons in Parliament, that the Liberties ſhould be ſeized as forfeited : All this is taken notice of by my Lord *Coke*. But yet, as if he thought it not enough to have ſaid all this in the Body of the Book, he puts down in the Margin of that Book theſe words, *Nota*, It was done by Act of Parliament. And that it was taken, that a Corporation cannot be diſſolved but by Parliament, I ſhall cite your Lordſhip *Davis's* Reports, *fol. 1. b.* where he ſays, that neither by the Surrenders, nor by the Acts of Parliament that gave their Poſſeſſions to the Crown, were theſe Corporations diſſolved ; the Surrenders did not do it, and the Acts of Parliament did not intend it.

But, my Lord, I ſhall diſmiſs this Point, for indeed it will not conduce to the Queſtion, which is not, *Whether a Corporation be Surrenderable, or no ;* but, *Whether it be forfeitable ?*

Now there are many things that are renounceable, that yet are not forfeitable ; an Annuity *pro Conſilio impenſo & impendendo* may be ſurrendered, and ſo is *Empſon's* Caſe in *Dyer, fol. 2.* but it cannot be forfeited for Treason, 'tis a Thing that adheres to the Perſon, and there is a Privy in it that makes it not forfeitable ; ſo a Guardianship in Soccage, a Man may renounce it as well as he may Executorſhip, but they are neither of them forfeitable ; and ſo is the Truſt of a Freehold, and ſeveral other like things.

My Lord, as to what Mr. Solicitor has ſaid, *That a Corporation may be ſeized, and therefore it may be forfeited ;* I think certainly that is no good concluſion at all. Thoſe words of Seizures of the Liberties, and ſeizing into the King's Hands, he has with great Learning collected a great many Records about them, and they make a great ſound at firſt, but when they are narrowly looked into ; they make nothing of Argument at all ; they have ſlept a long time, and are but imperfectly remembered ; they may ſerve to amuſe People, but when they are conſidered they will ſignify very little. *Vet. Nat. Br. fol. 161.* He diſtinguiſhes there (and every Body muſt) between the Cauſes of the Seizure of a Franchiſe into the King's Hands, and the Cauſes of a Forfeiture ; and there he ſets down ſeveral things, and then adds *ſtude differentiam iſtorum ;* ſo that there is a Difference, and that Difference ought well to be adviſed upon. In *2 Ed. 3. 28 & 29.* *Scrope* gives the Rule, ſays he, in ſome Caſes a Franchiſe ought to be taken into the King's Hands, and in ſome Caſes it ought to be ſeized till a Fine be made to the King ; and in ſome Caſes it ought to be forejudged ; and ſo he makes Three diſtinctions. Now, my Lord, this will anſwer (as I ſhall obſerve by and by) all that Mr. Solicitor has produced about Seizures, either by Act of Parliament, or for a Fine, or for a Diſtreſs for want of an Appearance. If a real Action, there goes out a *Grand Cape*, and there the Lands ſhall be ſeized into the King's Hands, and that looks big upon Record ; but if you come to know the meaning of it, 'tis only that the Sheriff ſhould return Iſſues upon it, and that is a very little thing ; the King has no pretence to the Title of the Land, nor is the Suit His Suit, but the Party's : So the ſeizing of a Biſhop's Temporalities,

ties, and the Lands of Priors Aliens, and the like. But Words must have a reasonable and legal construction; as when a Statute is made, that if a Man does so and so his Body shall be at the King's will, and he shall do with him at his Pleasure, as in the Statute of Maintenance, and the Statute against transporting of Money, that is nothing but that he shall forfeit the Use of his Body, and the Liberty of his Body, and shall be imprisoned for the Offences.

All this I shew, to distinguish about this word Seizure, and by that distinction to answer the Weight of all the Records that Mr. Solicitor has cited. Those Seizures that were of any Towns, I say, they were only till they had made a Fine to the King; and when the King had so seized them, what did he do? He put in a *Custos* upon them, which was to keep them in good Order; he put them into a safe Hand, but it was never intended to suspend or destroy the Corporation: For the Corporation went on as it did before, it might sue as it did before, and was as liable to be sued as before; it was to put a Guard upon them, not for their Destruction, but for their Preservation; to quell Insurrections, to keep Peace and good Order among them; the Seizure of the Liberties was not a seizing of the Corporation, because a Corporation is not a Liberty, it cannot be seized; for the King cannot exercise the Liberty of a Corporation; the King may seize the Mayoralty, and the King may put in such a Deputy, that may be a *Custos*, he may seize the Sherifalty, he may seize a Leet, or a Market, or he may receive the Profits of them, and execute by Deputy the Purport of them: But what can he do when he has seized the Corporation? can he himself be the Mayor, Commonalty, and Citizens, of the City of *London*? or can he put in any one to be such Corporation? it is not a Thing manurable, 'tis not a Thing seizable, nor ever was seized; for the King can seize nothing, but what he can have and use when he has seized it. And therefore all those *Custodes* that were put into *London*, upon the seizing of the Liberties, were only in the Nature of the Lord Lieutenants, that were to keep Order in the City, and prevent Breaches of the Peace; but still the Customs, the Courts, and the Usages of the City went on as they did before; I cite not any Record indeed for it, because there is no need, 'tis so well known; but if there be any doubt of it, we will make it appear, that during all those times Mr. Solicitor speaks of, who has cited a great many Records, and if he can find as many more, yet still all along the City was in *Statu quo*, as to their being a Corporation; they did sue and were sued, and they did all manner of Acts as a Corporation, which shews that it was not so much as suspended, much less forfeited. This is without contradiction very plain, during all the time of those Seizures. If it had been forfeited at all, it must have been extinct; and if there could have been a Judgment given against it, it could not have been taken into the King's Hands, but it must have been an *Ouster* of the Liberties.

In *Yelverton* there is a Case of the King against *Staverton*, a *Quo Warranto* is brought against *Staverton* for keeping a Court Leet, and a Court Baron, within the Hundred and Manor of *Warfield*; the Defendant disclaims the Court Leet; as to the Court Baron, the great doubt is whether a *Quo Warranto* can be brought for it, it appearing that he had a Manor; for that is in-

separable to a Manor. For he that has the Demesnes and Copyholds, must call his Tenants together to do Suit and Service; and 'tis agreed indeed a *Quo Warranto* will lie. But *Fleming* Chief Justice, and *Fenner* doubted of it. And in that case Judgment must be, that he shall be ousted of the Liberty, and not that it shall be seized; for the King cannot use it, and therefore 'tis impossible, that it should be taken into his Hands: And so 'tis, as I said, of a Bishop's Temporalities, and the Lands of Priors Aliens, and the like; it is a meer Personality, and cannot be seized.

But Mr. Solicitor says a Corporation can commit a Crime: Truly I do very much question that, nay, I shall deny it by and by: But if they do commit a Crime, the Punishment must be by other means than a Forfeiture; and I will cite your Lordship a parallel Case: For as I said before, a Corporation is an Ability or Capacity like that of a Denizen, and so can no more be forfeited than a Denizenship can. There is *Verselive Manning's* Case in *Lane's* Reports, 58. and the same Case is in *Rolls* 1. *Ab.* 195. in an Office of Intrusion, it is there found, that *Verselive Manning* was a Denizen by Letters Patents, and in the Letters Patents there was a Clause, as is usual in Patents of Denization, Proviso, that *Verselive Manning* the Denizen should do liege Homage, and that he should be obedient and observe the Laws of this Realm. The Office finds that he never did Homage, nor was obedient to all the Laws of the Realm; and it was urged that consequently he had lost his Denization, for Breach of the Condition. No, says the Court there, by no means, this must have a reasonable Construction, not to take away his Capacity of being used as a Subject, and so suing and being sued; but the Proviso is to be interpreted thus, for his Non-obedience of the Law he shall forfeit the Penalties appointed by the Law: So, I say, a Corporation, if they do offend the Laws, shall forfeit and undergo the Penalties appointed by the Law, but not be disincorporated, any more than a Denizen undenized.

My Lord, the next Point that I go upon is, what I at first mentioned, and that is this, That this *Quo Warranto* is not well brought, and there can be no Judgment given against us upon it, if we should admit (which I do not) that a Corporation is forfeitable; or if I should grant (which I do not neither, but shall come to that afterwards) that the Particulars assigned are causes of a Forfeiture.

Now this *Quo Warranto* is brought against the Mayor, Commonalty, and Citizens, of the City of *London*, that is to say, against the Corporation (for that is the Corporate name, and no Man sure is so vain as to think that can be the Christian Name or Surname of any natural Person) therefore I say 'tis brought against us as a Corporation, and charges us, that we have usurped the Liberty of being a Corporation, under such a Name, for a Month before the Information brought. Now, my Lord, I say this is impossible, and this is repugnant; for the Question is here, whether we are a Corporation, and that is a Liberty to be Plaintiff and Defendant? and then comes Mr. Attorney, and admits us to be Defendants; for he sues by that name, and yet the very question that he does bring us to dispute on is, whether we are capable of being Defendants, or no: That is just as if he should have said,

I have brought you into Court, and you must be Defendants, or else I have brought you here for nothing; for there is no cause depending without Parties, Plaintiff and Defendant, and then I will assign for the cause of my Suit, that you are no Defendants; nor is it possible for you to be Defendants.

My Lord, this is plain reason; but I shall strengthen it with great Authority, and that is the Case upon a Writ of Error, out of *Ireland*, to reverse a Judgment given in a *Quo Warranto* against the Corporation of *Dublin*: It is in *Palmer* the first Case, and 2 *Rolls* fol. 113. & 125. A *Quo Warranto* is brought against *Cusack*, and other Aldermen of *Dublin*, who pretended to have Privileges, and a Guild, and to be a Corporation, and this I presume is for their being a Corporation; for there is a *Curia advisare vult* as to the Corporation, and so 'tis not put in the Case, but 'tis also brought for several Liberties that they did pretend to claim; as that they only, and none others, should sell and buy all Merchandizes, and no Body should buy of another, or sell to another, but to them; that all Merchandizes should be brought to their Common Hall, &c. now, as to these Liberties they are forejudged, that the Liberties should be seized, and they ousted; as to their being a Corporation, *Curia advisare vult*; so the Case is in *Palmer*: But in the other Book in 2 *Rolls* 115. it is agreed, if a *Quo Warranto* be brought to dissolve the Being of a Corporation, it ought to be brought against particular Persons, for the Writ supposes that they are not a Corporation; and 'tis to falsify the supposal of the Writ to name them as a Corporation. Now here this Writ, it supposes them to be a Corporation, or else they could not be Defendants; and then it comes and falsifies that supposal, by assigning that they are no Corporation, nor ever were, or if they had been, they had forfeited it; and so all the Foundation that this Writ stands upon is destroyed.

In this Case of *Cusack* I am assisted further with a Report of it in my Lord Chief Justice *Hales's* Book: A Report of very great Authority with all Men of our Profession, and there he says expressly, If a *Quo Warranto* be brought for the usurping a Corporation, it must be brought against particular Persons, because it goes in Disaffirmance of the Corporation, and Judgment shall be given that they be ousted of the Corporation; but if it be for Liberties claimed by a Corporation, then it must be brought against them as a Corporation.

Lord Chief Justice. What Folio is it in my Lord *Hales's* Book, Mr. Recorder?

Mr. Recorder. It is my Lord *Hales's* Common Place Book, which is in *Lincoln's Inn* Library, fol. 168. *placito* 7. and this is our Case directly. If you go about to say, our Corporation is forfeited, or must be dissolved, nay more (as you say here) we never have been a Corporation; or by Forfeiture our Corporation is lost long ago, then there is nothing can come before the Court properly, but that *J. S.* and *J. N.* particular Persons have usurped to be a Corporation, when they are none. This Information is brought in Disaffirmance of their being a Corporation; and therefore there must be set up some Body capable of being a Defendant in such a Suit; and who can that be but particular Persons, which ought to have been named, as they are in that

Case of *Cusack*? For as Judgment of ouster of particular Liberties, given against particular Persons, will not bind the Body of the Corporation; so the Judgment, that they are not a Corporation, will not be good, unless it be given against those particular Persons that usurp the Corporation. And I do say further, that individual Freemen of *London* cannot possibly be bound by this Judgment: For they are not here before you, nor were they ever so; for it is the Corporation here that is made the Defendant. And I do not now consider the Number that make up that Body (*London's* being so populous doth not alter the Case) for the Case is the same, if it were the Corporation of *Queenburrough*, or any other petty Corporation. Suppose Twenty Men be a Corporation, or pretend to be a Corporation, and you come to enquire by what particular means these Twenty Men pretend to be a Corporation, or, as the Words of this *Quo Warranto* are, *usurped* to be a Corporation; you must not say that they are one, and then say that they usurped it, for 'tis not the Corporation that usurps to be a Corporation, that is impossible; but it is the particular Persons that usurp to be a Corporation, when indeed they are not one. A Corporation may usurp a Market, they may usurp a Leet, but they cannot usurp themselves. In *Townsend's* Book of printed Precedents (which is a laborious thing, and wherein he has collected all the Precedents, he could meet with, of *Quo Warranto's*) there is but one in all that Collection, that was brought against any Persons upon the Score of being a Corporation: And what is that? How was it brought? Not against a Corporation that was, but against a Corporation that never was, that is to say, a parcel of People, that took upon themselves to be a Corporation, when they were not, and that is the same single Precedent in *Coke's Entries* 527. tit. *Quo Warranto*. The King against *Helden*, and other Burgesses of *Helmsley*, for usurping to be a Corporation, by the Name of The Burgesses of *Helmsley*. And how does the Attorney General there bring the Writ? He brings it against particular Persons. My Lord *Hobart*, who was then Attorney General, never thought he could have maintained his *Quo Warranto*, or expected Judgment against them, if he had brought it against the Burgesses of *Helmsley* generally, and then have said, that they were no Corporation; but he brings it against those particular Persons, and thereupon they come in and disclaim their being such a Corporation, and the having the other Liberties; and the Judgment is, That of those Liberties those particular People should be ousted, and should not intermeddle with them.

Now, my Lord, what Judgment can be given in this Case, that the Mayor, Commonalty, and Citizens, shall not intermeddle with the being of Mayor, Commonalty, and Citizens? 'Tis a very reasonable Judgment that *Helden* and those particular Persons should not intermeddle with such a Liberty, or be in such a Corporation; but if such a Judgment be given against the City here, that would be as much as to say, That you have never been what you are, or you shall never be what you are, that is the English of it.

And, my Lord, I am sure as there never was but one *Quo Warranto* that we can find any printed Precedent of against the Being of a Corporation, so that very Precedent is not against those that really were so, but particular Persons that

ufurped to be so. And if you search all the Records of this Kingdom, and all the Books in all the Offices, you will never find any that is brought against a Corporation, for being a Corporation, upon pretence that they might be made none by a Forfeiture; and no Prerogative of the King shall extend to excuse this, but his Action shall abate, if it be not right brought, as well as the Subjects, and so is *Plowd' Com. fol. 85.*

Further, my Lord, I have another Authority in this point; and that is in the Case of the Corporation of *Maidenhead*, which hath been so often cited by Mr. Solicitor, and it is in *Palmer, 80, 81.* where it is said, When the Attorney General hath supposed them to be a Corporation, it is not usual to plead them to be a Corporation; otherwise if he had questioned them as Inhabitants of such a Town, then they ought to enable themselves: Those are the Words of that Book; and what can be more plain? Here the Attorney General supposes us to be a Corporation, his Replication flies in his own Face; and he having supposed it at first, he is bound not to question us for our being a Corporation at any time after. As to the business of *forisfecerunt*, it is a strange and a new word that never came into any *Quo Warranto* before, that I know of; but we will accept the new Word, but not the Thing, and that they have forfeited by such and such Acts: This sure will be very hard upon us; for if it be a Forfeiture, it must relate to the time of the Thing done, to the time of the making the Act of the Common Council, to the time of the Toll levied, or to the time of the Petition; and if it do so, it must relate like a Forfeiture for Treason; it must reach all mean Acts, all the Leases that we have made since are gone; all the Judgments that we have given in any Cause are *coram non Judice*, and void; all the Acts of the Corporation are overturned by this Forfeiture, and we have been under a vast mistake all this while. We have had no Mayors nor Sheriffs, no kind of Officers, no manner of regular and legal proceedings; but we have been under a great mistake ever since this Money was ordained or levied. We have forfeited all; and that it is so, is plain, because in all *Quo Warranto's* wherein Persons are convicted for usurping of Liberties, there is a Fine set upon them for continuing that Usurpation, and reason good; then if it be an Offence for continuing the Liberty, we must be fined for doing it ever since the Forfeiture, when, if Mr. Attorney General's Rule be right, there has been no such Corporation; but we ought to have discontinued all our acting as a Corporation, and laid it down; and so every Step that we have taken since hath been irregular, and every Act void.

If so be an Action be brought against Baron and Feme, and the Plaintiff should in his Replication say, they were divorced several years before, has he not undone all his pleading? Here then is our Case, Mr. Attorney General admits us to be sueable, and yet charges us to have no capacity to be sued. I do implead you, but you have no right to be impleaded; here he brings us into Court, and when he has brought us here, he quarrels with us for being here; he makes us Defendants, and then questions whether we ought to be so; and so his great Charge against

us is, that we are what he would have us to be, and what he hath made us to be; for if a Month before the Information, the Corporation was not, but the very Being of the Corporation was usurped, how come we at the Month's end to be Defendants? Here comes a new Creation interposed in that time, and makes us Parties sueable in the Court, when by the Charge in the Information we were not so a Month before.

And then, my Lord, the Information is not quite so bad, but the Replication is worse: First he takes issue, that we never were a Corporation at all; and the next thing is, if ever you were a Corporation, you have ceased so to be, because you have forfeited it so and so several Years ago. This is just then to put a common Case (and I confess, a very familiar one it is) if I should bring an Action against a Man, and when he hath pleaded, I should by way of Replication set forth, there never was any such Man as the Defendant, and take Issue upon it; or, if there were, that he was dead Ten Years ago: And yet this is the Substance of Mr. Attorney's Issue, and his Replication.

My Lord, the Authorities before cited in *Palmer, Coke's Entries, Rolls*, and my Lord *Hales's* Common Place Book, are not all; for I have some other that never saw the Light in Print yet; and that is the Case of the King against *Bradwell* and others, *Trin. 18.* of this King. A *Quo Warranto* was brought against them for usurping to be a Corporation or Company of Musicians; it had been a strange thing, if the *Quo Warranto* had been brought against that Corporation, and then the Attorney General had said they were no Corporation, nor ever were; there they did think best and fittest to go against *Bradwell*, and the rest, and that by Name, and only so, not against the Body Corporate. So in that Case of the Corporation of *Worcester*, which was lately tried before your Lordship in this Court; when the *Quo Warranto* was brought against such Men for usurping to be all Aldermen and Common Council-men; if the Attorney General had once called them Common Council-men, it had been a great Repugnancy for him afterwards to say that they were none, or if they were, that that Privilege of theirs was lost so long ago. So in the Case of the *Quo Warranto* against the *Bermudas* Company; it was against a Corporation, and against particular Persons by Name both. These things have been considered, and doubtless they have gone on in an ordinary way. I must confess, I was not privy to that particular Case; but by the Report of that Case, which I have seen, I have been informed that the Corporation never appeared; for they said, 'tis not Sense for us to appear; for it being a Question by what Warrant we are a Corporation, it is not we, supposing us a Corporation, that do usurp, but the particular Persons that do usurp, if it be at all usurped. Now, my Lord, if that had been a regular Suit, no doubt but there would have been Judgment against the Corporation, which there was not; and certainly the Replication of Forfeitures was not good against the Corporation, but against the particular Persons only.

All Mr. Solicitor's Authorities for seising hold true, if the Corporation would never appear: And what is the Reason it should be brought against *J. S.* and *J. N.* but because Corporations do never appear in such a Case, in regard it were

not congruous they should appear? for the *Quo Warranto* must intend it so, that they were not a Corporation in Being, by implying a Forfeiture. Then say I, no Judgment at all can be given upon this score; *Non admittitur exceptio ejusdem rei, cujus petitur dissolutio*; a Man shall never be admitted to controvert that to be in Being, which he himself desires should be destroyed, and so has allowed it to be. Shall Mr. Attorney be admitted to deny the Supposal of his own Writ? And truly I think I might very well leave this part of the Case, and this Point, to Mr. Attorney General himself; for if he will have any thing to be answered by us, he must maintain us to be a Corporation capable of answering; and so I have reason to expect, that against his own Replication he will be pleased to support the Being of our Corporation, and so dismiss us hence.

My Lord, I have done with this Point, and now I come to the Replication, which indeed is a kind of a new *Quo Warranto*; for it brings in new Matter, and therein they do charge Two Forfeitures; the one is, by reason of the Abuse of the Market, the other is, by reason of the Petition. My Lord, I shall answer both of them. That we were seised of the Market, that is pleaded, and that is agreed: That we were seised of Tolls, and were to have reasonable Tolls, that is agreed too: That there is a Custom in *London* to have Common Councils, and that this was by Common Council, is agreed; all this is agreed by the Demurrer: That this Toll (though by the way I must confess, and will agree with Mr. Solicitor, that it is not properly to be called a Toll; for a Toll is only for Goods sold; and when they are sold, in Recompence for the Officer's Attendance for the Testification of the Contracts, and the Entering them in their Books; but I agree, this is not such a Duty for Goods bought and sold, but it) is for the Accommodation of Persons repairing thereunto for their Stalls; and, if I would call it by any particular Word, I had rather call it Stallage than any thing else; it is for those Accommodations, which we have been at vast Charge in preparing and providing, and for the Maintenance of requisite Officers, and for the cleansing of the Markets. Now Mr. Solicitor objects, That we cannot prescribe for a Toll uncertain, and he cites the Case of Murage, and the like; and so I must confess, where Murage is granted, 'tis commonly a thing certain; so is Pontage, and the like; but I believe (if I had thought that it would have been a Point insisted upon) I could have brought you Instances where Murage, and such like things, have been granted in general, and they would have been ancient ones indeed: And there is a Necessity for it in some Cases; for when a Town will repair its Walls, the Charge may be greater or less, as the particular Accidents may be, and so perhaps a certain Duty would not do it. When a Wall is to be built, there the Duty may be certain; but when it is built, to keep it in Repair, the Duty of Murage may be uncertain, according to the Charge; and if the Case be not so, it will come little to our Purpose, which is a Duty upon a great and a continuing Charge. I will name him some things that he must agree, and I know he will grant, are uncertain, as Pickage and Stallage, which are Duties for picking in my Earth to dig Holes for the Posts of Stalls to be fixed

in: Now there can never be, nor ever was, any circumscribing in those matters; for Circumstances in every of those Cases must govern it. If I have Occasion for my Stall to use a Foot of Ground, one sort of Sum is necessary; if ten Feet, another Sum; it ought to be equal indeed, but it could never be good, if it were limited to a Sum certain; and in all Grants that ever were of Pickage and Stallage, they were never reduced to a Certainty; and those are things too that relate to a Market.

And so I take it to be for Keyage, Anchorage, and the like; for when there are Posts or Places for Ships, to which they may be fixed, the Owner of the Port may have a Compensation for that, but that must needs be uncertain, according to the Circumstances; if a Ship be bigger or lesser, if a Ship stay a Month or a Day, it is not fit the same Rate should be paid; nor is it usually granted by particular Words, *Co. Entr. 535 & 526, Placit' 4*. The King against the City of *London* for the Water-Bailage, and other things. They pleaded only a Right in general, and do not say what the Particulars were; and yet one of the things demanded in the *Quo Warranto*, was, as I said, the Water-Bailage; which, sure, if any thing ought to be certain, that ought. In that Case it was good Pleading; though I think I could say more against it than this thing, that is in the nature of Stallage; so that all that Mr. Solicitor hath built upon that must, I think, needs vanish.

My Lord, I do not think but *London* ought to be, and is as much under the Obedience and Correction of the King, as any City; but yet I believe, in these Cases of their Customs, you will give that Allowance and Indulgence to it, that all your Predecessors have done, which is greater than they have given to any other Corporations in the Kingdom, and that because it was *London*. That there should be such a thing as a Foreign Attachment, I think, is hardly allowed in other Places; I am sure, I have known it denied in some, that a Contract in Writing should be equal to a Book-Debt; that a Feme Merchant should sue or be sued without her Husband; or if he be named, he should be only named for Conformity. You take Notice, that *London* is a Port Town, and that Men that trade there, sometimes go beyond Seas, and in their Absence their Wives trade by themselves, and perhaps carry on distinct Trades while they are here; and so they may do in other Places, may be; but only for the sake of *London* do you take Notice of these things there, and not elsewhere. Their Penalties, that are sued for in their Courts, a great many of them are such as would not be well maintained in other Courts, or in any other Place; and yet they are maintained there, as namely, That their Penalties should be sued for before the Mayor and Aldermen, when the Benefit of them goes to their Use; and yet that is allowed in the Eighth Report, notwithstanding the grand Objection, that they are in some sort Judges and Parties, *Rolls 2. p. Abr. Tit. Prescription, Letter H. Fol. 266. No. 2. & 3*. The City of *London* may prescribe to have a Court of Chancery in *London*, of matters tried in the Sheriffs Court, though such a Court cannot be granted by the King's Letters Patents; but the Mayor and Citizens of *York* cannot prescribe for such a Court, because it were very dangerous that such petty Corporations should have such Courts. And,

whatsoever is said by my Lord *Hobart* in his Reports, 63. I do affirm, there is no Act of Parliament that erects a Court of Chancery in *London*, or the Cinque-Ports. If Mr. Solicitor had struggled with me about the Being, or not Being of that Act of Parliament, I would have agreed with him, that there was no such, sooner than some that he says are none. The Customs of *London* have been upheld, and, I must confess, I think that is very strange, even against the general Words of an Act of Parliament, 2 *Inst.* 20. A Gaoler in *London* may permit his Prisoner, that is in Execution, to go at large with a Battoon in any Place within their Jurisdiction, and it is no Escape. And so is *Plowden's Com.* 36. A Citizen of *London* may set up one Retail Trade, though he was bred to another, notwithstanding the Statute 5^o of the Queen. And for a general Rule take that that is said in *Palmer* 542. those of *London* may prescribe against a Statute; and the Reason is, because their Liberties are confirmed by Statute, and other Towns are not. In *Rolls Rep.* 1 P. 105. *Spike* against *Tenant*, my Lord *Coke* being then Chief Justice, says, We take notice of the Customs in our Courts, and other Courts in *Westminster-Hall*, and in *London*. *Fleetwood*, Recorder of *London* says a very strange thing in 1 *Leon'* 284. *Hollinshead's* and *King's* Case, and in 4 *Leon'* 182. that the King's Courts ought to take Notice, that those of *London* have a Court of Record; for if a *Quo Warranto* issues to the Justices in Eyre, it does not belong to them of *London* to claim their Liberties; for all the King's Courts have Notice of them. And truly I have been informed, I mean by Copies of Records, that when the Justices in Eyre came to the *Tower*, this was a Privilege allowed to them, they were not bound to set forth their Liberties, as others were.

My Lord, I think this, as it is pleaded, is a Duty very justifiable, and very well payable, by virtue of this Custom. I do agree, as I said, a Toll is properly for Goods sold, and this is a Custom for the Accommodation of those that brought Goods to be sold; and it is like that 1 *Leonard* 218. my Lord *Cobham's* Case, a Duty paid for the Standing in the Cellar; and there that is held to be good. In *Rolls* 2 p. of the *Abridgment*, 123, Letter B. *Hickman's* Case, the Lord of a Manor may prescribe to have the Eighth Part of a Bushel of Corn in Four Bushels that are brought to the Market within the Manor, in the name of the Toll, and that is for Stallage only, for it is said there, Whether it be sold or not. And in the same Book, fol. 265. the City of *Dublin* set forth, that they are Owners of the Port of *Dublin*, and that they maintained Perches in the said River, to direct the Ships in the deep Channel, and that they kept the Key and the Crane; and therefore, in Consideration of that, they prescribed and demanded Three Pence in the Pound for all Merchandizes in the said Port, and it was held good. Now I agree Toll-through, that can not be prescribed for simply and generally; but by Toll-through I mean, as you know, for passing and repassing through only, and not for staying. But yet even that may be prescribed for too, in Consideration of repairing a great Highway, or a very foul Way, or maintaining a Bridge, and the like. And therefore, if our Considerations here be as good, then we maintaining those great Places may

prescribe for this Duty, as for passing through the Streets, though it were no Market.

There is a famous Case reported in *Rolls* 1 p. Fol. 1. & 44. and it is in 2 *Bulstrode*, and also in *Moor*; it was the Case of the Bell-man of *Litchfield*: A Prescription is made, that the Corporation of *Litchfield* hath a Market, and they ought to repair the Way to it, and to appoint a Bell-man that should sweep the Market-place; and that for this the said Bell-man, time out of mind, had taken of those that brought Corn to the said Market, and opened their Sacks to sell, a Pint of Corn, if but a Bushel or under; if more, a Quart. So that if it were opened and not sold, yet he was to have that Duty, and that Prescription was adjudged to them by all the Judges, and yet it does not appear there, whether the repairing that Way cost them 5 s. or 5,000 l. and yet by Intendment they would not account it unreasonable, though it might have been urged it was very unequal; if they could take a Pint for that which was under a Bushel, perhaps they would take, by that means, half of what the Party bought; but if there were Fifteen Bushels, they had but a Quart, and this was objected as to the inequality of it; and yet they all passed over that by a reasonable Intendment, and would not deny the Prescription to be good. And the Case of *Crantage* in *Dyer*, and the Case of 21 H. 7. 16. are admitted to be good Law, where the Town of *Gloucester* prescribed for a Toll of Boats passing by the River near the Town.

Now, my Lord, for ours, there was very great reason to induce it, the great Alterations that were made in *London* by the Fire; and it was not the first Time that *London* was burnt: And if there should be War, and so great Alterations and Confusions, there were great cause, that the City, that lays out great Sums, and must be at such a publick Charge, should not be Losers by it.

And we do set forth more than they do in the Case of *Litchfield*, that we provided the Market-places at our own charge; and if they will use them, they must expect to pay some compensation for it; that we do keep Officers, and pay them for cleansing and keeping Order in the Markets: And above all that, we provide Standings and Stalls, and such Accommodations, and that I am sure is a Provision no Lord of a Market is bound to make, unless he will; and therefore the Market-people, that are accommodated by it, have great reason to pay for it; and we pay all the Taxes for the Market-places, for the Ground is ours; and that is not alledged in the Pleading indeed, but it must be implied, because we pay the Taxes, and they that have the Standings are not liable to pay the Taxes: And so is the Judgment in *Rolls*, 2 p. 238. and the 2d *Abr.* 289. And in the Case of *Cusack* Justice *Dodderidge* says, that the redeeming of one Fair from the Abbot of *Westminster* cost the City of *London* 8,000 l. for he had a Fair at *Westminster*, and a Market for Forty Days, and that during that time no Sale should be in *London*, or the Places adjacent; and a great Rate it was, if it were so. The Measure of a Toll is according to my Lord *Coke* 2 *Inst.* 58. when the thing demanded for Wares or Merchandises does so burthen the Commodity, that the Merchant cannot have a convenient Gain by trading therewith; and thereby Trade is lost or hindred, then it is an evil Toll. But here indeed the Market-people

are better accommodated than ever they were; and Trade is so far from being discouraged, as that it is increased, as is implied in the Replication; for it is said, we receive 5,000 *l.* a Year, which if it were so unequal, would not certainly be paid, nor could be, if there were not great Trade there. So that the Increase of Trade is the thing complained of in this *Quo Warranto*. And the Truth of it is, I have examined and looked into the Fact of these things, and there is nothing in this By-law, but what was really anciently paid, except only in one Instance, whether it were 6 *d.* or no, that was paid when a Cart was drawn by Two Horses, which now is but 4 *d.* and if we have increased the Toll, which I doubt whether it be so or no, it is only in a very trifle.

Now, my Lord, this Case, I think, is a stronger Case than that in 5 *Rep.* the Chamberlain of *London's* Case; there is no Consideration of Stalls, or cleansing the Place, but only they had an Officer to search and view, and that was a new Appointment of their own; they could not prescribe for it, but it was thought a Penny was a reasonable Recompence, and the Subject had a Benefit by it; and if he would bring his Cloth to *London* to be sold, he should come thither to have it viewed, and give a Recompence for it. Now *London* is all Market indeed, every Shop is a Market; and it hath been well said of the Judges several times in *Westminster-Hall*, that *London* is the Market of all *England*; and there is never an Acre in *England*, but is the better for that.

As to the Imposition upon Coals, that is but an Inducement; and an Inducement is never to be relied upon; it is not to be stood upon; and Mr. Solicitor did very honourably decline it, and did not make any thing of it, nor trouble the Case with it.

When the City did make this Act of Common Council, they did consult with their Counsel for matter of Law, and with their Officers and Fellow Citizens for matter of Fact, and did adjust these Rates, and enacted them to be paid, they being reasonable ones, and according to the ancient Usage; but if they were mistaken, it will be no cause for you to give Judgment against them, for many other Reasons: As first, you cannot judge this to be unreasonable. I have not heard one word said, that this is an unreasonable oppressive Toll. Here is Money levied; what then? If it be a reasonable Sum, it is not so great, it does not deserve the name of Oppression. I say, it is not so great an Oppression, if they should have been mistaken in the Form of instituting the levying of it; if they might have done it under their Common Seal, and now they have done it without that by Act of Common Council. Nay, it does not deserve that you should judge it unreasonable; you cannot do it here, for the Considerations are meritorious, and equivalent to it, the great Charge they were at in building, and they still daily are at in cleansing and repairing, and providing Stalls. But however, the Case is not so disclosed here, that you can judicially determine this to be an unreasonable Toll; according to the Rule in *Coke's Magna Charta* 222. the Toll of a Market need not be certain, only it must be reasonable; and what shall be deemed reasonable the Judges must determine, if it come judicially before them. So shall reasonable Customs, and reasonable Fines, and reasonable Ser-

vices, and reasonable Time to remove Goods, and the like, they must be judged by the discretion of the Justices upon the true state of the Case before them. Now this Case must have all its Circumstances stated and agreed by Demurrer, or found by Verdict. And so is 4 *Rep.* 27. *b.* and *Hobart* 135. and 174. as in the Case of Copyholders Fines, the Quality and Yearly Value of the Land must appear, or else there cannot be Judgment, whether it be reasonable or no. In the 13th *Report fol. 3. & Croke Car.* 196. where the Question was, Whether the Lord of a Manor might assesse two Years and an half Value of Copyhold Lands, according to the Rack-Rents for a Fine upon Surrender and Admittance, and upon Nonpayment to enter for the Forfeiture; as suppose Land, it be rented at 20 *l.* a Year, here is 50 *l.* demanded for Admittance; there it appeared judicially that it was unreasonable; and so it was adjudged, because the Value was certain. But who can here say, whether the providing of Markets costs 5 *s.* or 500 *l.*? it is not estimable. Perhaps we have overbought all these Tolls that they call unreasonable; we aver it to be reasonable, the Demurrer agrees it to be so, and you must intend it to be so, unless the contrary be set forth clearly in its Circumstances; for he that will have a Forfeiture, must shew the Circumstances to make it out.

My Lord, another thing is this, to answer Mr. Solicitor in that point: I say, an unreasonable By-law is no reasonable Cause or Colour for forfeiting a Corporation, admitting it to be unreasonable, though I grant it not. My Lord *Hobart* in *Norris and Staps Case, Hob.* 211. says, that though power to make Laws is given by special Clauses in all Incorporations, yet it is needless; for that is included by Law in the very Act of Incorporating. For as Reason is given for the natural Body for the governing of it, so Bodies Corporate must have Laws as a Politick Reason to govern them. Reason is a Faculty in them as 'tis in a man, and may err; and therefore says he, If the King do grant Letters Patents of Incorporation to Persons, and he doth thereby make Ordinances and By-laws himself, they are subject to the same Construction and Rule of Law, as if they were made afterwards by the Corporation. For the King can no more make an unreasonable By-law than a Corporation; but if the King do, shall that affect the Corporation, and make the Corporation void by way of Repugnancy, or an instantaneous Breach of Condition? No, it shall not. And therefore as they may receive unreasonable Rules from the King, without defeating of the Corporation, or having their Being thereby vacated; so they may make unreasonable By-laws without the same Danger of destroying the Corporation. The Cases are very many, wherein By-laws have been judged unreasonable; the truth of it is, there is a great Misfortune in the penning and making of those By-laws; by some Means or other there is something discerned that still proves an Exception to it, as we see in the Case of the Carmen and the Woodmongers; their By-law was made, and re-made, and corrected again and again, before it could be made to hold Water in this Court. So in the Taylors of *Ipswich's* Case, and *Bradnox's* Case, which was here lately. All these have been adjudged void; but what then? In all these Cases it was never said, Hereby your Corporation is destroyed,

froyed, you have erred in making a By-law, and therefore you have lost your being of a Corporation. Besides, if there were but a Colour for it, and it were any thing tolerable, surely that were enough to make us excusable in such a matter. If it has been received, as we agree it has, the Officers are Trespassers, every individual of them are fuable, and any man may bring his Action against them. But they that come to the Market, think not fit to complain; if they did not like the Market, they would not come at all; and if they did not like the Payment, they would not come neither; and there is no levying of any thing unless they do come.

Now, my Lord, I will admit the levying and the receiving, and yet I say this is no Forfeiture; for here is a Mistake of Law, or a Mistake of Fact, by Colour whereof Money is received: This by no Means will work a Forfeiture of a Corporation; for at that rate every Penalty that has been levied by a By-law will be adjudged a Levying of Money without Law, and so forfeit the Corporation; which has not been done in other Cases of By-laws, and those much worse than this; because most of those By-Laws were made for levying Money upon Men for exercising a Trade; and 'tis much more to say that you should levy such Sums of Money upon every stroke of honest industry, whereby a Man gets his Livelyhood, than that you shall pay so much for your Accommodation in my Ground for the better vending your Goods. This hath been held good in some Cases, but in others it hath been held naught; and this hath all been received and levied to the Use of the City too, and so 'tis a levying of Money, whereby they have a great Advantage; nay, 'tis worse still, because it is imposed by Force, and recovered by Force: but here 'tis a voluntary Penalty, no Force, no Compulsion, only the being removed from their Standings, no other Penalty, no Imprisonment, or the like; but if you do not like the Conditions, you may be gone: I desire you to walk out of this Market, if you don't like the Price of the Provisions; and to be gone from the Stall, if you don't like the Price of the Standing. We were not bound to provide these Stalls for you, but having provided them, if you don't like them, you may leave them; in other cases, the Man is imprisoned, and sued by Action for the Penalty; here at any time, if you don't like, you may be gone.

My Lord, I am very confident, if this be so, that all Monies levied by a Corporation without Law are Forfeitures, or where the Law is mistaken; then I dare boldly affirm, that we never were a Corporation two Months since *London* was *London*; but by virtue of some old sleeping By-law or other, that has been set on foot, Monies have been levied, which perhaps will not be in strictness allowed good: And if all these had been Forfeitures, we had been in a strange Condition, not one Month or two should pass over us, but we had forfeited it, and never can there be perhaps a Month to the end of the World, but we should still be forfeiting. And what is said of us, may be said of any other Corporation that happens to make By-laws. And I am sure in former times there were Monies levied with a witness, I mean not the late times of Rebellion only, but an hundred years ago, strange Exorbitances of that nature were committed by *London* and

other Corporations; then they went by way of Information, but never was it thought that it could affect the Being of a Corporation: If it should do so, I do not know whither it will go at last. The greater or the lesser Sum is not that that will difference the Law. Is it a Forfeiture to receive 5,000 *l.*? Why is it not a Forfeiture to receive 500 *l.*? Why not to receive 5 *s.*? Why not to receive 5 *d.*? No bounds can be set for that, if it be a Transgression of the Law; here is a Tort and a Wrong done by your By-law, that you have levied 5 *d.* and therefore all this great Inheritance of *London*, this, that is the greatest Inheritance of the Kingdom, is forfeited for a Trifle, upon three half pence, or a Basket of Eggs.

Nay, my Lord, to go further, I say, if this be a Forfeiture, I say 'tis only a Forfeiture of the Market; nay, not so much neither, 'tis only a Forfeiture of the Toll: my Lord, I cannot but once more mention that excellent Notion of my Lord *Hobart*, That the Power of making By-laws is included in the Act of the Corporation; for as Reason, says he, is given to a natural Body to govern it, so a Politick Body must have Laws, as its Reason, to govern it. Now then the making of these Laws is but the exercise of that Reason, declaring the Mind of the Corporation, for the direction of the Officers of it, what to do, and what to take; and 'tis but like the Mind of a Man that directs his hand what to do. For this is not like the Duty of Stallage, that relates to the Publick, and relates also to something that before they had no Interest in; but only relates to the Administration of a private property, and directs the manner of that Administration. They are Lords of the Market, and that is casual to them, it is not necessary for them so to be. If any Corporation bid their Officers levy so much Money; suppose they bid them take more Toll than is due, or levy more Money for Rent than is due for the Land, why this might be looked upon as a great Breach of Trust and Encroachment: They should have had but 6 *d.* and they took 7 *d.* and this done by Act of Common Council, which is their way of expressing their mind; yet surely it would be no Forfeiture, because the Land is their own, and the Administration of it belongs to them only in point of Interest and Property. Suppose a Gentleman has a Market, and his Reason, which is his By-law, as my Lord *Hobart* says, puts him upon taking of Toll, but he does a little mistake the Law or the Custom, he bids his Servant take so much, which perhaps may be too much for Toll; does this destroy his Capacity of suing and being sued? You may as well say such a particular Person shall not plead, or be impleaded, if he do so and so. Nay this, if he were a Denizen, does not forfeit his Denization, and yet a Denizen is as perfectly a Creature of the King's as a Corporation is. It is *Basilicon Doron*, it is the Bounty and Kindness of the King to one born out of his Dominions, to give him the capacity of a Subject, to sue and be sued, and the like, which cannot be forfeited, even for breach of Conditions in the Letters Patents of Denization. For this is within *Verjellin Manning's* Case; if he does not observe the Laws of the Land, 'tis true, he must be punished for it, but he shall not be undenizen'd.

My Lord, there is a Statute, which I think is a most plain Declaration of the Law in this Case, and

and 'tis the Stat. of *West. 1. cap. 31.* Some call it the 30th, because they differ in the numerating and heading of the Chapters. 'Tis the Statute concerning those that take Outrageous Tolls in Market-Towns. The Statute says, *Le Roy prendra la Franchife del' March en sa Maine.* The King shall seize the Franchife into his own Hands. My Lord *Coke* in his Comment upon that Statute says, he shall seize the Franchife of the Fair or Market, till it be redeemed by the Owner, that's all. But this is intended, says he, upon an Office to be found; for in Statutes all Incidents shall be supplied by Intendment.

Now in the *Quo Warranto* that was brought against the Corporation of *Maidenhead* in *Palmer's Reports*, there is this very case. That Corporation took an outrageous Toll, too much Toll, or that that was not justifiable, for going over their Bridge. Yet it was so far from being imagined that this should be a Forfeiture (and yet the Case is the same, let any Man distinguish it that can) that it was a Question whether the Market was forfeited, or no, as you may see in that Book, *fol. 82.* And there 'tis said by *Doderidge*, and at last it was agreed by all the Court, that it should be a Forfeiture only of the Toll, and not of the Market. And I desire that that *Folio* may be noted by your Lordship, and that you will please to look into what is said in that Case; for 'tis debated before, and it seemed as if they would have forfeited the Market by it, but not the Corporation; and yet that was not forfeited neither. And to this I will apply that Rule that Mr. Solicitor himself did mention, *Punitur in eo quo peccat.* You have offended in the Toll, therefore you shall suffer in the Toll, not in the Market, to be sure not in the Corporation. For if it were that, it should affect the Market, it would be because it hath some relation to a Market, as a Toll hath; but how can this possibly affect or touch the Corporation? The Statute indeed goes thus far, and says, Whosoever shall take outrageous Toll shall forfeit the Market; but then shall we come and add, Whoever shall take outrageous Toll, shall forfeit his Capacity of holding a Market, or any thing else? Do they complain of us for taking the Legislative power upon us, and therefore we shall forfeit our Corporation, when the Statute it self has appointed the Punishment, and says only, the Market shall be forfeited, and so make a new Law themselves? Statutes are supposed to be penal enough of themselves, and all penal Statutes are to be taken equitably as to the Penalty, and not stretch'd beyond the Letter. And wherever a Statute inflicts a Penalty, and says you shall forfeit so much, as my Lord *Hobart* says, the Common Law shuts up the Negative, that you shall forfeit no more. How then is it possible we should forfeit that, which if it were forfeitable at all, is not within the provision of this Law?

'Tis true, as Mr. Solicitor hath said in the Book of *Affises* that he cited in *Vet. Nat. Brev'* 161. it is said you shall forfeit in the case of a Mis-user (where the Liberties are not depending one upon another) only the Liberty that is abused; but how that can be applied for him I understand not, for nothing can be more flat and plain against him: If to be we should forfeit our Toll or our Market, be it so; nay, if we should forfeit our Liberty of having a Common Council, what then? how is it possible to bring it up to a For-

feiture of the Corporation? You shall forfeit a Court of Pypowders, if you forfeit your Market, because 'tis incident to it, and dependent upon it, and subject to what Dangers the Market it self is subject to; but the Being of a Corporation, nothing can transcend that. To be sure what is incident to it, cannot transcend it; 'tis but a Subject to that which is superior.

For example sake, my Lord, I will cite you a Case, which is the Case of the City of *London* too about the Measurage of Coals. It is Sir *Julius Cesar's* Case, *1 Leon' 106.* And I choose to cite that Book; for though it did not come out with your Lordship's Authority, yet my late Lord Chancellor gave this just Account of it, That it was one of the best of our later Reports. Sir *Julius Cesar* libelled in the Admiralty against the Officer of the City for measuring Coals upon the *Thames.* *Fleetwood* came to the Bar, and prayed a Prohibition, and *Edgerton* the Solicitor on the other side complained, that the Mayor of *London* did take a Fine for this Measurage, and made an Office of it; and this he conceived was Extortion (which is the thing complained of here in so many words) and being upon the *Thames*, should be punished in the Admiralty. As to that the Judges replied, By no means; and *Wrey* and *Gawdey* said, If it be Extortion in the Mayor, there is no remedy for it in the Court of Admiralty, but in the King's Courts, and it shall be redressed here in a *Quo Warranto* says *Gawdey.* 'Tis true, a *Quo Warranto* might well have been brought for redressing that Extortion, but it could not mean thereby that the Corporation should be dissolved: And that it was so understood is most plain; for accordingly a *Quo Warranto* is brought. You have it in *Coke's Entries fol. 535. and 536. placit' 4.* And the City of *London* appeared and pleaded, and prescribed to it; and thereupon the Attorney General that then was, my Lord *Coke* himself, was satisfied, and confessed their Title, and Judgment was given for them; and since it hath been held good, and they have enjoyed it in peace; and this I hope is a good Example for Mr. Attorney to follow in this Case.

My Lord, I come now to that part which I come least willingly to, I mean that of the Petition; and that which I have to say in it, is this, my Lord: First I say, That this Petition is justified in the Pleading, and I hope it is very justifiable; if it were but excusable, 'tis enough. That it is justifiable to petition the King in our Necessities and Extremities, is plain from what my Lord *Hobart* says, *fol. 220.* He says it was resolved by the Court in *Renbam's* Case, that it was lawful for any Subject to petition to the King for a Redress, in an humble and modest manner: For as 'tis there said, Access to the Sovereign must not be shut up in case of the Subjects Distresses. Now the Common Council are not less privileged than any other sure, but rather more in this kind of Addressing and Petitioning: I cannot tell what Crime to make of this, there is so much alledged against us.

I did very well observe truly, and would always observe and remember in all such Cases, what my Lord-Keeper here said to your Lordship, *That Council should not so much speak, as if they would abet the Guilt of their Client, rather than advocate for their Innocency.*

My Lord, if the Words themselves that are alledged are not Words that are unlawful to be delivered

livered or spoken, then all this that they are dressed up with of the Intention to censure the King, and to bring him into dislike with his People, all that must go for nothing, and are not to weigh in the Scale. Now the Words are these: *That there was a Prorogation, and by means of this, there being depending so many Impeachments of Lords and others, and Bills in the Parliament in both Houses, which could not be perfected any where but there, the Prosecution of the Publick Justice, and the making Provisions necessary for the Preservation of his Majesty and his Protestant Subjects, received an Interruption.* Now, my Lord, I conceive these Words are not Words that in themselves are unlawful, and for that your Lordship will be pleased to consider our Plea; I need not repeat it, you have it before you: If they are in Sense and Substance the same Words that have been spoken by the King, and the Lords and Commons in Parliament; he that will not be satisfied with that Authority, will not be satisfied with any. Then what do we say? We say that the Prosecution of the publick Justice received an Interruption: Does not the King say so, and more, in his Speech, we have set forth, wherein he recommends it to both Houses, that Justice may be done? What is the meaning then but this? If the further Prosecution of the Offenders goes not on, Justice is not done? and so we speak but the King's Words. We say they are not tryed, or they were not tryed, they themselves complain of it to this day; and therefore Justice did receive an Interruption. I am confident, without reflection, that Honourable Person my Lord *Danby* in this point hath said Words much more liable to exception, though truly Words that I believe deserve no Rebuke. He has complained that Justice was not done in his Case, because he was not tryed, and that when he desired to be tryed too; but his Liberty taken away, and he forfeited that which was dearer to him than Lands or Honours, his Health, whereby he endangered his Life, and lost all the Comforts of Life. If it were lawful for him to say, as certainly it was, That Justice was not done in his Case, why might not the City say so? Either these Lords ought to be condemned, or they ought to be acquitted; 'tis hard to say Justice is done, when they lie so long in Prison, and are not either acquitted or condemned.

Then we say this, That the making Provision for the Preservation of the King's Person and of his Protestant Subjects received an Interruption. To this part we give this Answer: We set forth, That there were Bills depending in the Parliament for this Purpose, and that is agreed to us by the Demurrer; and that these Bills could not pass into Laws, any more than the Lords could be tried but in Parliament. Why then if it be so, that the matter cannot be done, nor provision made, but (as that Proclamation, that issued for the Fast, said, and as the Addressee of both Houses for the Fast do say) by the Blessing of God upon the Counsels of King and Parliament; if these Counsels, or the King and his Parliament are interrupted, this is not done. To make such an high Crime of this I do not understand; I would not be thought to speak any thing to justify that which is really a Crime; but this is that I say, 'Tis not in Law unlawful for us to petition the King, or address to him:

But, my Lord, to take off the edge of this Business, I shall beg leave to read to your Lordship a Speech of the King's, made the 6th of March following, and therein there are these Words, *The further Prosecution of the Plot.*

My Lord, let any man read, and spell, and see how in substance the Words in our Petition differ from the Words of the King, making those Laws necessary for the Security of himself and the Kingdom, and this spoken the 6th of March, when this very Petition now complained of was presented in January or February before, and there was no Parliament between. No Man will say, that there were Laws sufficient for the Security of the King and Kingdom, when the King himself speaks of the Necessity of making such: So then, those Laws that were preparing received an Interruption. The Lords were not tried, is not that an Interruption of Justice? since they could be tried no where else, as must be granted; and the King recommends it to them as not done, but necessary to be done. So the King said before, and so it is implied here. There is no such thing said in the Petition, *That the King did interrupt Justice, and the Proceedings of the Parliament:* It is an Inference and a Consequence made by Wit and Art; not that the King did interrupt, or intend to interrupt Justice, but it says, *by the Prorogation of the Parliament the publick Justice received an Interruption.*

My Lord, suppose at that time there had been a Pestilence here, and the King had been as much resolved to meet his two Houses as they him, but by reason of the Pestilence he were necessitated and forced to make a Prorogation; then there comes such a Petition from the City and says, That by reason of this Prorogation those Bills that were depending did not pass, and the publick Justice received an Interruption: What is the Offence of this? 'Tis all true. If there be Bills depending, and Impeachments, that can no other where be tried, they do receive Interruption by a Prorogation. Can any Man say this is false? The charge in the Replication is, *That we did falsely and maliciously say, what? that which is true, and that which the King had said before, and that which the Lords and Commons said after him, That till those things were done they were not safe; and those things as yet were not done.*

My Lord, there is this further in it, the Petition is set forth *in hæc verba;* and therefore I may take any thing out of it to explain it, and restore it to it self; for this indeed is a very restrained construction of the Petition.

It says, when this Interruption by the Prorogation was receiv'd, *that the King for urgent Causes, and very good Reasons, did prorogue the Parliament.* It is his Prerogative to do so; and God forbid but he should have it. I think, without doubt, we should be more at a loss for want of that Prerogative than we can by the use of it: it is mine, and I believe every good Man's Opinion, that that Prerogative is very necessary and profitable for us all; but it is the consequence of it that this Interruption of Justice is received; nay, we are so far from saying that the King did interrupt Justice, or intending it, that we say, we do hope the King's gracious Intentions were only to make way for the better Concurrence of his Majesty and his Parliament. The King does, *for great Causes,* and best known to himself, who has the Prerogative, *prorogue the Parliament;* where-
by

by, as a meer Consequence, not as the King's Intention, *the publick Justice is interrupted*: Nay, this we affirm was with a good Intention in the King, *that he might the better be enabled to concur with his Parliament*, as is set forth in the Petition. Can there be any thing more properly said? 'Tis the greatest Justification of the Prorogation that can be. The King has prorogued the Parliament: What to do? Why Justice hath in View received an Interruption, but not in the Intention of the King. We know what the Meaning of it is, and so we set forth in our very Petition, *it is to gain time, that he may the better concur with his Parliament*. It is a great Commendation of the King's Purpose, instead of charging him with Injustice, that he did resolve to concur with his Parliament for such Ends, and accordingly did prorogue the Parliament.

Now the Attorney General hath put in, that it was *ea intentione*; there is the Sting of the Business to put in those Words, to make that which we may lawfully speak, of it self to be an Offence; but truly that signifies just nothing: It can never hurt a thing that is true; it has great Authority in it, if it be applied to a thing that is unlawful; but in substance it be true, and the thing it self justifiable, those Words make nothing in the Case; and I think I need not argue that Point, but refer my self to the great Case that was in *Westminster-hall*; and that is the Reversal of the Judgment given in this Court against my Lord *Hollis*, which was a Reversal in Parliament; and is printed in the last Impression of Mr. Justice *Coke's* Reports by order of Parliament, and there they explode all the Notion of *ea intentione*, and this Business. A man speaks Words that he might speak in Parliament (though I know not whether he might, or no) but the great thing is, if words, that in themselves are tolerable to be spoken, be spoken, you shall not come and say they were spoken with an ill Intention; though, as I shall shew by and by, this hath a kind of Fatality in it, and that is this, that it is done with an ill Mind by a Corporation that hath no Mind at all.

Mr. Attorney General. Just now you said it had a Mind, and Reason was its Mind.

Mr. Recorder. I said as my Lord *Hobart* says, that a By-law to it is a Mind, 'as Reason is to a Man, but it hath no moral mind. My Lord, then I say, the Citizens of *London* were indeed at that time under great Consternation, by reason of the Conspiracies that had been discovered in Parliament, and in the Courts of Justice; and it had been declared by the late Lord Chancellor, at the Trial of the Lord *Stafford*, which your Lordship may very well remember, *That London was burnt by the Papists; and therefore it was no wonder that they were desirous that themselves and the Kingdom should be put into great Security against those Enemies*. This, my Lord, I confess is a tender point, and I would not speak a Word in it without a Law-book to back me. I remember that my Lord *Hobart* says, that Zeal and Indignation are fervent Passions. The City of *London* had great Indignation against the Papists for this Conspiracy against the King and Kingdom, and the Religion established by Law. There was no Disaffection in the City at this time, when this Petition was made sure, and I wonder that any Man should say, that knows *London*, and was acquainted with it then, and looks upon this Peti-

tion, which passed *nemine contradicente*, that they had such an Intention as is insinuated; and pray let him read the Names of the worthy Aldermen that then sat upon the Bench, and the other Names of the Common Council-men then present, and then let him say, if, without Reflection, the King have more loyal Subjects in the City of *London* than these Men were. And do you think if there had been in it any Sedition, or any of those ill Qualities that make up the ill Adverbs, which are joined to it in the Replication, not one of all those loyally disposed Men would have spoken against it? But alas, all of it passed *nemine contradicente*.

My Lord, I say, that if the matter of it be justifiable, as I think it is, then all these Words will signify nothing, if there were never so many more of them: And the presenting and carrying of it to the King, that is no Offence, that is not so much as pretended to be one. And, my Lord, I think it a very harsh Translation of the Word into *Latin*, when the Petition says, That the Parliament's Proceedings, or the publick Justice, received an Interruption, to put that word of *Obstructionem* in; truly I think a better Word might have been found to express the soft Expression in the Petition; and they need not have put that hard violent Word *Obstructionem*, when to make *English* of it they translated it *Interruption*.

But, my Lord, they do admit, I say, that the making and presenting of it to the King is not the Offence so much as the publishing of it, by which it is exposed to many others besides. Now to excuse that, the Answer we give is this; and 'tis that which will carry a very reasonable Ground of Justification in it: Certain Citizens, that were private Men, had petitioned the Common Council, and thereby they were importuned to make known the Desires of the City to the King, and it was reasonable to make known to those Citizens what the Common Council had done, to prevent false Rumours, which we knew were rife enough in those Days; and to shew that there was nothing ill in it, we did print it. And 'tis also all driving at the Common Interest, at the King's Safety, the Preservation of the Church and the Government established: All this they did desire might be known to these Citizens, and all others that enquired about it; and therefore they printed it, to evidence that there was nothing of ill intended in it. And I do wonder, I must confess, that this Objection of the publishing of this Petition should be so much insisted upon; for they say, that the Mayor, Commonalty, and Citizens of the City of *London* did it; and say not any thing of the Common Council, that they did print it: Now they that did vote it, knew it without printing; and 'tis alledged in the Pleadings, and confessed by the Demurrer, that the Mayor, Commonalty, and Citizens of *London*, that is, the Corporation, consists of above 50,000 Men, which cannot well be intended otherwise. Why then, here is a Petition that is agreed to be well enough lodged as to the Persons that voted it, it being the Liberty of the Subject to petition; and if this had been only presented to the King, though it had been by those 50,000 Men, nay, if it had been by 10,000 Men, who had been the Corporation, it had been well enough, so it had not been printed, but only kept private to themselves: Why then 'tis very strange, that what is

known to all *London*, so great a Part of the Kingdom, should be lawful, but it should be heinously unlawful to send the News of it further. It went further than the City of *London*; and therefore 'tis such an Offence as shall be a Forfeiture of the Corporation. My Lord, there is the Case of *Lake and King*, the Petition to the Parliament was scandalous in it self, yet it stood protected, being presented to the Parliament; and it was lawful to print it, provided it were delivered to a Committee of Parliament, or only to those that were Members; though 'tis said there, that the printing of it is a great publishing, for the Compositors, Correctors, and other Persons that are concerned in the Press, read every Letter of it. But it was answered, that Printing is but a more expeditious way of Writing; and if he had employed 20 Clerks, it had been a greater publishing than three or four Printers. Possibly the Printers might not read it, or not be able to read it well, or not all of them read it at that time.

Now here, my Lord, sure it was lawful to acquaint the Citizens what they had done, if you take it to be the Act of the Common Council, and the Common Council to be the Representative of the City. It was always agreed by the House of Commons, that any Member might send the Votes to those that sent them thither, and whom they represented; they have blamed indeed Men for sending the Debates, but never for communicating the Votes: And what they may do by Writing, that they may do by Printing. Why then might not the Citizens of *London*, who by Custom choose those Common Council men, well desire to know, and might well know what they had done? And then what they might do by Writing, they might by Printing; for that is but another way, though a more suitable and compendious way, of exhibiting any thing that you would have go to many. And if it be lawful to impart it to all the City, and all the City does know it, though it does go further 'tis no matter; for what is known to *London*, may very well be known to all the Nation besides, without Offence, if it did go further. Besides, it shall never be intended it was published further; or that any others knew of it; for 'tis said to be published in the Parish of *St. Michael Bassishaw*, in the Ward of *Bassishaw*, and that is in *London*; to the Citizens of *London*; and so they only talked of it amongst themselves. Besides, the main thing which I go upon, is, if there be no ill in the thing it self, the *ea intentione* can make no Crime by a bare Affirmation, which we deny; and if it might be well said or done, it is lawful to print it, and the Publication is no Offence neither.

My Lord, the next Point I come to is this, That a Corporation cannot possibly commit a Capital Crime, or any other Crime against the Peace: And I shall offer this Dilemma, Either it was done seditiously, or not; if not, then there is no sufficient Assignment of a Cause of Forfeiture; if it were, then 'tis a Crime for which the Offender is indictable; and that I say is absolutely impossible for a Corporation to be guilty of. And here I will throw in also that Business of the Toll; and I will, for Argument's sake, admit the taking of a wrongful Toll to be Robbery, and then let the Argument go on. I have heard it said within the Bar occasionally, that a Corporation is intrusted with

the Government; and that they may commit Treason, and raise Sedition, as Mr. Solicitor hath said; I suppose it must be under their Great Seal: But I confess, I believe it is rather spoken to amuse, than to satisfy: But I really think it is no ill nor unjustifiable thing for me to say, nor against the Government to affirm, That 'tis impossible a Corporation can commit Treason, or that it is intrusted with the Government in any such Kind.

But first, my Lord, I shall shew you what Opinion former times had, and that because such an Opinion as this hath been broached of late Days.

Lord Chief Justice. Mr. Recorder, will you be much longer? Because I must sit here at *Nisi prius* this Afternoon, and yet I would fain hear the Argument, if it would not be too long.

Mr. Recorder. No, my Lord, I have almost done, and will cut short.

In 21 *E. 4. fol. 13. b.* 'tis said by *Pigott*, That a Mayor has two Abilities; the one to his own use, to take and to grant, and to do as another natural Person does; and then the Mayor, as Mayor and Commonalty, hath another Capacity to their common Use and Profit; and that is but a Name, an *Ens rationis*, a thing that cannot be seen, and is no Substance; and for this Name or Corporation, 'tis impossible they can do or suffer any wrong, as to beat or be beaten, as such a Body; but the Wrong is made to every Member of the Body, as to his own proper Person, and not as to the Name of Corporation; nor can the Corporation do a personal Wrong to another; nor can they commit Treason or Felony as to the Corporation, nor against any other Person. And if a Writ of Debt be brought against the Mayor and Commonalty, or other such Body, upon an Obligation, and they plead it is not their Deed, and it is found their Deed, they shall not be imprisoned as another single Person shall. The same Law is if they are found Disseisers with Force, they shall not be imprisoned; nor in a Writ of Ravishment of Ward shall they either be imprisoned, or abjure the Realm; for such a Body is but a Name, to which such an Act cannot be done. So says *Catesby* in the same Book, In a Writ brought against them no *Capias* shall issue, because they are but as a dead Person in Law; and the Appearance upon a *Capias* cannot be otherwise than personal. And so to this purpose says the Chief Justice there, If this Body will do any thing, it must be done by Writing. And all along it is the Tenor of the whole Case, that a Corporation cannot commit Treason, or any other Crime. But the Reason of the thing is above any Authority: Suppose that they under their common Seal should commit Treason, and you bring an Indictment of Treason against the Mayor, Commonalty, and Citizens of the City of *London*, what Judgment shall be given against them in their corporate Capacity? What? It shall be, that *Suspendatur per collum Corpus politicum*. And then, what Execution shall be done upon that Sentence? What? must they hang up the Common Seal? Nothing else you can do affect them; but in their private Capacity, there they may be punished as single Persons.

A Penal Statute says, that he or she, that offends against the Law, shall forfeit so much, or incur such a Penalty: Is a Corporation Male, or Female, that it should come under such a Provision? but the real reason of the Law is this, it is a civil Being, it is *Ens civile*, it is *Corpus politicum*;

liticum; it hath civil Qualities, but it hath no moral Qualities; and all Offences consist in the Immorality of them, and there must be Malice to make that Immorality. No Words or Acts are Treason or Felony, unless there be a traitorous Mind, or a felonious Mind; and therefore a Mad-man cannot be guilty of Treason, or Felony. Serjeant brought an Action for these Words, that he had spoken Treason; it was moved in Arrest of Judgment, that this cannot be actionable; for he might speak Treason in putting a Case: Ay, that were well, said they, if it could be understood so; but we must intend it that he spoke Treason, as his own Words *ex corde suo*, which makes it Treason; for Treason consists in the Immorality of the Mind.

Another reason is what *Pigott* said, as I said before, That a Corporation is but a Name; an *Ens rationis*, a thing that cannot see or be seen, and indeed is no Substance, nor can do or suffer Wrong, nor any Thing where a corporal Appearance is requisite: What my Lord *Dyer* says in *Moor* 68. that he never saw, is, I believe, true in general, what no Man ever did see, that a Corporation could be bound in a Recognizance or Statute Merchant; and why? because it must be acknowledged in Person: And so in this Case, the Guilt follows the Person, but cannot a meer Capacity. In all Crimes the Offender must appear in Person, and plead in Person, and suffer in Person; but you can never bring the Mayor, Commonalty, and Citizens into Gaol, to appear and plead to an Indictment to receive a Judgment, or suffer Execution. Can a Body Politick, that is invisible, appear in Person? But then there is this great Objection, By this means, they say, if there be no Punishing of them, there is no Government, and they may commit Treason under the Great Seal, they may raise Armies, and instigate a Rebellion, and all with Impunity. My Lord, I say no, and I give two Answers to it, that are not to be replied to; and the first is this:

1. All these Persons, that are met together, though they are met *corporaliter*, in their corporate Capacity, for the Acts of the Corporation at that time; yet when they go out of their corporate Business, and commit Treason or Felony, the Crime does not *egredi personas*, every one of them is a Traitor or a Felon; and notwithstanding they appeared there under the Pretence of a Corporation, yet they are all liable in their private several Capacities, every one of them must be indicted personally, and suffer personally: For when they go about to do such a thing, it is out of the Business of the Corporation; and they must answer for their own particular Offences. But,

2. I have another Answer to give to it. This Objection is to be retorted on the other side, that if a Corporation authorize the levying of War under their Common Seal, they shall be affected by it in their politick Capacity, and are liable to the Law in that Capacity only, and must suffer in that Capacity only: And the Consequence of that is, they are discharged in their private Capacity; and this is a Law of Indemnity and Protection for all Crimes; for a Man cannot be liable two Ways for Treason, or Felony, or any other Crimes: If he be not liable in his private, he is in his publick Capacity; if not in his publick, he is in his private. And what is the Consequence of that? This is a Dispensation for a Corporation: VOL. IV.

on met together in a Body, to do any illegal thing, or to commit any enormous Crime; for the King's Counsel say this, we are responsible for it in our politick Capacity; and what Execution can then be done to punish that Corporation with such a Punishment as the Law inflicts, that is, Imprisonment, or Death, any more than upon an Action of Debt brought against them upon a Bond, and *Non est factum* pleaded, and found for the Plaintiff? can they be imprisoned? and the like. So that this shall protect and shelter them in the Commission of any Capital Offence; for if they are to suffer for it as a Corporation; you must take Judgment against them, as the Law gives it; and how will that be done against an invisible Body? What will be the Execution against the *Corpus Politicum*, that can neither see nor be seen?

I think this mighty plain; and I must confess, I wonder how it could ever enter into the Mind of any Man, that a Corporation could commit a corporate Crime. I have, as it became me, in regard of the Duty of my place, and before that, for my own Learning, read *Stamford's Pleas of the Crown*, my Lord *Coke's 4th Institutes*, *Poulton de Pace Regni*, my Lord *Hales's Pleas of the Crown*, *Dalton's Justice of the Peace*, and other Books on that Subject, but I defy any Man to shew me in any of those Treatises concerning criminal Matters, any Resolution, that ever a Corporation could be so concerned, that they should be brought before a Justice of Peace, or proceeded against upon any Law for Treason, or Felony; or be hanged in their political Capacity.

My Lord, I shall conclude all my Discourse of this kind (and I have almost done, because I perceive I incroach upon your Patience) with an Observation I have made upon the 19 H. 7. c. 7. and it is the Statute that makes Provision against Corporations, that made By-laws against the Prerogative. That Statute says, that some Corporations did so; now an higher Offence than that, sure cannot well be described; and there that Law says, that those that do so, that make such By-laws against the Prerogative, shall forfeit for so doing, for every Offence, forty Pounds, unless they are confirmed by the Chancellor and Treasurer, and Chief Justices, or any Three of them. Now to what purpose was this Statute made; if the making of an ill By-law (and worse cannot be than a By-law against the King's Prerogative) should be a Forfeiture of the Being of a Corporation? How vainly did the King and Parliament employ themselves to make a Statute that a Corporation should forfeit 40 l. for such an Offence? No Man will say they had rather take that Penalty than another, when they might have a greater, if a greater could be had by Law. If they might have had a *Quo Warranto*, and thereby destroyed the Corporation, surely they would not have stood for the Penalty of 40 l. for they might easily have got more Money: No, they might have said, We will never pass it by, unless you will give us 4,000 l. or a far greater Sum; nor shall you have your Corporation again, without you give us a considerable Recompense for it. And when the Process and the Proceedings were so expeditious and easy to come at in a *Quo Warranto*, as it was easy in those Days, why should they put the King to the Delays in an Action of Debt for so small a Penalty as 40 l.? So that I take it to be a direct Judgment of the

Parliament in that Case, that no Corporation should or could be forfeited for the making of any By-law that was irregular, though it were even against the King's Prerogative.

But to hasten to a Conclusion, I have all this while, my Lord, supposed, that the Mayor, Commonalty, and Citizens of *London* have done this, but it is not so; this is not the Act of the Mayor, Commonalty, and Citizens, 'tis not the two hundredth part of the Corporation, 'tis but the Act of the Common Council; and we have distinguished our selves by pleading, that it does not consist of above 250, when the City contains above 50,000. I must confess the Council is not taken notice of much in Law; as is seen in *Warren's Case*, 2 *Crook* 540. & 2 *Rolls* 112. *Warren* being one of the Common Council of *Coventry*, and displaced, sued out a Writ of Restitution, and upon that Writ it was returned, that by Custom the City might place and displace *ad libitum*; they there held that the Custom was good: But it is not so of a Freeman or Alderman, because he hath a Freehold; but a Common Council is a thing collateral to a Corporation, and the Office of a Common Council is nothing but only to give Assistance and Advice, which they may refuse at their pleasure. In *Estwick's Case* in *Style* 32. & 2 *Rolls* 456. it is said, That 'tis a place meerly by Custom, and that the Common Council is properly but only a Court of Advice; and, my Lord, you shall never intend more than that they were a Court of Advice: All the Rise of their Power is but by Custom, and that Custom is pleaded to give Advice for the Benefit of the City, and make By-laws for the good of the Corporation, and that is confessed by the Demurrer, and you shall intend no more than what is opened in the Pleading.

And then 'tis evident this was done by a very small Part of the Citizens of *London*; and that does no way affect the whole Corporation sure. In *James Bagg's Case*, 1 *Rolls*, fol. 226. it is said, That if a Patent be procured by some persons of a Corporation, and the greater Part do not assent to it, that shall not bind a Corporation. And if so be a Charter sealed, and sent by the King, because not accepted *in pais*, by the greater Party, bind not, shall an Act done by a few, and an Act done, that tends to a Forfeiture, bind the whole in point of their Being? There is no ground to say, that the Common Council represents the City, no more than a Council does his Client, or an Attorney his Master; only as far as is for the Benefit of the City, they are chosen and intrusted to make By-laws; if they offend, they are but Ministers and Officers, and so they are within the Statute of *Ed.* 3. which I mention, though I think we have no need of that in the case to help us; if they make an unreasonable By-law, it is void, and every man that is aggrieved by it may have his Remedy, may bring his Action. Shall you supply this by an Intendment, that they have such a Relation? that they are the Representatives of the City of *London*? that they have a Power to forfeit the Corporation? No, my Lord, by Law they are Part of the Corporation, but they have no such Power to forfeit the Corporation. A Custom shall never be construed to enable a Man to do a Wrong; and a great Wrong it is, that they that are trusted, and trusted but for a Year, and trusted but for the good of the Corporation of which they are Part, should give up

the Being, or what is worse, forfeit the Being of that Corporation. The Custom of *Kent*, that makes an Infant capable of making a Feoffment, shall never enable an Infant Tenant in Tayl to make a Feoffment, so as to work a Discontinuance of the Estate Tayl, and put the Heir to his *Formedon*. Every illegal Act of theirs is beyond their Commission, and a Nullity of that is all in respect of themselves; and it is as if they had never done it as to the Corporation, for they are by no means the Corporation; for tho' they use the Common Seal in some Cases, at some times, so do the Court of Aldermen in other Cases; but it is only in other Cases wherein they are particularly intrusted. If an Act of Common Council say, that I shall have such and such Lands of the City's, that Act signifies nothing but as a Direction and Advice; when it is under the Common Seal, it is an Act of Corporation, and proceeding by Advice of Common Council, it binds.

Now, my Lord, this is the more unreasonable, because we know that the Practice of the Common Council in *London*, being to advise for all the Inhabitants, they are chosen by the Unfreemen as well as others; and it is a strange thing that they should have a Capacity to give away the Liberty of the Citizens, when they are chosen by others as well as them. They had no such Trust for them; nay, all Trust they had was to keep their Liberties, and not to destroy them. Has any Man a Trust to destroy himself? sure no Man is trusted by God himself to be *selo de se*. And certainly then you can never understand it to be in the nature of a Trust to destroy another; and the least Citizen, my Lord, has as much and as true an Interest in the Corporation of the City of *London*, as the greatest: And therefore 250, if they had been much the greater Number of the Citizens, would signify nothing to the rest of the Body.

My Lord, I shall only say this little more, here is no Crime charged relating to them as a Corporation: Here is indeed a fine Word used, that we did this *contra fiduciam in corpore politico repositam*; but all this is but an imaginary Trust, the King never gave them a Power or Authority, or intrusted them to make By-laws that were unreasonable; he gave them a Power to make reasonable By-laws, and so he does every Corporation. And the same Law that gave them the Power, limits that Power, and says, if they go beyond that Power, it is a Nullity. And these Acts relate not to them as a Corporation; the Petition is not so much as said to be against any Trust reposed in the Corporation; certainly there never was any such Trust. Did ever the King intrust them to advise him about the Matters contained in the Petition? and if not, then it is not *contra fiduciam*; therefore it relates to particular Persons: If it be an Offence, I hope it is none of the Corporation's.

But then the levying of Money, that is *contra fiduciam*; they took upon them an illegal and unjust Power in the Common Council. Suppose it so, how does this belong to the Corporation? it is an Inroad upon Property, it is the most arbitrary thing in the world. Whether they have the Market, and the Dominion of it, or not, is matter of Fact, and being pleaded, is confessed by the Demurrer: And then for the Power of making By-laws, that is a thing that cannot possibly be taken from them

them while they are a Corporation; it is that which must be in them as a Corporation, like the Faculty of Reason in a Man to express his Resolutions by. And it is no more, than if a Man; that has a Market, bid his Servant go and remove such as have Stalls there, unless they will pay so much. That Direction is as good a Law as this, and as bad a Law as this, and no more. There is nothing else in it but the Direction of the Officers, what they shall do in the ordering of the Markets, and disposing of the City's Property.

Then as to the formal Method of expressing themselves, whether it be by Act of Common Council, or under the Common Seal, or by their natural Voice, it is all one, it is not a thing that concerns them as a Body Politick: But if it were illegal and mistaken, I say, the Penalty is only, that it shall be void. What the Common Council, nay, what the Corporation does within the Limits of its Authority, is good, what beyond that it does, is void. If I command my Servant to distrain for Rent, and he kills a Man in the doing of it, this, as to me, is void; but as to himself, that is chargeable upon him. And what I say of the Common Council, I say of the Corporation it self, That it is a Capacity, and a limited Capacity; it is the Act of the Members, not of the Corporation, if they do wrong. The Common Council can act for the good of the City, and the City can do no more, if they themselves should meet. *Crooke, Eliz. fol. 85.* the Queen makes a Lease for Years of Lands to the men of *Chesterfield*, by the name of Aldermen, and they by that Name grant all their Interest to *Clerk*; says that Book, This is void; for the Queen granting them a Lease as to the Aldermen of *Chesterfield*, this makes them a Corporation, and gives them a Capacity to take, but not to grant. And so *Rolls Abr. 1 p. 513.* And therefore no Corporation is to be considered as a Corporation, but only when it acts according to the Capacity allowed to it; and as to the rest, it all turns into their private Capacity, but it affects not the Body, nor hath any such Relation as to bind it.

My Lord, all the Question here is, Whether there shall be such a Person *in esse* as this Corporation? Whether the City of *London* shall subsist as such a Person, to sue and be sued, to plead and be impleaded? There is nothing of Government or Misgovernment in the Case; but it is all about our Capacity, and nothing else, whether we shall be Defendant or Plaintiff in any Court.

My Lord, *Magna Charta*, and all the other Acts, that have gone in Confirmation of it, shew the great Care of the Government in all Ages to preserve the City of *London*; and I look upon them as so many Declarations of the Immortality of it, and of all other Corporations. I shall use a strange Argument perhaps at first hearing, but it is to me a great Evidence for us, that *Magna Charta* does not confirm our Being, but our Liberties and Privileges; it says, That the City of *London* shall have all its Liberties, it confirms its Leets, its Markets, and all those things, that is, it confirms all that it has; it has not saved indeed, if a Corporation indeed be built upon a Corporation; but that particular Liberty may be destroyed, as that of *Bridewell*, and the like, but it does more than confirm its Being, for it does implicitly declare, that that was impossible to be forfeited: They confirm what needed Confirmation; but for their Being there was no need of

that; it only confirmed the supervenient Liberties, without which it might be a Corporation; but as to its Being, it meddled not with that. And if it were not so, it were an unreasonable thing that we should have so many Acts of Parliament, that give such particular Powers to the Mayor and Commonalty of *London*; and scarce any Act of Parliament that relates to the Publick, but *London* is mentioned, and taken care of in it. Are not all these Declarations, that *London* should stand for ever? Would not any one have said else, Pray what do you put such Confidence in *London* for? There is not such a fickle Thing upon the Earth as the Being of the Corporation of *London*. If they lay but 6 *d.* upon a Joynt of Meat, they are gone, and there is not a Month in the Year but they forfeit their Being.

The Act for Administration hath a Proviso, that says, it shall not extend to *London*: Why does any Man think that this Law was not intended to be as perpetual for *London*, as for other Parts of the Kingdom? They did not question but *London* would be a Corporation as long as *England* was *England*. It would be a strange Thing in the Example of it, that the World should be taught by one Instance, that a Corporation can be ruined, when so many People put their Trusts in those Corporations, and so many vast Inheritances depend upon them. And I think the King and the Government, or those you call so, are more concerned to preserve *London*, than all the Persons that are in it. I would not speak it in this place by way of Argument for my Client, but I think I could maintain it in all Places; only I hope and believe I shall have no Need for it.

My Lord, all Innovations (as this must certainly be a very great One) are dangerous; this Frame of Government has lasted and been preserved for many hundreds of Years, and I hope will be so as long as the World endures.

My Lord, I am sensible I need your Patience; but I have just done. Here is a Charge that has very little, indeed there is nothing in the Matter of it; but the Weight and Consequences are fitter to be meditated upon, than spoken of. And therefore for these Reasons I do pray, that these Liberties may be adjudged to us, and we may be dismissed out of this Court.

Now, my Lord, if your Lordship please, I will give an Answer to Mr. Solicitor's Authorities.

Lord Chief Justice. I suppose you do intend to argue it again, and therefore there will not be so much need of that now; besides, it is late, and I cannot stay.

Mr. Attorney General. My Lord, I think it may be very proper to have one other Argument, the first Week in *Easter Term*.

Lord Chief Justice. Take what day you will, Mr. Attorney.

Mr. Attorney General. Let it be the first Friday in the Term, if you please, my Lord.

Lord Chief Justice. Let it be so. Look you, Mr. Recorder, I perceive you do agree, that the *Petition*, setting forth, that the King having prorogued the Parliament, and thereby that Common Justice had received Interruption; you have justified in your Plea (I took it always to be so) and now at the Bar, That the King by the Prorogation did interrupt the Justice of the Kingdom.

Mr. Recorder. No, no, my Lord: then I have Reason

Reason to speak again to make my self rightly understood.

Lord Chief Justice. Why, look you, you do agree that the King had prorogued the Parliament, and thereby that publick Justice was interrupted; if that were so, by whose Means, and by whom did the publick Justice receive interruption, if not by the King? I did take it to be so really, and that you had justified it.

Mr. Recorder. My Lord, I do agree, as we say, and as the King himself said, that these Acts were not passed, nor the Lords tried, and so Justice was not done: and I would ask your Lordship, or any other indifferent Person, whether Justice were done, or necessary Provision for these things made, if those Bills were unpassed? If it were so, it is a natural Truth, that thereby the Trial, and Acquittal, or Condemnation of the Lords was interrupted, and so was the Security of the King's Person, and the Protestant Religion, the Bills not being passed. For the King calls upon the Parliament to pass them the next Session, therefore they were not passed in the former Session. This is by no means a charging of the Interruption of Justice upon the King; every great thing that is done by the King may have a prejudicial Influence, it may be, as to some Particulars; but to say that thereby Justice is interrupted, is not to charge any Blame upon the King; because, though it may be prejudicial in one Particular, yet it may be useful to the Publick. No doubt, if the King do prorogue the Parliament for never so great Ends, and necessary Causes, yet if I have but one Bill passing there, suppose it be a private Bill about Naturalization, or the like, if a Prorogation comes, it is naturally true that that is interrupted, but that is not laying a Blame upon the King.

Lord Chief Justice. May it be said that the publick Justice is interrupted, if a Bill for Naturalization, or the like, pass not before the Prorogation? I speak it for this only, that they that argue next may think upon it. The Petition does say that the publick Justice was interrupted; did they mean it was true? or did they mean it was not true? If they did mean it was true, then you have done well to justify it, to say it was so, and the King had done amiss in proroguing the Parliament. Yet it seems, the Common Council of London (neither by Charter nor Prescription) had any Right to controul the King, nor to be of the King's Council neither; and therefore it was a matter purely *dehors*. If the matter were not true, why do you put in your Petition? If it be true, justify it, if you can. But here is the matter, I would have a good Answer given me to this Point: The Petition was to the King; if so be the Petition had been delivered to the King (as it may be it was) it was but one single Petition to the King; that might be well enough, if there had been no more in the Case, it is very possible it might not have been a Question at this time: But pray, I would know of them that argue next, by what Law or Authority it was, and what was the Meaning of it, that that which did not require two Clerks to write, in order to its being presented to the King, must be printed? By what Law is it to be justified, the printing and publishing of this Petition, and sending it all over the Nation, whereby the Mayor, Aldermen, and Common Council of the City of London, do let all the Nation know, that they do look upon the King as one that by the Prorogation of the Par-

liament had given the publick Justice of the Nation an Interruption? Pray by what Custom or Law is this published? In the Case of *Libellis famosis* (even in the Case of a Subject) it is adjudged, that if you print a Libel, though the matter of it be true, you shall be punished for it: Now when it is argued again, I would desire some good Satisfaction in that, what Reason or Ground there was for printing or publishing this Petition, unless it be to that Intent which is set forth by Mr. Attorney General in his Replication?

Now for the other Point, as you have ordered the Matter, you hold that a Corporation cannot be forfeited. Mr. Solicitor did take some Pains to argue, that there was no Statute that did protect you from a Forfeiture, he was not aware of what you did insist upon: You say, that by the Common Law Corporations cannot forfeit their Being; if so be they cannot, there is an end of the Question. But I pray you do you take it that a Corporation can commit any corporate Act, or no? For according to your Definition of the Matter, if nothing will serve but the Act of the Mayor, Aldermen, and all the Citizens, I believe I may safely say, and so will every one else, that never any corporate Act was done by the City of London since it was a City.

We know on the other side, and you, when it makes for your turn, told us, that the Mayor, Aldermen, and Common Council could make By-laws, and they were good, and binding, that is, when it lay in your way. For you make a Prescription in your Plea, and so also you have said at the Bar, that they may make By-laws to bind the Corporation. So that it seems when it is for your Conveniency, then the Mayor, Aldermen, and Common Council can do as much as all the Corporation; but when you come to be touched with something that you have done, in which you have gone beyond what you should have done, then the Citizens are 50,000 Men, and these are but 250 Persons, that have done these Things. Either the Mayor, Aldermen, and Common Council are the governing Part of the Corporation, or else they signify just Nothing: If they be, then whatsoever they agree upon binds the Whole, and must be taken as a corporate Act; or otherwise you will bring it to this pass, that the Corporation can do Nothing at all. For if the whole Corporation be not bound by such an Act, then it is impossible for you ever to do an Act that shall be an Act of the Corporation; so that that will be pretty hard for you that are for the City, I think, to maintain. Then I have but one Word more (I give no Opinion, but only tell you what I would have you apply your selves to) is the Trust of making By-laws annexed to the Lord of the Market? or is it annexed to the Lord Mayor? or is it annexed to the Corporation? Surely the Power of making By-laws is annexed to the Corporation, and I cannot see how, as Owners of the Markets, they have that Power. Now by your Distinction, where there is a Franchise that does necessarily depend upon another, there the Abuse of any part does forfeit the whole Franchise. If then this Power be annexed to the Corporation, as sure I think it is (but I reserve my self till I have heard a further Argument about it) then consider, whether or no, when they have abused that Power, in making this By-law, that is knit to them as a Corporation, it does not affect the Being of a Corporation? For it is strange a Corporation

Corporation should commit a Fault, and not be punished for it. I tell you, I deliver no Opinion in any thing now, but these things I would have you give me some Satisfaction in; and there are indeed several other things that will require consideration, I only hint these now.

The Second Argument was in Easter Term on Friday April 27.

Attor. Gen. THIS Case between the King and the City must be acknowledged to be a Case of Importance, both as it refers to the general Government of the Kingdom, and that of the City in particular. As it concerns the particular of the City, it doth not bode such dismal Consequences, as some Men endeavour to frighten their Neighbours with; as if it were hereby designed to demolish at once all their Liberties, and to lay waste and open the City of London, and to reduce it to the Condition of a Country Village; than which nothing could be more maliciously suggested of so excellent a Prince, who hath given such large Demonstrations, not only of his general Care of all his People's Welfare, but of his more especial and particular Kindness to this City of London. This *Quo Warranto* is not brought to destroy, but to reform and amend the Government of the City, by pruning off those Excesses and Exorbitances of Power, which some Men (contrary to their Duty, and the known Laws of the Land) have assumed to themselves under Colour of their Corporate Capacity, to the reviling of their Prince, the Oppression of their Fellow Subjects, and to the infinite Disquiet of their Fellow Citizens. I shall not recount the Mischiefs which those Exorbitances have of late wrought within the City, both as to its Peace and Profit, as likewise to the Obstruction of the free Course of Justice, that few Causes escaped the Crime of Maintenance from a divided Party. These Exorbitances committed by the City, casting so great an Influence over the whole Kingdom, make the King's Interposition in a Course of Law necessary, by gently laying his Hands upon them for their Cure. Herein the Politick Body of his Subjects resembles the natural, that the disaffected Members are best cured by laying on the King's Hands upon the Body. It hath been observed, that the City of London was never better governed, nor flourished more, than after it came from under the King's Hands. The Reason given by *Edw. 1.* at his Parliament in 18 *Ed. 1.* of Denial of the Petitions of the Citizens of London, to be restored to their former State, *scil.* To have a Mayor and their Ancient Liberties, is this: *Quia sunt in bono Statu, & omnia bene, & in pace, & nullam Commodum apparet to change it then.* The City was in as good Plight, both as to its Quiet and good Government and Profits too, whilst in the Hands of the King, under the Common Law Government, as it would be in the Hands of the Corporation. Neither did the City suffer by being in the Hands of the Crown, as it was in the Reigns of *Edw. 1.* *Edw. 2.* *Ed. 3.* and *Rich. 2.* nor their ancient Customs and Privileges destroyed; but they were thereby indeed restrained and held within the modest Rules of Government, in Subordination to the General Government of the Kingdom. And therefore the Danger threatened by this Suit will not be so fatal to the Being, or well-being of the City, as was suggested. Nay, I may with

great assurance say, That if the City receive the least harm hereby, their, or their Managers obstinate and final Impenitence must draw it upon themselves. For though the Conclusion of the Replication upon the Assignment of the Forfeiture be, That the Liberties be seized, and they *ab iisdem penitus excludantur*, that is but the formal Conclusion upon Assignment of Forfeitures, it shews what the Judgment of the Law may be; if demanded by the King's Attorney, and necessitated by the City's Obstinacy, but doth not exclude the King's Grace. But the Importance of this Case, to the general Government of the Kingdom, is of another Nature; and the Consequences thereof, both to the King, and his Subjects in general, appear now far greater than before, from the manner and grounds of the Defence made for the City at the Bar: *viz.* from the general Topicks of Corporations, That they are immortal and indissoluble; that no Treasons or Seditious against their Prince can be committed by the Members of a Corporation, even though those Members meet, and act jointly in the same manner and method, as they do all other corporate Acts; no, though they should vote raising of Men against their Prince; and should give Authority (under their Common Seal) to levy Money for that purpose; that Murders, Felonies, and Oppressions of their Fellow Subjects, either by unjust Imprisonments, of levying Money upon them; that none of these Crimes committed by the Majority of the Members of any Corporation, and authorized under the Common Seal, will affect the Corporation, or the Government thereof, in point of Forfeiture. But a Corporation once constituted, is out of the reach of the Common Law, to determine its Being, or its Governments, for any Causes whatsoever. If such Notions as these could be true, or should receive the least Countenance in a Court of Law, it would be unsafe, either for the King or any of his Subjects, to live in or near a Corporation. And the Complaint made by the Commons in Parliament 21 *Ed. 3.* that the Increase of Franchises tended to the Extinguishment and Overthrow of the Common Law, would soon be made good to the purpose, when such great Bodies of Men, as the Corporations within England consist of, shall jointly have a Power allowed them, *Quilibet impune audendi*, without being capable of Separation. The Distinction between the Politick Capacity and the Natural, to subject the one to Punishment, and not the other, was framed in the *Jesuits* School, to encourage Subjects to rebel against their Princes; but never yet so far improved the Distinction to apply it to Corporations, which (if they had thought of it) would have been more efficacious to their purpose, than as they applied it; Assurance of Impunity being the strongest Argument for a Commission of any Crime. The Case being of such Consequence both to the King, and his Subjects in general, I shall endeavour to examine it by the Rules and Precedents of Law, that I may sever what is meer notionally from what is of substance in it. I forbear to trouble the Court again with opening the whole Pleadings, but shall take the Case as it hath been opened. Wherein the General Question is, *Whether by any thing disclosed upon the Pleadings, it appear to the Court, that the Mayor, Citizens, and Commonality of London, have forfeited their Right of being and acting as a Body Politick,*

tick, and subjected that Right to be seized into the King's Hands?

In stating of the Question, I forbear to style it a Franchise or Liberty, that I may not by anticipating preclude the Force of Mr. Recorder's Argument, That it is no Liberty or Franchise; but may reserve the entire Consideration thereof to its proper place. And therefore I shall call it a Right, for such most certainly it is; and it includes both *Jus agendi*, & *Jus habendi*. Before we can arrive at the main Question, certain preliminary Points have been moved and debated; some to the Form of the Suit and Pleadings, others relating to the Matter thereof.

To the Form Mr. Recorder took three Exceptions:

1. That the Information is not well laid, because not brought against particular Members by Name, which ought to be in all Cases, where the Right of Corporations is questioned or struck at.

2. That the Replication is worse, importing a Contradiction both to the Supposal of the Information, and to it self; because it denieth *London* to be a Corporation, which the Information allowed, and admitted it too, to be a Corporation, by assigning Causes of Forfeiture.

3. That no Judgment can be given upon these Pleadings, either of *Seizure* or *Ouster*; not of *Seizure*, because the King cannot seize what he cannot hold when seized: And the Body Politick, by which Name it is sued, cannot be ousted of it self.

The great Triumph Mr. Recorder erected upon the strength of these Exceptions, as for an assured Victory already obtained, makes it necessary for me to give a more particular Answer to them than their Weight would otherwise require. For the Authorities cited by him argue very little to this purpose: And indeed he hath been so unfortunate in quoting of Authorities, that how little soever they seem to make for him, as to the Point he produceth them, yet they flatly make against him in some other material Point. Not only by his Authorities, but his Objections themselves, to the Form of the Information, admit, that a Corporation is in its Nature separable by Judgment of *Ouster* against the particular Members by their Natural Names. (The Opinion of my Lord

Hales, in his Common Place Book, Quo Warranto fol. 168. pl. 7. argues, he did not think of the

Indissolubility of Corporations; but it is no Opinion, that the only way to impeach them was by a Suit against particular Persons; for it is only a short Reference to the Cases of *Cusack*, and others of *Ireland*; and *Farrer*, and others of the *Virginia* Company: which Cases (as also that of *Fisher*, *Helden*, and others of the Borough of *Hebmerley*; the Case of the *Musicians*, and the *Bermudas* Company; and the other Cases cited by Mr. Recorder) do fully prove, That Corporations are Franchises, and may be questioned and impeached in the very Point of being Corporations, by Suits of *Quo Warranto*. And they do prove, that the Suit may be brought against some particular Members by Name: And against the rest of the Corporations by the General Words; as, *Et alios Liberos homines, & alios Burghenses, & alios de Fraternitate*. And these general

Words are material and operative; for a Judgment thereupon binds the whole. In the Case of *Cusack* against Particular Members by Name, *cum diversis aliis Civibus Civitat. Dublin*. Judgment

was given to out not only the particular Men, but *alios Cives, & Successores suos*. Upon the Writ of Error, it was assigned upon Record as one of the Causes of Error, that Judgment was given to out the Corporation of those Liberties; yet no Parties by their Names of Incorporation; but Judgment was affirmed. And the *Quere* that is made in *Rolls* 2 Report, in the Case of *Ferrars*, and others of the *Virginia* Company; whether the Corporation were barred? probably did arise from the Nonobservance of the Records, where Judgment was given, as well against the *alios Plantatores*, as the particular Men made Parties. In both these Cases the Suit was as well against the rest of the Corporation as the particular Men: The Appearance by Attorney was entred for both, and the Plea as well in the Name of the rest, as the particular Men, and Judgment against both. And the Judgment against the *Virginia* Company discharged that Company.

These, and the other Precedents produced by Mr. Recorder, do prove that the King's Suit may be brought against particular Persons by Name, and against the Residue of the Corporation, by a General Name of *& alios homines*; or against particular Persons, and also against the Corporation, by the very Name of Incorporation, as the Case of *Bermudas* Company: But they do not argue the King hath not a further Election, either to bring his Suit for questioning the Corporation, by the proper Name of Incorporation, without naming of particular Person, or by some other General Name, which sufficiently describes the Persons. I shall therefore apply these Answers to the Objection warranted by Precedents of Law; that where ever many Persons are jointly concerned in Charge or Discharge, and the King hath Cause of Suit against them, he may sue them, either by naming some particular Persons, with a general Reference to others; or he may sue only by a common Name of Description, without admitting them to be a Corporation, especially where the general Name sufficiently describes the Persons, who took this Corporation; and this as well for Offences at Common Law, as against Statute Laws. Where Murder is committed in the day time in a Walled Town, *tota Villata oneratur*; and so for Repair of Highways, or Nufances in Highways, Repairs of Bridges, and for levying of the Hue and Cry. The King's Suit, either by Indictment or Information, hath been used both ways; either naming some few particular Inhabitants, but then always with a general Reference *& alios Inhabitantes*; which is essential; otherwise both Indictment and Information would be naught; or they are frequently only by the general Name of Inhabitants, within a Parish, Hundred, or County, as the Case is, without naming any particular Inhabitants at all; to produce Instances of this nature would be infinite, the Cases frequently falling out both at the Assizes, and in this Court. It is so in Cases of *Quo Warranto*.

Rot. 15. 23. R. [A] *Quo Warranto* against the Inhabitants of *Denbigh*, for using several Liberties; as to hold a Court of Pleas before the Bailiff, and choosing two Aldermen, &c. upon Plea and Demurrer, Judgment of Seizure is given, & *quod*

Mich. 21. Jac. 1. Rot. 9.

Mich. 27. Eliz.

Co. Ent. 537.

quod

quod Inhabitantes capiuntur. A *Quo Warranto* brought by *Gerrard the Queen's Attorney*, against *Hominēs & tenentes Manerū de Kings Haurston in Com. Bedford*, for claiming to be discharged of Knights Wages, &c. they pleaded the Manor to be antient Demefine; and their Plea was confessed, and Judgment for the Tenants, without naming any particular Tenant. These general Names of Inhabitants and Tenants were insufficient Descriptions of the Persons whom the King sued; and yet this Suit, by those Names, works no Conclusion that they were a Corporation. So *Cives, Burgenses, & Communitas* of such a Place, are general Names to describe the Inhabitants of the Place by, antecedent to their being a Corporation. The like of *Mayor, Bailiff and Burgesses, Mayor and Citizens, and Pontenariū*; where *Burgesses* is but an Addition of the Name of an Officer to the common Name of the Inhabitants, and properly describes the Persons whom the King sueth. By these Names of general Description they are capable to take this Right of Incorporation by the King's Grant. The Grant doth not enable them to take this Right; and if by such general Names in the King's Grant they may take, there can no Reason be assigned why they may not be sued by the same Name they took, when they are questioned for this Right, be the Name of Corporation the same, or any other. Upon Pleadings in the Case of a common Person, *Major & Cives* shall not necessarily be intended a Corporation, without it be especially set forth.

Inter Jerom & Neal 20 Eliz. B. R. 1 Leonard 106. in Trespass and Battery, the Defendant pleads *Salisbury* an ancient City, and a Custom there, that if any Affray be committed upon any Officer, upon Complaint to the Mayor, he, as a Justice of Peace, might send for the Offender, and justifies, under the Commandment of the Mayor, to bring the Plaintiff before him: And on Demurrer joined, and Judgment against the Defendant, one of the Grounds thereof was, that it did not appear that *Salisbury* was a Corporation, although it did appear that *Salisbury* was a City, and had a Mayor; much less shall it conclude the King, who is not so strictly bound in his Suits as common Persons are. It is true, that in the Case of *Maidenhead* there are three Judges against

Palmer. *Mountague*, of Opinion, that they need not set forth they are a Corporation, because they are not questioned for it by their Information, but supposed to be one, and questioned only for a Market, which they claimed by the King's Grant. In the same Case it is agreed, if they had been sued by any other general Name, but the very Name of Incorporation, they should not be intended a Corporation, according to the Case of the King against the Corporation of *Denbigh*. And whoever looks into the Record, must conclude *Mountague's* Opinion to outweigh that of the other three Judges. The Suit against them was by the Name of the *Pontenariū*; the Grants which they plead recite the Corporation of the *Pontenariū* to be dissolved, and the Grant is a new Grant to the Bridgemasters: So that there was no room for any Intendment, that it was a Corporation before the Grant, against their own Plea; but that which seems in the Case to have preserved the Bridge-

masters, is, that the Judges inclined to an Opinion, that it being for Maintenance of a Bridge, which was of necessary and publick Use, the Grant it self might amount to a new Incorporation, which was a plain Waiver of the former Opinion; and if the three Judges had continued their Opinion, Judgment would have been entred for the Defendant; but no Judgment was ever given in that Case: So that *Mayor, Citizens, and Commonalty of London* being a general Name, sufficiently describing the Persons against whom the Suit is brought, may be used in the King's Suits without any manner of Conclusion to the King. But in the next place it is yet stronger, where one of the Articles of the Suit is for usurping the Corporate Right, that prevents all colour of Pretence for any Conclusion; herein this Case differs much from that of *Maidenhead*, as to the Form of the Information. And in such Cases, where the questioning the Right is a special Article, the Form of the Information is the same against all Corporations, whether by just Title, or altogether usurped, and by wrong; the Suit supposeth them all to be by wrong, and usurped; and whether by right or wrong cannot be known, till the Title by Pleading be disclosed and discussed; and many times not then neither, because the Liberty may be lost by Default of Pleading, upon *Nihil dicit*, or Misdemeanor, by pleading a wrong Title, or insufficiently pleading a right Title.

A *Quo Warranto contra Præpositum & Burgenses burgi sive villæ de Card.* for claiming to be a Corporation, and divers other Liberties: They plead, that they claim nothing but under the Bishop of *Bath and Wells*. It appears by the Plea, that they had no good Incorporation, and Judgment might have been entred against them: But the Bishop obtained a Grant from the King of a new Incorporation, which I have seen and perused, and thereupon a *Noli prosequi* was entred.

A *Quo Warranto* against the Commonalty of the City of *Canterbury*, for claiming to be a Corporation, and divers other Liberties: They plead to all, and several Issues taken in several Parts of the Plea, and Breaches assigned to others for a Forfeiture. *Quo Warranto* against the Bailiff and Aldermen of *New Radnor* is of the same nature; and Multitudes of others I could produce, where the Suit is brought in the same Form as ours, to question the Right of a Corporation against them by their Corporate Name.

My last Answer is, That where the King proceeds for a Forfeiture upon Breach of Condition, the Right is not determined till Judgment of Seizure; for it is a mistaken Ground, that Forfeitures to all purposes relate to the time of the Forfeiture: For as to Copyhold Estates, Offices, and Liberties in case of the King, which may be determined by Breaches of Fact, they are not avoided till the Fact, which causes the Forfeiture, be found upon Record: So that the Suit is well grounded against them, by the Name of *Mayor, Citizens, and Commonalty*: for they continue such till Seizure, and till then are a Corporation *de facto*.

2. I shall be short in my Answers to the Objections to the Replication, because they are in effect already answered by what I have said. The Traverse of the Title by Prescription is pursuant to the Supposal of the Information, which supposeth they have usurped that very Liberty, and puts them upon shewing their Title by that Name; even put the Case they have a good Title by that Name, by this Patent, or by Act of Parliament, and they will waive it, and set up a Title by Prescription. And this was done in the Case of *Canterbury* before, and in the Case of

Trin. 6 Jac. 1.
Rot. 3.

New Malton; where, upon the very same Information as ours, against the Bailiff and Burgeſſes of *New Malton in Com. Ebor.* they pleaded their Title to their Corporation by Prescription, and Issue taken; and it proved fatal to them; for Verdict and Judgment went against them.

Then for the Contrariety of the Replication to it self, none appears; for the travelling of the Prescription by such Name, is no Denial; but it may be a Corporation by Prescription by another Name, or it may have that Name also by Grant. And the farther Replication is, That assuming upon themselves to be a Corporation by that Name, they committed the several Acts, which are assigned for Breaches. And that is the only Advantage the King hath. By Informations of *Quo Warranto* he may go upon the Title, and take Advantage of any Defect therein, or of the Pleading thereof, and may also assign Breaches for a Forfeiture, as is held in the Case of *Maidenhead Bridge*. In the Case of *Canterbury* Issue was taken upon some Liberties, Breaches assigned to others. The King may plead several Pleas, and take several Issues, and demur to part, as he shall be advised.

3. The Objection, That no Judgment can be given upon these Pleadings, ariseth principally upon two notable Errors, against plain and express Authorities of Law:

- (1) That nothing can be seized into the King's Hand, which the King cannot hold and enjoy when it is there.
- (2) That every Judgment upon a Forfeiture ought to be a Judgment of Ouster.

These mistaken Grounds having been so often made use of by Mr. Recorder in other parts of his Argument, for supporting a Supposition, That a Corporation cannot be forfeited, I shall (to avoid Repetition) leave them to be considered when I come to his main Argument; and therefore shall proceed to consider the preliminary Points moved relating to the matter; viz.

First, Whether the Right of Incorporation of being a Body Politick may be forfeited, or seized into the King's Hands.

Admitting it may be, then,

Secondly, Whether the Acts of Common Council, or the Members assembled in Common Council, which is all one, may work such Forfeiture, or Cause of Seizure.

First, As to the first Point, I must confess the Weakness of my Understanding, that upon what hath been offered from Reason or Authorities of Law, I cannot apprehend it rendered in the least doubtful to a Court of Law, whatever it may be in a Common Hall, and Publick Assemblies of the City, where strong Lungs have a Preference before a rational Head, but that the Right of be-

ing a Body Politick may be forfeited, or suspended.

It was moved as a Doubt by Mr. Solicitor, but as a vulgar Error obruded from publick Prints upon the unthinking and unwary Citizens; which possibly gave Encouragement to the many Exorbitances committed within the City, and particularly to those now laid to their Charge; and, I thought, sufficient had been spoken by Mr. Solicitor to have prevented the Growth of so mischievous an Error. But for that Mr. Recorder did *ex animo* espouse that Opinion, as if no Man were in his right Wits, that did not concur with him in Opinion, and as if there were something in it indeed, hath laid his main Stress upon it, and erected it as his *Palladium* to defend the City by. And probably this Image (for, if examined, I fear it will prove no other than a Work of Imagination) may make that Impression upon some Men, that, conceiting themselves to be Citizens and Aldermen of an invincible and immortal City, incapable of Dissolution, they may dream of being an Independent Commonwealth within a Kingdom, and unaccountable to the King, or his Laws. It is therefore made necessary for me (with your Leave) to mispend some of your Time in speaking again to this Point; which I shall do,

1. By briefly stating what this Right is; whence it ariseth, and for what Purpose it was framed or introduced.
2. I will examine the Reasons and Grounds produced by Mr. Recorder, why it cannot be forfeited.
3. Then I shall offer the Reasons and Authorities of Law, that it may and hath been forfeited and seized into the King's Hands.

In speaking to all which I will not so far distrust the Memory of the Court, as to repeat what hath been so well urged by Mr. Solicitor from Reason and Authorities, but shall endeavour to avoid it what I can.

1. As to the first thing proposed, This Right of a Corporation, aggregate of many (to which I shall confine my Discourses, being the only thing under Consideration) is a Right granted to many natural Persons to be, have, enjoy, and act as one Body and Person. It confers *jus Personae*, & *Personam efficit*, which our Law Books express by the Names of *Persona Politica*, and *Corpus Politicum*, and, as such, is capable of all Civil Rights, both *habendi* & *agendi*. The Instruments of Creation of this Right, and the Claims thereof upon Pleadings, do best declare the Nature of it, viz. *Quod homines Inhabitantes, Cives, Burgenses*, or such other general Name, describing the Persons who are to take, *sunt unum Corpus Corporatum re, facto, & nomine*. And when Prescription is made for a Body Politick, &c. *Quod Homines & Cives, or Homines & Burgenses sunt, & à tempore ejus, &c. fuerunt unum Corpus Corporatum re & facto per nomen*—So that it is something more than a Notion, or meer Name, *Corpus Corporatum* fully expresseth it, a Body made up of several visible Bodies in *unum collecta, & vinculo Juris unita*. And a Corporation is every whit as visible a Body, as an Army: For though the Commission or Authority be not seen by every one; yet the Body, united by that Authority, is seen by all but the Blind; and if the King or the Law demand the Authority, it must be produced and shewn, and is as visible in the Eye of the Law, as any other

other Right whatsoever, whereof natural Persons are capable. It seems strange, and almost beyond all Excuse, that the Recorder of *London* should never have seen that great Body Politick assembled; unless he will excuse himself, that he is the Mouth of the City, and not the Eyes. Sir *James Bagg's* Case, Co. 11. b. allows it to be such a Right, that every

Member, separately considered, hath a Freehold therein; and all, jointly considered, have an Inheritance which may go in Succession.

It is the same Right which the Civilians style *Collegium*, or *Universitas*; and so styled here in *Brañton's* time; scil. *Si Rex concesserit alicui—Universitati, sicut Civibus vel Burgenſibus.*

Natural Persons, as such, are capable of taking and holding this Right. It is neither taken nor held in their Politick Capacity, but their Natural; for many Men, as Men, are capable of Union, which is evident by the Charters of Creation, and the Pleadings in all such Cases; it is *Homines & Burgenſes, Homines & Cives*, who are constituted *unum Corpus Corporatum*. And as the Natural Persons are an essential Part constituting the Body Politick; so all the Operations and

Exercise of this Right are only performed by the Natural Persons, 21 Ed. 4. fol. 14.

That Book, and other Authorities, are express in the Point; though in a Case so evident, there needed no Authority. And therefore when the Question is of *Nonuser*, or *Abuser* of Franchises by a Corporation, it must of Necessity be intended for some Acts or Negligence of the Natural Persons, or those Officers that are employed by them. And the Question will rest only upon this, What Acts, or what Omissions of the Natural Persons, will affect this Right, wherein all the Members of the Body have an Interest?

This Right is meerly of human Institution; and therefore as to its Birth, Form, Extent, or Limits, is directed and supported by the municipal Laws of each Country, and therefore for that Reason is styled by our Books *Political*. By the Constitution of our Laws, this Right, as all Jurisdictions and Franchises, is lodged in the Crown, and thence only is derived. *Brañton* upon the Question, *Quis concedere possit libertates, & quibus, & qualiter transferuntur?* thus resolves it: *Dominus Rex habet omnia jura in manu sua, quæ ad Coronam & Regalem pertinent potestatem, & Regni gubernaculum; habet etiam Justitiam & Judicium, quæ sunt Jurisdictiones; habet etiam ea quæ ad Pacem pertinent. Ea quæ dicuntur Privilegia, licet pertineant ad Coronam, possunt ad privatas Personas transferri, sed de gratia ipsius Regis speciali.* And then sheweth, that such Grantees as Usufructuaries may enjoy them, *donec amiserint per abusum vel non usum.* The whole Current of our

Books to this day concur with this ancient Author in this Point, That none can make a Corporation, but the King; such Power cannot be prescribed for, it is so inherent to the Crown. The principal Case was of the *Whitelawers in London*, who prescribed, That by the Custom of *London*, the Men of any Art or Mystery might act as a Guild or Fraternity, and were capable of a Devise; and plead their Custom confirmed by several Charters; and, no doubt, would have pleaded some of the Acts of Parliament now pleaded, if the learned Coun-

sel had then thought there had been any thing of Force in them. Judgment was given against them, for that none had such Power but the King. In that Case it appears, that the Abbot and Prior of *Westminster* were one entire Corporation, and divided by the King, and, after the Severance, a *Quare impedit* maintained by the Prior against the Abbot.

Some Corporations are by the King alone, as Dean and Chapter, Mayor and Commonalty; some by the Pope alone; some mixt, by the King for their Temporal Possessions, by the Pope for their Spiritualities. Whether the King grant them by Charter out of Parliament, or in Parliament, or by Act of Parliament, the King is still the Donor, and the Fountain and Spring from which this and all other Liberties flow. A Title by Prescription always supposeth a Grant in or out of Parliament, and is allowed by Law for supporting long Possessions, grounded upon ancient Grants before, time out of Memory; but by what Title soever these, or any other Rights are derived down, whether Grant or Prescription, their Natures remain the same, and they are governed by the same Rules of Law, and are equally subject to the like Civil Accidents, the one as well as the other.

The last thing inquirable into this Head is, To what End and Purpose such Corporations were elected, and allowed by the Policy of our Laws.

The general Intent and End of all Civil Incorporations is in order to better Government. Government relates principally either to Persons or Things: That which relates principally to Persons may be properly called General Government; because, properly speaking, Persons only are the Subjects of Government. That which relates to Things is called Special Government, because limited to the Managery of particular Things, as Trade, Charity, and such like; for the Government whereof several Companies and Corporations for Trade were erected, and several Hospitals and Houses for Charities. Of this Nature are the *Trinity-Houses* for regulating Navigation; and so the College of *Physicians*, the Corporation of *Parish-Clerks*, and a multitude of other Special Corporations in *England*. The only End of erecting these Special Corporations was, for the better Order and Government of the several Matters specially committed to their Care.

The Corporations for General Government only, are those of Cities and Towns, Mayor and Citizens, Mayor and Burgesſes, Mayor and Commonalty, and such like. The Corporations, as they are for the Government of Men only, having nothing specially committed to their Care upon the Incorporation, so they are erected for no other End or Purpose than Government. And if either at the Time of the Incorporation, which very few are, or afterwards, they have any Special Matter committed to their Care, it is purely collateral to the Ends and Design of erecting these sort of Incorporations within Cities and Towns. This appears by the Charters of Creation both ancient and modern; the Form is much the same, which is after this manner: *Nos volentes, quod de cætero imperpetuum in eadem Civitate, Burgo, aut Villa [as the Case is] Libertat' & Precinct' ejusdem habeatur unus certus & indubitatus modus pro custodia pacis nostræ, ac pro bono regni*

mine & gubernatione Civitatis, Burgi, & Ville, ac Populi ibidem inhabitantium, & aliorum illic confluentium; & quod Civitas, Burgus, aut Villa, pax, concordia, & quiete sint, ad formidinem & terrorem malorum delinquentium, & in premium bonorum; ac etiam ut pax nostra ceteraque facta justitia & bono regimine ibidem melius custodiri valeant & possint. These are the Grounds upon which Corporations are erected.

The Limits and Extents of their Corporations, and Jurisdiction, are limited by their Charters; and there is a plain Difference made in many Charters between this and other Liberties, as to the End of granting; this being erected only *pro bono regimine*, being a Burden, and chargeable in the Execution of that publick Trust. Many other Liberties and Privileges, both of Ease and Profit, are granted to them *pro meliore sustentatione* of those Charges, which the Government would necessarily require. Since the Statute of *Mortmain* they cannot purchase without a special *Non obstante*. They cannot engross Trade, by

excluding Foreigners; *Norris* and *Hob. 211. Stap's Case, Hob. 211.* So that private Benefit can be assigned to be the End of erecting them. The Power of making By-laws, which is incident to a Corporation, is only for better Government; and by that Rule they must be judged.

Having considered the Nature of a Body Politick aggregate, whence it flows, and for what Purpose it was erected,

2. I proceed to examine the Grounds and Reasons produced, why it cannot be forfeited, or seized into the King's Hands.

Many things were produced by Mr. Recorder, to make good his Assertion, more *ad captandum populum*, than to persuade a Court of Law. I will not mispend your Time in perusing the jocular part of the Argument, which may make the Citizens smile one way, and the Learned in the Law another way; but I shall collect together what seems to have any Force of Argument. The Grounds the Argument went upon seem to be these:

- (1) That a Corporation is no Liberty or Franchise, but a meer Capacity of suing, and being sued.
- (2) That a Corporation, in its Nature, is not capable of being forfeited or dissolved.
- (3) That it cannot be surrendered.
- (4) That the Forfeiting or Dissolving of any Corporation was never put in Practice, nor so much as ever came within the Compass of any Man's Imagination.

(1) As to the first, *A Corporation is no Liberty, but a Capacity.* Now it is proved, even just as all the rest will appear to be proved, by strong Averments, and Quotations of Books that prove no such thing. The Authorities were *1 Inst. 250. Bro. Title Corporation and Capacities.* In the Institutes the Words are, *A Body Politick is a Body to take in Succession, framed as to that Capacity by Policy.* The Authority is express against him, that a Body or Person Politick hath a Capacity to take in Succession, and is not a meer Capacity; and the other Words of the same Author are, *And made into a Body and Capacity to take and grant:* So that this Authority fails; it neither proves it no Liberty, nor to be a meer Capacity.

That of *Bro. Tit. Corporation*, proves less; for *Capacity* is of larger Signification, and incident

to Natural Persons, as well as Corporate Persons; and such Instances are set down under that Title of *Alienees, &c.* and it is a great Imputation to the Memory of so learned a Person, that he should think that *Corporations* and *Capacities* were synonymous, or that he should tautologize in a Title in an Abridgment.

The Definition Mr. Recorder gives of a Corporation, that it is a *Capacity of suing and being sued*, which served him for many a Jest in his Discourse, is no better than to define a Man to be *Animal bipes*, or, which is nearer, a meer Capacity of walking with two Feet. Although the Authorities fail, and prove not the Matter, yet it is of that Importance to the Cause, that a Corporation be no Liberty, that something must be thought upon to make it out. For if it be admitted to be a Liberty, the Authorities will be too strong, that every Liberty and Franchise carries with it a Condition, that it be used, and well used, the Breach of which will amount to a Forfeiture. And therefore, when nothing else can be found to prove it no Liberty, recourse must be had to the negative Argument, backed with strong Averments, that it was never so styled in any Authority of Law, except in one Case, in the Town of *Helmshy*, *Co. Ent. Q. W. Co. Ent. Quo Warranto*, and Mr.

Noy's Opinion in *Hayward* and *Fulcher's* Case, grounded only upon the Case of *Helmshy*. But one Swallow makes no Spring; and it was well Mr. Recorder spied it in that Case, otherwise the Averment had been without any Exception.

If the Point had rested upon that Precedent, and Mr. *Noy's* Opinion, it would have better Authorities for it, than any could be produced against it. But there are Multitudes of Authorities, whereby Corporations are not only called, but appear to be Liberties and Franchises; several have been cited by Mr. Recorder, but not seen, or overlookt by him.

In the Case of *Cusack* and others, in all the Parts of the Record it is styled a Franchise or Liberty; and particularly in the Continuance, *Curia advisare vult*, and time taken to advise upon it as a Liberty. So in the Case of *Farrer*, and others of the *Virginia* Company, throughout the Record styled a Liberty and Franchise, even in the Judgment it self. Mr. *Noy* knew of these Cases, and many more before this time; but knew it to be the Guise of learned Men, in clear Cases, and of daily Experience, not to repeat many Authorities.

The Records of the Cases cited by Mr. Recorder, of the Borough of *Hebmerly*, the Case of the *Musicians*, and *Bermudas* Company, &c. do all call it a Franchise or Liberty.

The Cases I have already cited do so too; Against the Bailiff and Burgesses of *New Malton*; against the Mayor and Commonalty of *Canterbury*; against the Portreeve and Burgesses of *Chard*. Many more I have perused, but conceive it too much to trouble the Court with them at present. It is certainly true in all the Records of *Quo Warranto*, wherever there is a special Article against a Corporation for being a Body Politick, it is always impeached by the Name of a Franchise and Liberty; and Multitudes there are of that Nature. And in so clear

Pach. 17 Jac. 1.
Rot. 2.

Mich. 2 Jac. 7.
R. 39.

T. 6 Jac. 1. R. 3.
Hil.

2 Car. 1. R. 25.
P. 5 Car. 1. R. 28.

a Case I omit to mention the Writs of *Non omittas*, for entering into Corporations, and the Returns of their Bailiffs; which make out evidently, that Corporations are Franchises, and the Limits of the Corporation, and Limits of the Franchises are all one.

(2) The next Argument is drawn from the Nature and Qualities of Bodies Politick, That they are invisible, immortal, impeccable, and therefore impatible, with a large Jargon of *non ens*, & *ens rationis*. Certainly this Argument was fetched from the Clouds at the City's Charge; and it cost them dear: For I cannot believe it could enter into the Reason of any Man, much less of learned Men, that a Body framed by the Policy of Man can be immortal; or that a Body, compacted of many bulky visible Bodies, can be invisible; or a Body, whose very Parts and Members are mortal, is in its own Nature immortal. Mr. Recorder admits, that the Death of all ends the Corporation; and therefore if any learned Men have used such hyperbolical Expressions, most certainly they never intended the Citizens of London, or other populous Town or City within England, of whom the Question is, but of some Corporation in *Eutopia*, where the Citizens neither eat, drink, nor die, or at least of some Corporation, that never had other Existence but in the Brain.

The Authorities cited were *Co. 1 Inst. 9. Bulstrode. 233. 21 Edw. 4. 13.* and many others; and many more might have been cited, and to as much Purpose; as *Co. 10. fol. 32. Sutton's Hospital*, brings in a whole Regiment of Authorities speaking to the same Purpose. I do not remember that Book was cited, and there was Reason for it; for in Conclusion it spoils the Argument, *viz.* that these Expressions are of Corporations in Abstracts, not coupled with particular Men of this or that Town, where the Men act all, and the Corporation doth nothing otherwise than what the Men do. If it be considered abstracted from particular Men, it is but a bare Right, and coupled in the Notion of it with Men in general, who are the proper Subjects of Government, and remains only in Notion, and may well enough sustain these Epithets which have been given it, as all other Rights and Notions may; but whilst it remains such, it can no more sue or be sued, than commit Treasons, Felonies, Riots, or other Trespases, either against the Government or particular Men; neither hath it any Existence *in re* & *facto*, but in the Brain.

The Case indeed that is cited *1 Inst. 9.* is applicable to any particular Corporation; the Case is thus put: If a Man gives Lands to a Mayor and Commonalty, or other Body aggregate, consisting of many capable Persons, without naming Successors, the Law construeth it a Fee Simple, because in Judgment of Law they never die. If this be any Authority, it is from the Immortality of many Persons capable, for they are the Persons who are said in Judgment of Law not to die. Where my Lord Coke's Sense is plain, that these natural Persons, though capable to take in their natural Capacities jointly, which the Law would adjudge an Estate for Lives; yet the Grant being made to them by their Corporate Name, they take in that Capacity, and the Grant is not determinable upon their Death, but shall continue with the Corporation whilst it continueth. That my Lord Coke never dreamt of Immortality of a Body Poli-

tick, fully appears in his Writings: *1 Inst. 13.* where he puts the Case insisted on by Mr. Recorder, of a Dissolution by Death of Abbot and Monk. He after puts the Case generally of other Corporations, as Dean and Chapter, Mayor and Commonalty: If Lands be given to them, and the Corporation be dissolved, the Lands shall escheat to the Donors, upon a Condition in Law: in the first Grant, if the Law raise such Condition upon Grant of Lands, much rather doth it upon the Grant of the Incorporation, where the Intent of the Donor is as special, and upon a greater Trust. That my Lord Coke understood it of other Dissolutions than by Death only, he refers in the Margin to the Case of the Knights Templars, which was not dissolved by the Death of the Members. That Corporations were dissolved many Years before the Statute *De terris Templariorum, 17 Ed. 2.* the Statute recites, the Corporation was dissolved, and that the King and several other Lords had entered upon all their Lands and Escheats: The Judgment of the Parliament was, they were well dissolved, and the Lords well intitled by Escheat, as the Law stood; and therefore by Act settles them upon the Hospitaliers. This Corporation was dissolved by the Pope, and upon the Ground of *Non user*. The End of their Corporation was for guiding Christian Pilgrims to the Holy Land and Jerusalem, which the Saracens and Turks having over-run, and possessed themselves thereof, the Members of the Order never came there, but disposed of themselves in several Parts of Christendom. The Order was erected by Pope Honorius, *21 H. 1. Anno 1120.* and was dissolved by *Clemens Quintus, 4 Ed. 2. Ann. 1311.* thirteen Years before the Statute; and their Spiritual Corporation, which was the Principal, being dissolved, the Power of holding Lands, conferred by Temporal Princes, determined, *2 Inst. 431. & H. 432.*

1 Inst. fol. 102. the Case is put where the Tenant held by *Homage Ancestrel* of a Body Politick dissolved; the Homage is gone, though a new Corporation be founded by the same Name. That my Lord Coke never entertained such an Opinion, appears by his Argument in the Case of the Dean and Chapter of *Norwich*, when Attorney General. His Mistress's Heart was much upon that Case to preserve their Lands; and it was well argued by Mr. Attorney, and no doubt well studied; but this Topick, from the Indissolubility of Corporations, never came into his Head. Besides the Statutes of Confirmation, he insisted upon these things: *First*, That the Words of the Surrender were not sufficient to surrender the Corporation; *Secondly*, That they were the Bishop's Counsel, and in some sort one Corporation with him; *Thirdly*, From the great Mischiefs which would ensue. This new Invention alone would have done the Business, if he had been so fortunate to have found it out; or if any of the Judges had thought of it, they would not have gone about it so long, as at length to ground their Resolutions only upon the Points which did arise upon the Statutes. *Fitzzberbert* is of the same Opinion, That if an Fitzh. N. Brev. fol. 33. Abby be dissolved, a Presentation shall escheat to the Lord of whom it was held.

(3) The next Argument produced by Mr. Recorder was, *That a Corporation could not be surrendered*, upon which Head I will not entertain your Time, for

for these Reasons : *First*, Because it was not to the Question, and that Mr. Recorder admits, that many things may be forfeited, which cannot be surrendered ; *Secondly*, Because the Point may come judicially into Debate, some Dislike having been taken to Surrenders lately made ; and I choose to refer my self to that Question which comes properly in Judgment ; *Thirdly*, But my last and principal Reason is, that he hath produced no Authority of Law to make good his Assertion.

The Authorities of the Cases of the Dean and Chapter of *Norwich*, *Mich. 40* *£* 41 *Eliz.* and *Hayward and Fulber's Case*, *Hil. 3 Car. 1.* which both relate to the same Surrender, and are in effect the same Case, only in the latter Case the Surrender is disclosed to the Court to be larger than did appear in the former Case ; and though many Books are cited, yet they all contain but these two Cases, which make strongly against him. For throughout these Cases, both in stating the Question, Arguments of Counsel, and Resolutions of the Judges, it is plainly admitted that a Corporation might be surrendered. Otherwise the stating of the Question in the first Case, upon the Effect of the Words in the Surrender of *all their Possessions and Cathedral Church*, Whether sufficient to surrender the Corporation? and the Arguments thereupon, and the Resolution of the Judges was needless ; but it was plainly admitted, that a Corporation may be dissolved ; and it was the Common Law Point they did resolve, that they were all idle and illusory. And so in the second Case,

Whether the Dean and Chapter, without the Bishop, could surrender the Corporation? it is all along admitted, both by the Counsel upon the Grounds they went upon, and by the Judges in their Resolutions, that it might be surrendered, *concurrentibus his quæ in jure requiruntur* ; and therefore, by the Resolution of the Judges, it could not be done without the Bishop, because he had an Interest in them. And when *Whitlock* in his Argument had recourse to a more general Reason, which was, That the Surrender could not be good, because then they should be *Felo de se*, which is against Nature ; *Jones* takes him up, and flatly denies it, and saith, That a Dean and Chapter might dissolve themselves by *Cesser* ; or if all die, or resign, the Corporation is dissolved ; but concurred with him, that the Surrender did not dissolve it, because the Bishop was no Party, nor consenting ; and in the end *Whitlock* concludes his Argument, that it could not be done without the Bishop. And the Saying of *Whitlock* in that Case, *That the King may grant, but not dissolve a Corporation*, is certainly true in the same Sense as it is of Lands, and all other Rights whatsoever ; the King may grant, but cannot resume without Cause ; yet all may be forfeited upon due Cause, and by Judgment of Law returned to the King.

Palmer 501.
Jones 168.
Palmer 503.

(4) The last Topick of Argument, by which Mr. Recorder concluded a Corporation cannot be forfeited, is a *Non user* ; because never any Corporation was forfeited, nor did it ever enter into any Man's Imagination, that it could be forfeited. This indeed doth put the Proof upon me ; and Mr. Solicitor hath already made it out with great Learning, by several Instances of Corporations seized into the King's Hands for Forfeitures committed by them ; some by Judgments,

others by Inquisitions finding those Forfeitures. But Mr. Recorder with one Blast hath blown them all away, that they are but meer Sounds, and look big with Seizure, and seizing of Liberties into the King's Hands, but, when strictly examined, they are of no Substance ; and the Fruit of all the Examination ends in a Difference he hath found out between *Seizures* and *Forfeitures* ; much such another Difference as was that between a *Liberty* and a *Capacity*, upon which the whole Weight of the Argument turned, *That a Corporation was no Liberty, but a Capacity*. And if so little a Distinction be enough to answer the Weight of Mr. Solicitor's Arguments, it will be in vain for me to attempt further Instances, unless I can reconcile this little Difference, and shew it to be as ineffectual as that between a *Liberty* and a *Capacity* was before ; and therefore I crave leave, in the first place, to examine this short Answer to so many and so great Authorities.

It is objected, That those are Precedents of Seizures, but not of Forfeitures ; for Seizures in the Case of the King's Suits, and of the Bishop's Temporalities, are of the same Nature as Seizures upon the Grand Cape's and *Disfringas* in Suits between Party and Party, only to answer Issues. And when Liberties of Towns are mentioned to be seized, the Towns only are seized, and not the Corporation, which remains in *statu quo* ; but where a Forfeiture is, there must be Judgment of *Ouster*. Every Sentence almost of this Answer is contrary to all the Books and Records of Law, that I know of. The Authorities cited to prove the Differences are *Nat. Brev. fol. 161, 162.* which saith, Inquire into the Causes of Seizures, and Causes of Forfeiture ; but what these Causes are, which may be Causes of one, and not of the other, are not disclosed. But my Lord *Coke* in the Countess of *Shretesbury's Case*, determines the Difference, and makes them all one. There are, saith he, three Causes of Forfeiture or Seizure of Offices for Matter of Fact, *Abuser, Non-user, and Refuser*. He makes the Causes of both to be the same, Forfeiture is but the Fact upon which the Seizure is grounded, where the Subject hath Title of Entry for a Forfeiture, in the Causes of the Entry, different from the Causes of the Forfeiture. So in the King's Case, where Liberties are seized for an *Abuser*, whether it be by Judgment, or upon an Inquisition, or Presentment, finding the Abuse ; can it be a Question with any learned Man, but the Seizure is for the Forfeiture? The King cannot seize without Cause, and the Cause must be some Fact in Breach of the Condition in Law annexed to the Liberty. The other Authority produced is of the *Quo Warranto* against *Roger Mortimer*, cited 2 *Ed. 3. 29. in Strata Marcella, Co. 9. fol. 28.* where upon Denial of Aid, and the Defendants not answering over, Judgment was given of Fore-judge of the Liberty, and Error brought ; where *Scroop* saith, That in some Cases Franchise shall be put into the King's Hands, in some Cases seized in the Right of the King until Fine ; and in some Cases it shall be fore-judged, which holds for ever. I do admit this Case to be good Law, but it makes nothing to the Purpose to prove the Difference ; or that Seizures by the King for Misusers are not for Forfeitures, or that Judgment of *Ouster* are only Evidence of Forfeitures,

feitures, or to prove a Seizure in the King's Suit, is of the same Nature as the *Grand Cape* or *Disstringas*, upon mean Process in the Suits of common Persons. And because neither the Book Cases, nor Mr. Recorder have given any light into the Cases, which may vary the Judgment in a *Quo Warranto*, I will endeavour to state the Matter, how it stands upon Seizures of Liberties :

1.) Liberties may be seized into the King's hands by Award of the Court, which in that Book is styled, *Put into the King's Hands*; and that in two Cases principally :

Where the Defendants are summoned to appear at the King's Suit, and make Defaults.

Where a Contempt appears upon Record, in returning or executing the King's Process.

I shall give Instances of each. For the latter, *2 Ed. 4. fo. 5.* in case of Bailiffs, upon Error, the Bailiff appeared, and prayed a Day to bring in the Record; they failed at the Day: The better Opinion is, their Franchise shall be re-seized. And *Vavafor* there saith, If a Lord of a Franchise do any Trespass, or Contempt to the King's Court, it is Cause in the same Court to re-seize the Franchise. For the former, *15 Ed. 4. 6. in Quo Warranto*, if the Defendant appear not at the Day, the Liberties shall be seized; and if he do not replevin them, as in *Eyre*, they shall be absolutely forfeited; for the Statute of *Quo Warranto* directs the King's Courts to proceed in *Quo Warranto* as in the *Eyre*.

Trin. 16 Jac. 1. Briggs's Case, in *Quo Warranto*, the Defendant appeared not at the Day; the Liberties were seized, *Roll. Rep. 2 part, fo. 46:*

Trin. 17 Jac. 1. Roll. 2. part, 92. Quo Warranto against the Mayor and Burgeffes of *Wygmore in Com. Lancast.* upon Default made at the Day, it was agreed by the Court, That if they shewed not good Cause to excuse their Default, their Liberties should be seized into the King's Hands: This being in the Case of a Corporation, the *Capias in manus* should be of the Politick Person which made the Default. Where Seizure is by Award of the Court for a Contempt in Court, the Court may admit the Parties to affix and order Restitution; so where by Award of the Court, on Default of Appearance at the King's Suit a Seizure is made, which is in Nature of a Distress, to bring in the Party, by putting him out of the Possession of the Liberty, till he appear and replevy; the Court (if the Defendants come in time, and pray it) may deliver them the Possession upon Replevin; and this by the new Statute *de Quo Warranto*, *30 Edw. 1.* Before that Statute the general Writ of Summons to answer to Liberties, as also the particular Writs of Summons upon the King's Special Suits, superseded the Use of any Liberty till the Justices met on the Day of Return. Which Mischiefe was remedied by that Statute; if they appeared not at the Day, the Liberties were to be seized in nature of a Distress, to enforce their Appearance. And upon Appearance, if they demanded to replevy them, the Judges might deliver back the Possession of the Liberties, upon Security to prosecute their Claim, and answer the mean Profits, if any; in case Judgment were against them; much in the same manner as the Practice is in the Court of *Exchequer* upon all Seizures to this Day, by the Seizures the King is in Possession: But if the Party appear and plead,

and put in Security, he is by Rule of Court permitted to receive the Profits. But this Statute not limiting any time for his Appearance, or to reply, that remained as it did before upon the old Statute of *Quo Warranto*, *18 E. 1.* which refers to the Practice in *Eyre*: So that if the Party did not Replevin in time, the former Seizure would amount to a Seizure after Judgment by Default, which is final.

2.) Again, Liberties are seized into the King's Hands by Judgment of Court in the King's Suits, whether the Judgment be by default, or *Nilil dicit*; upon Demurrer, or Issue tried, this Judgment is final, and the Court cannot admit to a Fine, or award Restitution, unless upon Error brought. This Court is to set the Fine upon the *Capiatur*, but not the Fine for Redemption, that is purely in the King's Breast, & *ex gratia Regis*. There is no such formal Judgment of Seizure until Fine; but this upon Judgment and another Seizure upon Inquisition, or Presentment, which I shall mention, are the Seizures in the King's Right; represented in *Mortimer's Case*, but frequently entred *quosque Dominus Rex aliud praeceperit*. What was intended by a Judgment of Ouster in that Book, and in what Cases by the course of the King's Courts it ought to be, will best appear by an ancient Rule, taken and agreed by the Judges in *Edward* the fourth's time, before they were promiscuously used. The Rule is thus: Where it clearly appears to the Court, that where a Liberty is usurped by Wrong, and upon no Title, either by the King's Grant, or otherwise, there Judgment only of Ouster shall be entred: But where it appears, that the King or his Ancestors have once granted a Liberty, and the Liberty be misused, Judgment of Seizure into the King's Hands shall be given. These Rules carry their own Light with them: That which came out of the King's Hands, as *Bracton* useth the word, is properly returned there again by Seizure, or (as our ancient Books phrase it) by Re-seizure. But that which never came thence, but merely usurped upon him, shall be vacated, and by Judgment of Law declared null and void.

There is another Case, which is there likewise resolved, and that is, where it is doubtful to the Court, whether the Liberty commenced by Grant, or by Wrong; that for the Uncertainty the best and safest Course is, that Judgment be given of Seizure. This last Case was the principal Case in that Book, the Question arising upon a Default, What Judgment should be given? and by that Rule Judgment was given of Seizure, not of Ouster. And agreeable to these Rules, all the Judgments which I have met with have been given; and this Course hath been found most beneficial to the Subject, who, though by Forfeiture, Mispleading, or Default, he may lose his Liberty, may have Recourse to the King's Mercy for Restitution.

In the Case of the Bailiffs and Aldermen of *New Radnor*, which was by Default, Judgment of Seizure only was given.

Mich. 20 Jac. 1. Rot. 17.

In the Case of *New Malton*, though the Issue, that the Corporation was by Prescription, was tried against them; yet having long acted as a Corporation, they might have mispleaded their Title, as the City of *London* hath done, in claiming that by

Trin. 6 Jac. 1. Rot. 3.

by Prescription, which commenced by Grant within Time of Memory, Judgment only of Seizure was given, and not of Ouster. In all Cases of Disclaimer, Judgment only of Ouster shall be given; upon the same Rule Judgment only of Ouster was given in the Case of *Staverton*, reported in *Yelverton* and *Crook*: But the Entry there is mistaken; for it is entred *Mich. 8. Jac. I. Rot. 2.* for it appeared to the Court, that it was a meer Usurpation without Title, for that no such Court as he claimed, could be gained by Prescription, nor indeed by Grant, through the means of his Estate. Mr. Recorder insisted upon this Judgment, as a Measure for all Judgments upon Forfeitures of Liberties, but plainly mistook the Reason of it. Upon the Reason of these Rules, in such Cases where Grants do appear, but either the Parties are not capable of taking, or the Liberty granted, not allowable by Law, the Courte hath been to enter a mixed Judgment both of Seizure and of Ouster.

Hil. 27 Eliz.
Rot. 15.
Co. Ent. 537.

In the Case of the Inhabitants of *Denbigh*, who claimed by Charter several Liberties; but it appearing they had no Capacity to take, yet the Usurpation being by Colour of Letters Patents, the Judgment was mixed both of Seizure and Ouster; for there was no Possibility of Restitution, because they were not capable.

And in the Case of *Cusack* it appearing to the Court, that the Liberties granted did not pass, nor could be lawfully used; yet the Usurpation being by Colour of a Grant, Judgment of Seizure was given, as well as *Ouster* in these Cases, as likewise in Sir *George Reynell's* Case; and by Multitudes of Cases of Offices seized, it appears how vain the Objection was, that the King cannot seize a Corporation, because he cannot have it, or be the Mayor and Commonalty; for not only what the King may have or hold, but what he may dispose of, are in Judgment of Law, said to be in his Hands; and it is the proper Office of the Hand *disponere*, as well as *tenerere*. And what but colourably came out of the Crown, though it cannot subsist by Law in a Subject, shall be seized, as in *Cusack's* Case.

3.) In the last Place there are other Seizures, which are by Process by Commission of Inquiry upon Inquisition found, or upon Presentment; and such are always for Forfeitures, upon Faults found in breach of Conditions annexed by Law. That the King is in possession of all incorporeal Rights by such Seizures upon Inquisition, appears by the Resolution in Sir *George Reynell's* Case. In these Cases of Seizure for Forfeitures, no Court, or the Lord of the Liberty, whether Body Politick, or Natural, can admit to a Fine, and thereupon make Restitution; neither is there any other way by Law to take off the King's Hands, but by direct Traverse of the Fact, if the Fact found be not true; or by Demurrer, if the Fact found be not in Law sufficient cause of Forfeiture. The Facts upon which such Seizures have been made, have been generally so notorious, and the Consequence of Law upon them, taken to be so evident, that I never met with any such Inquisition ever traversed or demurred to; but the Application for Restitution hath still been to the King's Grace. And these Inquisitions have been taken either *ex officio* by the Sheriff, or by

special Commissions. The Sheriff by his general Commission is intrusted with the Preservation of the whole County, and the publick Peace thereof.

And though in the Grant of Corporations and other Liberties, there be special Clauses exclusive, *Ita quod, &c.* Yet these Clauses, as the Grants themselves, have another *Ita quod* annexed to them by Law, that they preserve good Government, and do not abuse the Franchise, by committing or permitting Riots and great Disorders in Breach of the publick Peace; which if they do, is by Law a *Non omittas* to the Sheriff to enquire and take care of the publick Peace within the Liberty.

The Town of *Hereford* was seized into the King's Hands by the Sheriff of the County, for holding of a Market contrary to the King's Prohibition, Upon Certificate thereof into Chancery, the King's Writ issues to the Sheriff approving thereof, and commanding him to keep it in the King's Hands, *Donec Dominus Rex aliud inde preceperit. Rot. Clauso. 15 H. 3. memb. 7. Hales lib. K. fol. 41.*

Of Seizures made upon Presentments, and Inquisitions taken by Commissions, there are many Instances, some whereof I shall mention when I come to the Precedents. The Seizures upon Judgments, or for a Forfeiture, which are always in the King's Right, do as effectually put the King into Possession, and oust the natural Persons from using the Right, as any Judgment of *Ouster* whatsoever. And the difference between such Seizures, and those upon the Grand *Cape*, which are only upon Mean Process, and in Right of the Subject, and in his Aid, is too apparent to be further enlarged upon. There is some resemblance between this Seizure upon the Grand *Cape*, and that in the King's Suit for Default, that Appearance for both are upon Mean Process, and both repleviable, if the Defendant or Tenant come in Time.

There is also a further Resemblance between them, which makes not for Mr. Recorder's purpose; and that is, in that both are lost for ever, if the Parties come not in Time. For at Common Law, if upon a *Præcipe quod reddat*, and the Lands seized into the King's Hands upon the Grand *Cape*, the Tenant makes Default, and come not within forty Days, he could not wage his Law to excuse his Default, but the Demandant should have Judgment to recover the Land presently, *15 Ed. 4. fol. 7.*

The Difference that it was not the Franchise or Liberty of the Corporation, but the Towns themselves were seized into the King's Hand, is as void of Authority as of Law. Sometimes indeed *Civitas & Villa* in Records are used promiscuously for the Franchise and Freedom, which is jointly used and enjoyed by the Inhabitants, exempt from the Common Law Jurisdiction: And in such Case the Seizure of the City or *Ville*, and of the Franchise, is all one; and the Inhabitants thereby put under the Government of the Common Law, discharged of the Franchise. But if the Town or City be taken for the natural Persons who are the Inhabitants, or for the Houses wherein they inhabited, which they must be upon Mr. Recorder's Distinction, otherwise it will be a Distinction without a Difference: Neither the Inhabitants nor Houses were ever seized, or could be seized into the King's Hands upon such Inquisitions as have been found, and Judgments of Seizure that have been given. The only Proof for this Difference was a strong Averment, that whilst the City of

London lay under the several Seizures, sometimes of the Mayoralty only, at other times of the whole Franchise, the Corporation was as vigorous as ever, and in *Statu quo*; not so much as suspended, but did exercise all Corporate Acts as before. An Averment against the express Sense of all the Citizens when under those Seizures, and against many Authorities of Law.

At the Parliament, 18 Ed. 1. the Citizens (for they had then no Mayor) petitioned the King in Parliament, *Quod Rex velit eis concedere pristinum Statum, sc. Majorem et antiquas Libertates.* They petitioned not for their Houses, or the Liberty of their Persons, those were never seized; but to be restored to the Mayoralty, and their ancient Liberties, which were under Seizure in the King's Hands. If the Corporation had been in *Statu quo*, they would not have troubled the Commons to present such a Petition, nor the King to grant so idle a Petition, as *eis concedere pristinum Statum*; but they who knew their Condition better than Mr. Recorder, could admit themselves out of Possession both of the Mayoralty and their ancient Liberties, and pray to be restored to them. And the King's Answer was, his Lord not at present advised *Statum mutare.* My Lord Coke's Opinion is,

1 Inst. 263. b. Commonalty, when no Mayor, have not Capacity so much as to make continual Claim, nor to take by Purchase, nor sue any Action.

If the Commons of London meet on *Michaelmas-day*, and choose a Mayor, the old Mayor not present, the Election is void; and so any other Act without the Mayor. If the Commonalty in the Vacancy of a Mayor make Obligation under their Common Seal, it is void; how much stronger will the Case be, when the whole Franchise is seized?

I have now removed the Objections which lay in my way, by opening the Nature and Effect of Seizures of Liberties into the King's Hands, and where Judgment of Seizure, and whereof Ouster are properly given; whereby it may appear, that this special *Capias* of *Capias in manus Regis* is as proper an Execution against the Body Politick, as the common *Capias* against the Body Natural; and in Judgment of Law the Politick Person is as properly said *civilliter mortua* by Judgment of Seizure, as the Natural Person is said *civilliter mortua* by Judgment of any Attainder for any capital Offence. Mr. Recorder acknowledges, that in case of Natural Persons, when the Law gives Forfeiture of the Body, or of the Liberty of the Body, it is all one in Judgment of Law; the Law is the same when it speaks of Bodies Politick, to forfeit the Liberty of the Body Politick, and to forfeit the Body Politick.

3. My Way thus cleared, I will lay down the Grounds and Reasons of Law, upon which I conceive with some Clearness, that Corporations may be forfeited and seized into the King's Hands, as well as Offices or any other Liberties whatsoever; and then shall instance in some further Precedents, whereby it will appear they have been forfeited and seized. My Grounds are principally these:

(1) That there is a Condition in Law annexed to the Franchise of a Corporation upon its first Erection, as strong, if not

stronger, than to any other Franchise or Liberty whatsoever.

(2) That there is nothing extraordinary or peculiar in the Nature of a Corporation, to hinder taking Advantage of the Condition broken, or to exempt it from the common Condition of other Liberties in Consideration of Law.

(1) As to the first, Wherever the Law introduceth or alloweth any Right upon a Trust, or for the Benefit of the Publick, it implies a Condition, that the Trust be discharged, and the Ends of its Creation complied with. This Condition implied by Law is of stricter Obligation than Conditions express; it shall bind Infants and Females Covert, 8 Co. 44. The principal Case is of Offices; but the Book saith, *So it is of all Liberties and Franchises.* And indeed throughout our Books, the Cases of Offices of Publick Trusts and Franchises run parallel; and the greater the Trust is, or of greater Necessity to be performed, the Condition is still the stricter. And therefore in Franchises, as well as Liberties, if the Franchise be for the better Administration of Justice, and of Necessity, *Non user* will be adjudged a Breach of Condition; but where not of Necessity, bare *Non user* will not be a Breach; yet *Refuser*, which is an obstinate and wilful *Non user*, may be a Breach; but in case of all Liberties and Franchises whatsoever, *Abuser* was ever judged a Breach of the Condition. This matter, upon the Question of Forfeiture of an Office is well stated in the Countess of *Sbrewsbury's* Case, 9 Co. 50. Now this Franchise of a Corporation is granted upon a far greater Trust and Confidence, than any other Liberty whatsoever, as I have already shewn; viz. For the Government and Peace of the Inhabitants, and others coming within the Liberty of the Franchise, in Subordination to the general Government of the King; and that they are intrusted therewith by the King upon the publick Account of Government only, and not for any private Respect or Benefit whatsoever. Other Franchises are either subordinate and auxiliary to this, as to hold Courts, have Goals, and such like, for the better Administration of the several Parts of Government; or else are of Profit or Ease, *pro meliori sustentatione* of the Charge and Burden of this subordinate Government. And therefore *Banks*, in the Argument of *Hayward* and *Fulcher's* Case, *Palmer* 495. calls it the *Principal Liberty*, and other Liberties the *Accessories.*

In the Case of Knights Templers, the Corporation was dissolved upon 1 Inst. 432. the account of *Non user*, though without their Default; but the End of their Institution ceased. The Case is much stronger where it is a voluntary *Cesser*, as where the Abbots and Monks put off their Habit, and leave their Houses; this *Non user* will be a good Cause of discharging the Order. Where the Commonalty have Power to choose every Year a Mayor, if they do not choose a Mayor, their Franchise shall be forfeited, or they may be fined, upon this Reason, that common Justice fails for want of such an Officer, which was a Breach of the Condition annexed to their Liberty by *Non user*, 21 E. 4. 14. It appears by this Case, That the Commonalty, in the Vacancy of a Mayor, are to this purpose a Corporation, to choose a Mayor to perfect the Body; and 'tis the only Corporate Act, that they are by Law enabled to

do without a Mayor; and this Right may be forfeited too. And as by never choosing a Mayor, they themselves would dissolve the Corporation; so by forfeiting their Right, it is in the Power of the Law to dissolve them. It also appears expressly by this Case, that the King may proceed either for a Fine, or upon a Forfeiture, as he may do in the Cases of all Offices and Franchises whatsoever, as he shall be advised.

If *Non user* in some Cases (as I have shewn) will forfeit a Corporate Right, no Shadow of Reason can be offered, why *Misuser* or *Abuser* will not do it as well as in all other Liberties. For as greater the Trust is, or stronger the Condition, so an *Abuser* of that Trust is a far greater Breach of the Condition, than a simple *Non user*. Single Bodies Politick have indisputably such Conditions annexed to them upon the Trust of their Creation; and the Breach of the Condition is in Law good Cause of separating the politick Person from the natural, by Deprivation, which in the Civil Law is of the same Effect as Judgment of *Ouster* by the Common Law; and their Suspension hath some Resemblance with our Seizures into the King's Hands. If Mr. Recorder had but observed the different Laws that Spiritual Corporations and Civil Corporations are guided by, he would not have raised his Wonder to that Height, that *Quo Warranto's* were never brought against Monasteries, Bishops, Deans and Chapters, Parsons and Vicars, and that bringing it now against the City of *London* threaten'd the whole Hierarchy of the Church; when, with his Leave, all these, if they offend, may by Law lose their Corporate Right, which may be severed from them by a certain Instrument called *Deprivation*, the Edge of which is no sharper than Judgment of Seizure, or *Ouster* in our Law. And certainly the Union between the politick and natural Body is as close and as strong in single Corporations, as in aggregate; and the same Authors have bestowed upon them the same Epithet, and that they cannot commit Treason and Felony; and the Body Corporate of the Bishop, Parson, Prior, Alien, &c. is as invisible, immortal, and as politick as that of aggregate Bodies. Yet not only Treason and Felony, but far less Misdemeanors committed by the natural Persons will forfeit the corporate Right, and amount to a Breach of the Condition annexed by Law. So little Crimes, as Waste, and wilful Dilapidations, will be Causes of Forfeiture; many of the Cases thereof are put in Sir *James Bagg's* Case, to which I refer, 11 Co. 98. For I do take that Case to be an express Judgment in Point, That there is a Condition annexed by Law to every Corporation, and that the Breach thereof is a Forfeiture. The Resolution there is, that any Member of the Body may forfeit his Corporate Right, and may by Law be divested of it, which Right is there called his *Freedom* and *Liberty*. And it is the same Right or Liberty, in which all, jointly considered, have an Inheritance, wherein each Member hath a Freehold; for they are not seized of this Right in their Corporate Capacity, but as Natural Persons, the Question being of that Right which gives them the Corporate Capacity. And what any Member may forfeit, every Member may; and the same Acts which will forfeit the Right of every Member, separately considered, if done jointly by all the Members, will have the same Effect. What Act will amount to a Forfeiture, that Case generally

determines, whatsoever is contrary to the Duty and Trust of a Member; especially if the Fact be contrary to his Oath, the Oath of Allegiance by the Statute 7 *Jac. cap. 6.* is made a part of the Freeman's Oath. The Case goes further, and assigns many Particulars, which will be Breaches of the Condition, *viz.* Attainders, Forgery, Perjury, Conspiracy, or any other infamous Crimes at the King's Suit; if these will be sufficient Cause, there can be no doubt but Treasons, Felonies, and Oppressions, Seditious, and other Attempts in disturbing the Government, will be good Causes of Disfranchisement of any or many of the Members, who commit such Crimes. And this upon the Trust and Condition implied by Law, upon the first Erection of the Corporation; for the present Members are under no other Trust or Condition as to this Matter, than what the Law imposed upon the first Members.

I cannot see how the Counsel for the City can evade the Force of Sir *James Bagg's* Case, unless it be by a Distinction or two:

- 1.) Between every Man, and all Men; every Man may forfeit his Part, but all Men cannot forfeit the whole: Just such another Distinction as was made to all the Precedents between Seizures and Forfeitures.
- 2.) The other Distinction seems to have a little more Colour, and it is between the King and the Corporation.

The Corporation, say they, are intrusted by Law with Power over their Members to remove them for acting against their Duty; but the King cannot disfranchise any particular Member; and if he cannot disfranchise any one Member, much less can he all Members, or seize their Liberties into his Hands, which in Law amounts to a Disfranchisement of all the Members.

In answer, The King may do both the one and the other; and in saying the King can do it, I mean in Course of Law.

1.] The King doth it, when the subordinate Ministers and Governors within the Corporation do it; for they do it as his Ministers in Execution of his Laws; and it is their Duty to do it, according to the Trust he hath reposed in them, and the Power he gave them; and this Authority is greater or lesser, as he is pleased to grant it, as appears by Sir *James Bagg's* Case. If the King grant them express Authority to remove, they may remove the Offender before Conviction at Law. But if no express Power be granted, a Conviction at Law must be first had; and the Judgment of the Law directs their Duty, and they are accountable herein to the King in his Courts of Law: If they mistake the Law, and displace a Member convicted of an Offence, which amounts not to a Forfeiture, the Party shall be restored by *Mandamus*; an excellent Precedent of Restitution, if they do not their Duty, to disfranchise where the Offence requires it.

2.] The King may do it, by commanding them to do it by his Writ Dier 333. out of the Court where the Conviction remains, or out of the Chancery, as he may the Coroner of the County, Mayor, and other Officers, as the Precedents have been. A Writ to remove the 13 Co. Mayor of *Berwick*. So where an 9 Car. 1. Memb. 29. Alderman is dead, the King may send his *Mandamus* to choose another, as done in the Case of *Lanceston*, P. 8 Car. 1.

23 *R. Hale*, Corporat. Pl. 5. If they yield not Obedience, they may be fined, or may incur the Forfeiture of their Liberties, as the Case may require.

3.] In Case the Corporation cannot do Justice in punishing and displacing the Offenders, either because the Majority are Offenders, or favouring, or abetting the Offenders, there being a Failure of Justice in the Franchise, which the Law will not permit, by Judgment of Law the City or *Ville* shall be restored to the Government and Jurisdiction of the Common Law, by Seizure of the Franchise into the King's Hands.

4.] Failure of Justice, and the not suppressing and punishing of notorious Riots and Tumults, have been adjudged good Causes of Forfeiture of Liberties, and the Plea of *Non Ability* to suppress them, disallowed as any Cause of excuse, as to the Point of Forfeitures of the Liberties, which doth and will appear by the Precedents insisted on by Mr. Solicitor, and what I shall superadd. So that I conceive the Authority of Sir *James Bagg's* Case remains unshaken, that there is a Condition annexed to the Franchise of a Corporation, the Breach whereof will be a Forfeiture. The greater the Trust of any Member of a Corporation is, the stricter is the Condition; as where any of the Members are chosen into any Places, which more immediately concern the good Government of the Corporation, a less Crime will be the Cause of his Removal, than will be of Disfranchisement of a private Member, as in the Case of an Alderman.

Tryler's Case
Trin. 14.
Jac. 1. B.R. Roll
Restitution
455. pl. 1.

It was resolved, for being a Drunkard and Haunter of Taverns, he being a Magistrate more immediately intrusted with the Government, was Cause of Removal; though he have

Freehold in the Place, yet it is upon special Trust and Confidence. The Law will be the same, if the Magistrate gives the least Encouragement to popular Tumults, or frequent Conventicles, and unlawful Assemblies. And it is no Objection to say, that some Statute Laws have laid a Penalty for the Offences, as it is in the Case of Drunkenness, and many Offences of Officers; and in Common Law Offences, the Law provides a Penalty against the Offender by Fine or Imprisonment; and yet the same Offence, if a Breach of Condition, will be Cause of Disfranchisement, as appears in Sir *James Bagg's* Case. The Penalties inflicted by Statutes or Common Law, are for the Breaches of particular Laws; but the displacing of a Magistrate is for Breach of the general Trust of his Place, wherewith he is intrusted for the Publick; and having broken that Trust and Condition, the Law adjudgeth him unfit to be intrusted, *ne quicquam detrimenti capiat Respublica*. The Question, What Acts of a Member will forfeit his corporate Right, is no where in our Books so distinctly put as in Sir *James Bagg's* Case. But the Question, What Acts of the Members, and of what Number of the Members will forfeit the whole Franchise, I know no where distinctly put in our Books, but as they lie scattered in the Instances of Forfeitures taken, and Franchises seized; otherwise than upon the general Rules of *non user & abuser* of the Trust committed to them. But the Civilians do largely treat upon these Questions; Whether the Cities, Colleges, and Universities may be forfeited and dissolved, and

what Acts of the Members will be Causes of such Forfeitures. And therefore I crave leave, before I conclude this Head, from the Condition annexed by Law to all Corporations, only to mention one of them. It is *Oldradus de Ponte*, in his Book intituled, *Consilia sive Responsa, & Aureæ Quaestiones*. Where he debates the Point at large *Pro* and *Con*, and puts the Objections of some Authors, which are much the same enthusiastick Raptures, as have been made use of in this Case; viz. that they have no Souls, but are immortal Bodies, and such like Stuff. But he resolves the Question thus; I will repeat his own Words: *Sed licet non habent veram personam, tamen habent personam sicuti fitione Juris. Et ideo dicit Lex, quod Municipium Curiae & Societatem personae sustinent: Et sic eadem fitione animam habent, & delinquere possunt, & puniri, eam tamen poenam quae possit cadere in eas, scilicet, quod privetur Privilegiis, & sic Capite minuitur. Et sic sicut vera persona per mortem naturalem desinit esse quod erat, sic ista persona sicuti per mortem Civilem, quae est, ut privetur Privilegiis, desinit esse quod erat, quia amodo non erit Universitas.* And then assigns the Causes generally: *Et quod Privilegia possint revocari, cum incipiunt esse iniqua vel damnosa. Et non potest esse magis iniquum, si utatur eo in contumeliam concedentis.* Though this be a full Opinion of a learned Man, as to the Case in question, both as to the general Question of Forfeiture, and the particular Breaches assigned; yet I use it not as an Authority; but only to shew the Concordance of other Laws with the Law and Practice within this Kingdom; and that learned Men have before now not only dreamt of such a thing, but have concluded the Point upon Debate and Reason of Law, That Corporations may be forfeited and dissolved, when their Privileges, as used by the Members, *incipiunt esse iniqua vel damnosa*.

(2.) My other Ground is, that there is nothing extraordinary or particular in the Nature of Corporations aggregate, to exempt them from the Condition of single Corporations, or of other Liberties: If there be, it hath not yet been shewn. It must arise either from the Number of the Persons who take, and are the Subjects of this Liberty, because they are many; or from the Right conferred upon them. The Number of the Persons constituting this Body contributes nothing towards the Indissolubility thereof, pleaded for. They were several natural Persons before the Union, and remain so many natural Persons; and by retaining their natural Capacities, are as capable of being separated, as they were before capable of being united by taking this Right. And as to the Number of the Persons, a Corporation differs nothing from other Communities, which may assemble and act in a Body: As the voluntary Societies in Inns of Court and Chancery, and Armies, which act under Commissions, to some Persons to collect and assemble, others to act jointly under them. These Societies have their peculiar Rules and Laws to act by, and act jointly and in a Body as Corporations do: But yet, in the one Case, if the Members so agree; or in the other Case, the Commission be revoked, they are all separated, and the Union dissolved. So as to the Nature or Numbers of the Persons collected, a Corporation differs nothing from other Societies not incorporated.

incorporated. From Number may be presumed a greater Duration, and it is most probable many may outlive one; but it is certain that many shall die as one Man, and probable that all may die before others elected, which was admitted to be a Dissolution of the Body Politick: but ingeniously distinguished, that this was rather a Separation of the Persons from the Body, than of the politick Body from the Persons. Be it so, it is admitted then they are separable, and that Number cannot protect the natural Persons from being severed from the Body Politick by natural Death. And I have already shewn, that Number contributes nothing to the Indissolubility of a Corporation, by Separation of the Members one from the other, which is called a Civil Death; and in Cases of Civil Death, the separating the Liberty from the Person, or the Persons from the Liberty, is all one. To take the Office from the Officer, or remove the Officer from the Office, is all one; and so in Disfranchisement, to take away the Freedom of a Member, or to remove him from his Freedom, is all one: And so in Forfeiture of Franchises, the Judgment of *Ouster* is formally putting the Persons from the Franchise, and Judgment of Seizure taking the Franchise from the Persons; but in effect they are the same, *viz.* a Separation between the Persons and the Franchise. And this Separation being wrought by a Condition in Law annexed upon the Union, the Number of Persons can no more prevent it, than where Lands, or incorporate Inheritances are granted to many, and their Heirs, upon an express Condition, that no Advantage could be taken of the Condition broken, because the Grant is to many Men.

From the Nature of the Right or Franchise, as little can be inferred for this inseparable Union pretended.

1.) In its Creation; it is merely by the Policy of Man, and the Rule is taken in *Calvin's Case*, 7 Co. fo. 25. That what is by the Law of Man, may be altered. And divers other Books speaking of the Effects of human Constitutions, laying down as a certain Rule, *Quicquid colligitur, dissolvi potest*; mortal Beings cannot confer Immortality.

All Rights whatsoever are incorporate, and sometimes *abusive* are styled immortal, which by Intendment of Law is only, that they have Continuance so long as any Persons subsist capable of having them: And in this Sense the Right to Lands and Corporate Inheritances are of greater Duration than many Liberties, and particularly those of Corporations; because they subsist when they return to the Crown, which many Liberties do not, but are then extinct. *Strata Marcella*, 9 Co. & 15 Ed. 4. fo. 6.

2.) As to the Nature of this Right, whether it be considered as a Right of taking and holding in another Capacity than that of natural Persons, or as a Right of taking in Succession, under neither Consideration can it import any inseparable Quality. In the former, it is both the same with that of single Corporations, and plainly implies a Trust. In all the Cases of our Law, wherever any Persons take in another's Capacity than their own, it is always upon Trust, as Executors or Administrators, Churchwardens, &c. and all single Corporations: And where the Law creates the Trust, the Law provides Remedy, if the Trust be broken,

for putting the Trust into safer Hands. And likewise, if considered as a Right framed by Policy, to take in Succession, it is in Substance the very same with that of single Corporations, and if any Advantage be in point of Duration, it inclines to the Side of single Corporations, as better framed by Policy to have Continuance, than the other of aggregate Corporations.

1.) Because the Choice of the Successions, whether elective, donative, or presentative, is placed elsewhere, and not in the Person himself, that it cannot be in his Power to prevent the Succession.

2.) Because the Law leaves it not in his Power to determine the Corporation, either by Surrender, or Forfeiture, but during his Life; and so cannot prejudice his Succession.

But in Lay Corporations the Power of Succession being intrusted with them by Elections to continue it, the whole Right is in them, and consequently in their Power to determine it, either by not electing, or electing those the Law incapacitates, which is the Case of *Worcester*; or every Man of them may for good Cause be disfranchised, or the Franchise for Cause seized, and consequently, for want of Succession, fail. Besides, to go in Succession doth not necessarily imply a Perpetuity: Goods may go in Succession, as to Churchwardens. A Chattel Lease may go in Succession. The King grants Lands for Years, rendering the Rent to the Aldermen of *Chesterfield*; they take in Possession as a Corporation, *Cro. Eliz.* 35. (*Mich* 26) The same Case, *Hales Corporation pl.* 25. Upon these Grounds that there is a Condition annexed to all Corporations, as well as other Liberties, and that there is nothing peculiar in the Nature of Corporations aggregate, to exempt them from being liable to Seizure for Breaches of that Condition, I conclude, Corporations may be taken into the King's Hands by Seizure; which is a Separation of the Liberty of being a Body Politick from the natural Persons, who (as *Braeton* phraseth it) were but *Usu-fructuarii*, and had not *Absolutum Dominium*. And by this Separation the natural Persons are only restored to the Government of the Common Law.

The Mischiefs that would inevitably follow, were the Law otherwise, have been insisted on by Mr. Solicitor. It were to set up independent Commonwealths within the Kingdom; and according to the judgment of the Parliament

21 Ed. 3. would certainly tend 21 E. 3. pl. 17. to the utter Overthrow of the Common Law, and the Crown too, in which all Sovereign Power to do Right, both to its self and the Subjects, is only lodged by the Common Law of this Realm.

The Answer Mr. Recorder applied to the Mischiefs, That they may be otherwise punished, is of little avail. Though he did not express in what Manner they might be punished, yet it must be intended by Fine, or at the Suit of the Persons injured by their Oppressions. The same Answer may be applied to the Oppressions by Officers, and the Abuses of all Liberties whatsoever, and likewise to excuse the Disfranchisement of any one Member of a Corporation: But that is no sufficient Remedy to cure the Mischiefs, whilst the Cause still remains, and is in as great Power to oppress, as before; which nothing can sufficiently restrain, but the Loss, at the least the Fear of the

the Loss of that Power. To put the Subjects grieved to contend with Corporations for their Relief by their several Actions, were for the common Law to lay a greater Burden upon them, than what they suffered from the Corporation, as was sufficiently experimented in the Case of the Duty of Water-bailage of *London*, before the *Quo Warranto* was brought to rescue them: And if they recover Damages, those Damages can only be levied upon the common Goods and Estate of the Corporation, 8 H. 6. 1. And many Corporations have little or nothing in common Stock, and few Corporations sufficient to make Satisfaction for all their Oppressions. And to profecture for a Fine is no Satisfaction to those who are injured, nor doth remove the Cause of the Oppression. And the Law would be very deficient, if such inferior Jurisdictions, or Corporations, were not subject to the common Law upon the like Conditions as other Liberties, Franchises; and inferior Jurisdictions are.

Mr. Recorder hath affirmed it with great assurance, That never any till this Suit ever so much as thought of refusing Corporations, which are subordinate Governments. I shall only request of him, and of the other Gentlemen of the City's Counsel, to shew me the Opinion of one learned Man of this Kingdom, or any other Nation, deliberately delivered upon the Question, That sedatory and subordinate Governments cannot, for any Cause whatsoever, be forfeited or refused. That *de facto* they have been resumed in other Nations is testified by many Authors, with their Opinions, that *de jure* they may so be; which I forbear to trouble the Court with. Within this Kingdom of that Nature are Counties Palatine, the Cinque Ports, the Liberties of *Ely*, Lordships Marchers, and such like, and the Corporations of Cities and Towns; which are all held of the Crown of *England*. What the Practice and judicial Opinions have been concerning these Liberties, according to the Law of this Land, Mr. Solicitor hath shewn in several Instances; which I shall not repeat, but shall produce some others to prove the same Matter. I beg leave to rescue a very considerable Precedent produced by Mr. Solicitor, from the Gloss Mr. Recorder was pleased to put upon it, That it was an Act of Parliament; when 'tis no such matter, but a Judgment of the King's Bench in point upon a Forfeiture. It is the Case of *Sandwich*, cited p. 9 Ed. 1. Rot. majus 35. *Kanc.* The Record is amongst the Plea Rolls, in the Treasury or Tally Office.

It was upon an Information at the King's Suit, presented by the Sheriff of the County against the Mayor of *Sandwich*, and Three others, for assaulting the Sheriff's Bailiff upon Execution of the King's Writ within *Stanore*, beating the Officer, and taking the Writ from him, and tearing it, and stamping it under his Feet. They plead to the Jurisdiction, that *Stanore* was within the Liberty of *Sandwich*, within the Cinque Ports; and that *De aliqua seductione fac' corporis Regis, non tenentur respondere alibi*, than at the Court at *Shepway*. The Plea was over-ruled upon this ground, that none could claim such a Liberty without express Grant; and they shew no Charter for it, and were ruled to answer over. They insist upon that Exemption, and refuse to give any farther Answer; whereupon Judgment was given, that they be committed to Prison: And

the Judgment goes farther, *Et quia Johannes Dennis Major de Sandwich corvictus est de transgressionibus predictis; et factum Majoratus in his que tangunt Comitatum est factum ipsius Communitatis, consideratum est, quod Communitas de Sandwich amittat Libertatem suam.* This is an express Judgment of this Court upon the Forfeiture of the Liberty, for a Crime committed by the Mayor and others, in a Matter relating to the whole Liberty. Before this, the Franchise of *Sandwich* was seized, as forfeited into the King's Hands for a notorious Riot committed by the Inhabitants, in obstruction of Justice, 3 Ed. 1.

The Case upon that Record was thus: Upon an Inquisition found of Purprestures within the King's Warren of *Dover*, by stopping a Water-course, whereby the Warren was overflowed, a Writ issued from the Court of *Dover*, to distrain the Offender by his Goods, to amend and remove the Purpresture: The Officer distrains the Cattle of *Simon Erchebston*, who was the Offender, and lived at *Sandwich*, within the Cinque Port. Some of the Men of *Sandwich* make Rescous; and when the Constable of *Dover* sent Messengers to complain to the Mayor of *Sandwich* of this Rescous, and to require Redress; after the Complaint made, and no Redress had, several of the Men of *Sandwich* fell upon the Messengers, and severely beat them. Then the Constable sent more Officers to see Right done, against whom the Town was barrocaded and chained, and his Officers kept out by the Townsmen in hostile manner. Then the Constable went in Person, and after some time suppressed the Tumult, and upon their Submission, the Commonalty prayed the Constable would deliver their Submission to the King, which they then delivered to him under their Common Seal; and accordingly was delivered by the Constable to the King and Council, and adjourned into Parliament: And the Mayor, Bailiffs, and Commonalty ordered to be there at a certain Day, before the King and his Council in Parliament. Upon hearing thereof in the Presence of the Mayor and Bailiffs for the whole Commonalty, Judgment is thus entred upon that Record; *Consideratum fuit per Dominum Regem & concilium suum in Parlamento, quod Majoratus & Libertas de Sandwich pro predictis Transgressionibus in manus Regis capiatur, & tradatur in custodia Constabulario de Dover, ad disponendum de predicta Villa secundum communem Legem & Consuetudinem Regni, non obstante aliqua Libertate.* It evidently appears, both by the Form and Matter of it, that that Form was judicial, and not legislative, and agreeable to the Forms of Judgment, in the other Common Law Courts, and in our Law Books. Here is a Judgment only of Seizure upon a Forfeiture, yet it amounted to a real Ouster; for the Town was actually divested of the Liberty, and delivered up to the Government of the Common Law. For *capiatur Majoratus & Libertas de Sandwich* in the Singular Number, in *manus Regis tradatur in custodia Constabulario suo*, who is the Common Law Officer, within the Cinque Ports, is no more than leaving the Town to the Government of the Common Law; which is fuller explained by the subsequent Words of *disponendum de Villa secundum Legem & Consuetudinem Regni.* And it appears by this Record, that there is a difference between the Liberty and the *Ville*, though sometimes

19 H. 6. 64.
9 H. 6. 36
Fitzh. Exc. 128.

Pafch. 3 Ed. 1.
Kanc. 54.
Dorfo Rot.
majus.

times *Ville* is used for the Liberty of the *Ville*; but here the Mayoralty and the Liberty are seized, and the *Ville* delivered over to the Common Law Officer.

The next Precedent I insist upon, is that recited by Mr. Recorder, the Case of the Town of *Cambridge*, but lamentably defaced by my Lord *Coke's* marginal Note, and Mr. Recorder's Avertment, that by the Record it appears to have been by common Consent of Parliament. I rather insist upon this, for that Mr. Recorder hath acknowledged its Force, that it worked upon the corporate Right, and was upon a Forfeiture, but lays the Force of it in its being an Act of Parliament, when in truth it

5 R. 2. N. 45.
to 66.

is a plain Judgment of a Court of Law, and it appears by the Record it was no Act of Parliament. Mr. Recorder cited the Record, 8 R. 2. No. 11. 4. *Inst.* 228, and it is probable Mr. Recorder looked no further than that Book for it: In the Margin it is so cited, but miscited; yet in the Body of the Book, in putting the Case, it is truly cited; for the Record is 5 R. 2. 45. to 66. and it is evident by the marginal Note; and my Lord *Coke's* saying it was the common Consent, misguided Mr. Recorder, to affirm it to be an Act of Parliament, when the contrary appears by the Record. The Complaint to the King and his Counsel in Parliament against the Town of *Cambridge* was for a great Riot committed, and an Assault upon the University; and the Fact in substance is the same as related in the Fourth Institutes. It was prosecuted at two Suits, the one against the late Mayor and Bailiffs, who were at the Time of the Riot in their natural Capacity; the other against the Mayor, Bailiffs, and Commonalty in their corporate Capacity; the Writs returnable *coram nobis & concilio nostro*. The former Mayor and Bailiffs appear, and plead in their natural Capacity, that they were neither assenting nor aiding to the Riot; neither did or said any Thing, that might turn to the Damage of the University, unless only by Coaction and outrageous Compulsion: And there seems to have been no further Proceedings in that Suit. Upon the other Writ the Mayor, Bailiffs, and Commonalty appear, and pray they may have a Copy of the Articles, which were read to them, and Counsel allowed to them, and Time to answer; and such Answer was returned, as is mentioned in the 4th *Inst.* But in the Record it is said, it was answered by the Court; and that the Court told them, that at present they should not be put to answer to the Crime (which must be in order to a Fine) but only touching their Liberties.

Cotton's Records.

Then touching their Liberties, they put in a Plea by their Counsel, to the Jurisdiction of the Court, which is omitted in my Lord *Cooke*; only he saith, after many Dilatory Shifts and Subterfuges following therein, the Court overruled the Plea to the Jurisdiction, and ruled them to answer in chief; and if not, Judgment should be entred by *nihil dicit*. They then pleaded a frivolous Plea, partly not guilty, partly in Excuse; and the King's Serjeant replied, and the Plea was held naught. Thereupon they submitted, as to the Franchise, to the King's Grace, saying that it might be no Conclusion to them, if they should be called in question for the Crime. Whereupon Judgment of Seizure was only given, The Words

of the Record say thus: *Nostre Seigneur le Roy de Assent des Prelates & Seigneurs en cest Parliament fist seiser la dit Franchise en sa maine come forfeit pur la diuz Causes*. Throughout the Record it appears by all the Proceedings they were judicial; but the Plea to the Jurisdiction of the Court, and the Judgment by the King and Lords, only are Demonstrations it was no Act of Parliament, nor adjudged by the legislative Power, but by a Court of Law.

It appears upon the same Record, that the King granted several of the Particulars which were seized, to the University, who enjoy them to this Day. *Et la Remuante de la Franchise de la dit Ville* the King granted to the Mayor and Bailiffs, to hold of him and his Heirs, at the ancient Rent of 101 Marks.

33 Ed. 1. *Plac. parl.* 277. The Liberty of the City of *Winchester* seized into the King's hands by Judgment of the King and Lords, for suffering a Hostage of *Baion*, who was committed to their Charge by the King for safe Custody, to escape, to the King's great Damage. The Writ of Seizure is directed to the Sheriff of the County, *quod predictam Civitatem Wintonie & Libertatem ejusdem Civitatis, cum omnibus ad eas tangentibus sine dilacione capiat in manu Regis, & eas salvas custodiat, donec Rex aliud praeceperit*. Whereby the Franchise being seized, the Men of the City are put under the Government of the common Law Officer. Afterwards the City compounded with the King for 500 Marks, and then the King *reddidit eisdem Majori & Civibus Civitat. & Libertat. predicti. habend. & tenendum in forma qua eas tenuerunt ante captionem earundem in manu Regis*, and Letters Patents of Restitution were granted, and a Writ of Restitution directed to the Sheriff.

These were Judgments by the King and Lords in Parliament, upon Forfeitures, and were Judgments of Seizure only, according to the settled Rule and Practice in the Common Law Courts.

Mich. 18. *Ed.* 3. *Rot.* 161. *B. R.* in the Treasury or Tally Office. A Judgment of the King's Bench, against the Town of *Ipswich*, upon a Forfeiture. The Bailiffs of *Ipswich* are impleaded by the King, upon a special Information, reciting that in the King's Bench, sitting there, several Malefactors were indicted for the Death of one *John Holtby*, and that many of the said Town, *tam de majoribus quam de mediocribus*, did comfort and encourage the Felons after the Felony committed, and treated and entertained them with Viands and great Joy. And, after the Departure of the Justices, kept a mock Court publicly, and summoned the Justices and the Officers of the Court, to appear under several Pains. To which the Bailiffs appeared, and were opposed, by the Court, why they did not attach and stay the Malefactors? They answered, The Malefactors flew to Sanctuary: Being further opposed, that they did not attach those of the Town, that furnished the Malefactors with *esculentia & poculentia*, they pleaded, *quod non ausi fuerunt, eo quod tanta fuit multitudo gaudantium, & plures eorum fuere e parentela Malefactorum*: Whereupon Judgment was given *contra Balivos & Communitat. quod custodia ejusdem Villæ seifiat in manu Regis, & quod aliquis ex Parte Domini Regis, qui sit ausus ad pacem Domini Regis manutenendam, se intromittat in eadem Villa, quousque Dominus Rex aliud inde dixerit*. Which the Record

Record shews, is the Bailiff of the County, the common Law Officer. And the Mayor and Bailiffs in open Court surrendered their Staffs of Office. This Judgment is agreeable to those in Parliament, and of Seizure only.

R. Claus. 7. Johan' Memb. 24. Civitas & Libertas Norwici was seized into the King's Hands, for hanging Approvers without the License of the King or his Justices; and the Mayor was summoned to answer for the Damage done to the King. *Rot. Fin' Memb. 10. (13 Ed. 1.)* the Liberties of *Norwich* seized for a great Riot, and burning the Church: The Case is mentioned *Roll. Prerogative, fol. 204.* The Liberties of *Norwich* were again seized, 21 *H. 6.* upon a Prefentment of a great Riot taken before *Fortescue*, and afterward regranted to them, 27 *H. 6. Pat. Roll. Memb. 19.* The Case is cited by Mr. *Noy*, in the Case of the City of *London*, concerning the Death of *Dr. Lamb, Cro. Car. 252.*

The Liberties of *Oxford* were seized, 32 *H. 3.* for a great Riot committed by the Towns-Men, when the King's Brother was there, and killing of his Brother's Baker. The Writ to the Sheriff runs thus; *Quod capiat in manus Regis willelm de Oxon, ut eam salvam custodiat ad opus Regis, ita quod Major et homines ejusdem nullam inde habeant administrationem*; the King in the same Year pardons them, and grants them Restitution, and a Writ to the Sheriff to put them into Possession, 32 *H. 3. Memb. 13. Hal. Lib. L. f. 326.*

Again the Liberties of *Oxford* were seized 29 *Ed. 3.* and part of their Liberties granted to the University, which are enjoyed by them to this Day, and the Residue restored to the Town; the Seizure was for a Riot committed, *Rot. Claus. 29 Ed. 3. M. 21.*

20 *H. 3.* The Liberties of *Evesham*, for using false Measures, when the King was there, and afterwards, upon Submission of the Abbots and Monks, the King makes Restitution to them, *R. Cl. 20. H. 3. M. 8.*

18 *Ed. 1.* The Town of *Southampton* was seized into the King's Hands, for wounding, even to Death, an Officer in serving the King's Writs: They after submitted to a Fine, and took a new Grant, and raised their Fee-farm Rent to 20 *l. per Ann. Roll. Prerog. fo. 204.*

It would be too great a Trouble to the Court, to cite more Precedents of Seizures for Forfeitures. In all these Instances Restitution was never made by the Court, but by the special Grace of the King, after Submission to him, and upon such Terms as he was pleased to accept; and in some Cases was pleased to restore them to the whole; in other Cases, but to the Part of the Liberties. That this Liberty of being a Body Politick may be seized into the King's hands by *Quo Warranto*, Mr. Recorder in Effect hath admitted it, if the Suit be brought against particular Members, and the Cases produced by him prove it. For in the Case of *Cusack*, the *Curia advisare vult* was upon that very Point of being a Body Politick: And the Case of the *Virginia Company*, the very Liberty of being a Body Politick is by the Judgment seized into the King's Hands.

I will give some Instances where it hath been done, in Cases of *Quo Warranto*, against them by the incorporate Name.

Fitzb. Avowry 129. In the *Iter of Lancaster*,

a *Quo Warranto* against the Bailiffs and Commonalty of *Lancaster*: They appear, and claim by a Charter of King *John*, whereby the King grants to them all such Franchises, which the Burrough of *Northampton* had; but do not set forth upon Record what Franchises *Northampton* had; nor do make Title to the Franchise by Prescription: And for that Reason Judgment was given, that their Franchise be seized into the King's Hands, as forfeited.

In the Case I before cited, a *Quo Warranto* against the Bailiffs and Aldermen of *New Radnor*, and Judgment against them by Default, that the Liberty should be taken and seized into the King's Hands, though afterwards it was reversed, because *in misericordia* was entred instead of a *Capiatur pro fine*; yet it is a Judgment in Point, that a Corporation might be forfeited and seized by Default in Pleading.

The Case of *New Malton, Trin. 6. Jac. 1. R. 3.* is an express Authority, that this Liberty may be seized by Judgment in a *Quo Warranto* against the Inhabitants of a Town, by their corporate Name: It is brought against the Bailiffs and Burgeses of *New Malton*; and the Form of the Information is the very same with this against the City of *London*. They plead by their corporate Name, and intitle themselves to the Liberty by Prescription; and Verdict and Judgment against them by their corporate Name of Seizure only, that the Liberty be taken and seized into the King's Hands; and which is more, the *Capiantur pro fine* against them is entred against them by the corporate Name of *Ballivi & Burgeses*, though the Corporation by the Seizure was dissolved; and the Reason no Doubt was, that that general Name was a sufficient Description of the Persons who were liable to the Fine for their Usurpation. And no doubt can be made, but that the true Liberty may be forfeited and lost, by insisting upon a wrong Title, as well as by Default, or any other Forfeiture whatsoever. This Town lies under the Weight of that Judgment to this Day, and are no Corporation; and being opposed by the Interest of the Lord *Eure*, who prosecuted that *Quo Warranto*, did never obtain any Restitution or Regrant.

A *Quo Warranto* against the Bailiffs and Burgeses of *Berkhamstead* in *Com. Hertford*: They appeared, and Judgment *pro defectu responsi* given of Seizure, *Pasch. 16 Car. 2.* and they are no Corporation at this Day. In the ancient Eyres, the Justices in Eyre, when upon Claims put in, the Liberties were lost, either upon some Defect in Pleading, or for some small Abuse or Mistake, the Justices were entrusted with the King's Mercy, to admit to a Fine for Redemption, and make Restitution: But Judgment first passed for Seizure. And regularly upon the general Summons of *Quo Warranto* in Eyre, or special Suit of *Quo Warranto*, which are all founded in the same Right, no other Judgment can be given, if for the King, but a *Capias in manus*, or of *Ouster*; if for the Defendants, a Judgment of Allowance, or *Eat sine die*. The *Capias pro fine* is collateral, and for the Usurpation, not for the Cause of Forfeiture or Seizure. It was one of the Articles of Inquiry in Eyre, how they had used their Liberties; if an Abuse was found, though never so small, Judgment of Seizure was given; though after-

B. R. Mich.
22 Jac. 1. Rot. 17.

Mich. 15 Car. 2.
23 R.

afterwards redeemed by Fine upon Submission.

Quo Warranto upon a Claim of View of Frank-Pledge in Eyre. It was demanded of the Defendant, if he had any Pillory or Tumbrel; he answered, He had not. Judgment was prayed on the Behalf of the King; for that amounted to a Forfeiture; and if that were not sufficient, that then it might be inquired on Behalf of the King, how they had used the Liberty. The Jury find, that the Defendants and their Ancestors had view of Frank-Pledge, but find that the Defendants had taken Amerciaments of Offenders against the Assize for Bread and Beer, amounting to two Shillings, in such Cafes where the Offenders should have been punished by the Pillory and Tumbrel. *Ideo consideratum est, quod Visus capitur in manus Regis.* And then they pray they may have their Liberty again upon a Fine, which is granted to them, upon Pledges for well using of their Liberties. And there is no Difference where the Liberty is lost upon a defective Claim or Mispleading, or for a Forfeiture in *Quo Warranto*; the Judgment is the same of *Capias in manus*; and it is all one, whether the Cause of Forfeiture be found by a Jury, or confessed upon the Pleadings, in a *Quo Warranto*.

The next preliminary Point which was moved, is, Whether the Acts of Common Council be the Acts of the Corporation, and do oblige them?

It seems a strange Question, that when to assemble, consult, determine, and to make Orders and By-laws for the Rule and Government incident to every Corporation, without special Clauses of Grant, and that herein only consists the Exercise of the politick Reason of the whole Body, it should be doubted, whether what they determine and resolve upon, being so jointly assembled, be a Corporation Act, or may affect the Corporation? Upon the Erection of all Corporations, this Power of assembling, deliberating, and determining for the Corporation, is either intrusted with a few particular Members, whose Continuance in that Trust (both as to the present Members and the Succession of them) is directed by the several Charters: Or else it is intrusted with the whole Body, and that either expressly in plain Words, or by Implication of Law, when the Charters are altogether silent therein: The Law in such Case lodgeth the Power of assembling, debating, and determining for the Corporation in all the Members, and the whole jointly assembled (or so many of them as upon Notice shall appear) constitute the Common Council: And such Assembly is not stiled the Common Council from being retained and giving of Counsel, as Mr. Recorder would have it, in which Sense he only, and the Common Sergeant are the Common Council of the City; but they are so called from their joint assembling and consulting for themselves, who constitute the Body Politick. In the same Sense, the Parliaments of England, by many Authorities, are called *Communia Regni Concilia*. This Power thus lodged in the Whole, may be the Whole, or the major Part, which always binds the Whole, being lodged or delegated to a certain Number, which may represent the Whole. In such Case, where the Power is transferred, those Members to whom it is transferred constitute the Common Council in the same manner, and their Acts are

of the same Obligation, as where all meet, unless the Delegation were not general, but certain Cafes reserved for the Determination of the Whole, as hath been done in several Corporations; but in all Cafes not excepted, their Acts are the Acts of the whole Body. Where the Common Council is constituted of the whole Body, or of all the Members, who will meet upon Notice, there is no room left for Doubt, but their Acts, and the Acts of the whole Corporation are the same. Mr. Recorder seems the only Person that ever doubted it, and is not to be beaten from his holds:

First, That the Common Council consist only of particular Members, and their Acts bind only the Members; & *Actio non egreditur Personam*.

Secondly, That no Corporation Act can be without the Common Seal.

Thirdly, That the Acts of the Common Council of London are under the Protection of the Statute or Charter in Parliament of 1 Ed. 3. their Acts are Personal, and they but Ministers of the City; and that the Charter provides, that the Liberty of the City shall not be taken into the King's Hands for any personal Trespas of any Minister of the City.

For the first, I have already demonstrated, that there are no Acts of the Corporation, but what are performed by the particular Members; I will not repeat. I have produced many Instances, that in point of Crime the Acts of particular Members do affect the Corporation, touching their Liberty. That they do so in point of Wrong between Subject and Subject, the Cafes are infinite; I will only mention the Authorities: 9 H. 6. 36. b. 8 H. 6. 1. a. & 14. b. 45 Ed. 3. 2. b. 15 Ed. 4. 1. b. 5 H. 7. 26. a. 4 H. 7. 13. a. 32 H. 6. 9. a. 7. I shall add one Case more, that absolutely destroys Mr. Recorder's Hypothesis, upon which he relies, *That a Corporation cannot do or suffer any Wrong*; it is 48 Ed. 3. 17. b. The Mayor and Commonalty of Lincoln bring Covenant against the Mayor and Commonalty of Derby, upon a Deed of Covenants made by the Predecessors of those of Derby to the Predecessors of Lincoln, that those of the Town of Lincoln should be discharged from Toll for their Merchandizes brought to Derby. In their Count they assign for Breach, that two of the Burgeses of Derby by Name did exact and take Toll of several of the Burgeses of Lincoln. The Defendants first take Exception to the Count for Variance from the Writ; that the Writ supposeth and alledgeth the Breach to have been committed by the Mayor and Commonalty, and the Count assigns the Breach by two Burgeses: The Exception is over-ruled, and the Count held pursuant to the Writ for the Breach of Covenant, which binds the whole, and must be made by the Members. Then it was insisted upon, in point of Law, That the Act of the two Burgeses did not oblige the Corporation. It was admitted, that the Act of all the Members met together would oblige the Corporation: But it was resolved, that it was a Breach, and obliged the Corporation; and that the taking of Toll by their Officers was a taking of Toll by the Corporation; and the Reason given is, that all the Members of the Corporation cannot, by any common Intendment, be understood to meet together to take Toll. Here is an express Judgment

ment, that *Crimen egreditur Personam*, and shall render the Corporation liable for Wrongs done to a particular Member of another Corporation. Much stronger is the Case of the King upon Breaches of the Condition in Law, as I have shewn, where the Acts of the particular Members, committed against the King's Officers, are adjudged done against the King, and render the Corporation liable; but when all meet together, and do an Act, I may say it was never yet doubted, but the Corporation was obliged.

The Case of *Warren*, which was cited, of the Place of Common Council Man of *Coventry*, is nothing to this Purpose; nor the Reason given, That such Place was collateral to a Corporation; which was no more, than that the Court could not *ex Officio* take Notice of it as a fixed Place or Office, but must take it upon the Return; it being variously used in several Corporations, as I have shewed; and the Custom being returned to choose and remove them *ad libitum*, the Court could not judge otherwise, as they may of the Freedom of any Member, which is the same in all Corporations. And therefore in the Case of *Essex* and *Bret*, Common Council-men of *London*, where the Court could take Notice, they were chosen for a Time certain, the Court adjudged they could not be removed without Cause, and granted Restitution. That the Members

of a Corporation can be punished only in one Capacity, and not in both Capacities, and impeaching them for Treasons and Felonies in their Corporate Capacities, will be licensing them, or at least giving them an Exemption and Encouragement to commit these Crimes *impune* in their Natural Capacities, is a Strain so much above *Ela*, that I cannot understand it. Sir *James Bagg's* Case teacheth other Doctrine, That the punishing of any of the Members criminally for infamous Offences, by Fine, Imprisonment, or Pillory, at the King's Suit, doth not exempt the Criminal from Disfranchisement.

The many Precedents I have produced do prove, that the Rioters or Members, who committed the Cause of Forfeiture, were not discharged by proceeding against their Liberties. In the Case of *Norwich*, for hanging the Approvers, the Liberty was seized for Misgovernment, and Process issued against the Mayor to answer it at *Westminster*, *criminaliter*. And in the Case of *Cambridge*, the Court told them, they did not then put it upon them to answer criminally, but as to their Liberties. And they themselves knew, that by Seizure of their Liberties they were not discharged of their Crime: And therefore in the Plea of Submission they insert a Saving, that it might be no Conclusion to them, in case they were impeached criminally. Mr. Recorder doth admit, that if all the Members commit Treason, and be executed, the Politick Person is destroyed as well as the Natural Persons, and that justly too for so great an Offence; and therefore the Extent of Forfeitures doth not encourage, but deter Offenders from Commission of the Crimes. And the Citizens, when they know that their Riots, Oppressions, and Libelling of the Government, do not only subject their Persons to Punishment, who are the immediate Actors, but also subject the Constitution and Government of their City to be questioned, will look upon themselves under

stricter Bonds for discharging their Duties, than common Subjects are. And therefore the Nobility, who have so great a Share in the Government, for Treasons do not only forfeit their Lands and Lives, but their Right of Peerage, which is a special Trust for Government; and that was forfeited in Cases where their Lands were not forfeited, but only during their Lives, upon the Condition annexed to that special Trust; as before the Statute of 26 *H. 8.* if a Nobleman (to him and the Heirs Males of his Body) having entailed Lands, commit Treason, his Lands are not forfeited from his Heir in Tail; but the Dignity is forfeited and extinct, and not supported by the Statute of *Donis*, by reason of the Condition annexed, *Nevil's Case*, 7 *Co. fo. 34*: The Law is the same, where the Dignity is granted in Parliament, or by Act of Parliament, it is no less forfeitable in one Case than in the other; the Condition the Law annexed is still the same. If when the Members of a Corporation, *corporaliter* assembled, commit Treason against their Prince, it must certainly be acknowledged to be against their Duty, in whatever Capacity they be consider'd; especially since the Statute of King *James*, which makes the Oath of Allegiance to be Part of every Freeman's Oath; and the corporate Right is held of the King. If the Law allowed no other Way of taking Advantage of Forfeiture of the corporate Right, but by executing of all the Members, the Law it self might be accused of as great Tyranny as ever was practised by the greatest of Tyrants. And to this, and nothing else, the Principle laid down by Mr. Recorder, that Treasons, Murders, and Felonies of the Members do not affect the Corporation in Law, doth directly tend, *viz.* to introduce Cruelty.

The Objection that no Acts are corporate Acts, or can affect the Corporation, but what are under the Common Seal, nothing certainly can be more vain than such an Assertion. Then no Mayor, Sheriffs, or other Officers, ever acted legally in their Choice by the Corporation, because not under the Common Seal: Then no By-Laws are valid as corporate Acts, because not under the Common Seal: The same may be said by most of the corporate Acts in Cities and Towns.

In the Case of *Cambridge* before the King and Lords, 5 *R. 2.* *Birdfield* and other Burghesses appeared on the Behalf of the Commonalty; the Court demanded of them if they had Authority under the Common Seal of the Town? They answer, The Town had no Common Seal, but that they were chosen at a common Assembly of the Town summoned for that Purpose, which is the Common Council, to appear for the Commonalty, to answer and receive *ce queux la ley volt*, and the Authority was adjudged sufficient. The Common Council, say they, are but Ministers of the City, and the Liberty of the City hath a special Protection against the personal Acts of their Ministers by the Charter in *Parl. 1. E. 3.* I have a Copy of that Charter by me from the Records in the *Tower*. The King's Grant indeed is, *de assensu Prælatorum, Comitum, Baronum, & totius Communitatis Regni in instanti Parlamento.* The Considerations of the Charter are *pro melioratione Civitatis*, and for the laudable Services of the Mayor, Aldermen, and Commonalty, performed to the King and his Ancestors; but the Grant is only *Civ. Civitatis prædictæ habendum*

sibi & successorib. suis. The Words of the Grant are: *Quod pro aliqua personali transgressione vel iudicio personali alicujus ministri ejusdem Civitatis non capiatur libertas illius in manum nostram vel hereditatem nostrorum, nec custos in eadem Civitate ea occasione deputetur, sed hujusmodi Minister prout qualitas transgressionis requiritur, puniatur.* These are all the Words in that Charter, which refer to this Matter; and the same were granted to them, in some former Charters out of Parliament. This appears by this Charter in Parliament, that *Libertas Civitatis*, which is the Franchise or Corporation, had been seized and might be seized for some personal Miscarriages of the Ministers; for it is merely the King's Grant, that exempts them from it for the time to come. I do agree, that every personal Miscarriage of their Ministers was never any Cause of Forfeiture; but it must be Miscarriages of Omission or Commission, which amounted to a Misgovernment within the Corporation. As 30 *H. 2. Rot. Cl. memb. 5.* The City of *London* was taken into the King's Hands, for not levying a Hue and Cry upon the Death of Persons who were slain, *Hale Lib. L. fo. 269. H. 3. memb. 2.* Their Liberty seized for giving of false Judgment in the Huftings, *Lib. L. 309.* These are sufficient to shew what are the *personalis transgressio*, and *personale iudicium* intended to the Charter; though many the like Instances may be produced. Who are the Ministers intended partly appears by the Charter, but fuller by other Authorities, *viz.* Mayor, and Aldermen, and Sheriffs, who are in that Charter expressly mentioned. But this Charter did not prove of any great or long Advantage to the City, in differing them as to this Privilege from other Corporations; for they were met with, either by excessive Fines, set upon their Officers for personal Defaults and false Judgments; or that it excused the City only upon the first Offence; and if again they committed the like Offence, it was no longer personal, but become their Offence, because they did not displace their Officer to provide against his reiterated Crimes. And therefore, as Mr. Solicitor hath shewn, the Liberty of the City of *London* was after this seized into the King's Hands for Misgovernment; besides the Punishment of their Ministers became difficult, because the Offences being committed in *London*, the Inquiry of them must be by Men of the same, who favoured these Officers. And thereupon, to settle this matter, an Act of Parliament was made by the same King, which is in Print. The principal Grounds of the Act, as the Act recites, 28 *Ed. 3. c. 10.* were that the notorious Errors, Defaults, and Misprisions for Default of good Government of the Mayor, Sheriffs, and Aldermen of *London*, could not be inquired of, nor found by Men of the same City. The Act settles the Rule, that for the first Default of the Mayor, Sheriffs, and Aldermen, they shall forfeit 1,000 Marks; for the second Offence 2,000 Marks; and for the third Default, the Franchise and Liberties of the City shall be taken into the King's Hands, and this for the Defaults of their Ministers; which is a plain Judgment in Parliament, that the Franchise of *London* may be forfeited; and explains the Charter of the 1st *Ed. 3.* And to make the Remedy effectual, these Defaults are omitted to be inquired after by the Juries of Foreign Counties; and so shut the Door against

all Pretences for the Charter, 1 *E. 3.* and former Charters. It is enacted, that the Ordinance shall be held firm and stable, notwithstanding any Franchises, Privileges, or Customs. By this Law the Fines of their Ministers for their first and second Offences, in Breach of good Government, are ascertained, which by the former Charters were at Discretion; but for the third Offence of their Ministers, their Franchise might be seized as before 1 *E. 3.* and their other Charters might, for the Offence of Misgovernment, and from thence till this Statute for the second Offence. But neither the Charter 1 *E. 3.* or this Law did extend to any outrageous Acts of their Members, as breach of their Duty and good Government, but only to the personal Acts of the Mayor, Sheriffs, and Aldermen, in their several Trusts committed to their Managery. Under this Law the City of *London* stood till 1 *H. 4.* from which King the City expected greater Favours than ordinary, as having merited them by being the chief Instruments of his Promotion to the Crown; but the manner wherein they were instrumental, I forbear to mention. Yet from that King they could obtain no more, as to the Forfeitures for the personal Offences of their Ministers and Officers, than to be put into equal Condition with other Cities and Boroughs. The Statute, after Recital of 28 *Edw. 3.* That our Lord the King considered the good and lawful Behaviour of the Mayor, Sheriffs, and Aldermen, and of the Commonalty of *London* towards him, and therefore willing to ease and mitigate the Penalty aforesaid, by Assent of Lords and Commons hath ordained and established, that the Penalty aforesaid, as well of the 1,000 and 2,000 Marks, and the Seizure of the Franchise, shall not be limited in a Certainty; but the Penalty in the Case shall be by the Advice and Discretion of the Justices, as other Cities and Boroughs be within this Realm; and that the Remnant of the Statutes stand in their Force: So that from 1 *H. 4.* the City of *London* never could pretend to any other Exemption from Forfeiture of their Franchise than other Cities and Boroughs may.

Here I crave leave to join some other Records to those produced by Mr. Solicitor, particularly relating to the City of *London*.

2 *Pat. Roll. pars 2. memb. 9.* The king appoints *John Lord Breaton* Custos of the City, with Commission to amerce and punish the Aldermen and others of the City, according to their Demerits.

8 *Ed. 2. Memb. 3. dorf.* A Writ issues for the orderly choosing of the Mayor and Sheriffs, which began then to be tumultuous, and, as the Record saith, *Quod quidem populares & plebes, conspiratione inter eas habita, dissidia innumeraque facinora in dicta civitate nocte dieque perpetrantes, conventiculaque clandestina in locis privatis facientes, non vocati & summoniti, hujusmodi Electionibus se immiscent communicationibus & clamoribus.* The Writ recites the Elections to have been per Aldermans & alios cives discretiores & potentiores; and commands that they be so done, *prout in eadem civitate antiquit' fieri consuevit*: otherwise, that the King would not admit them, when presented to him or his Exchequer.

14 *Ed. 2. pars 2. memb. 22* The King grants the Office of Mayor, seized into his Hands at the *Iter* in the *Tower*, to *Robert Kendall*, *durante bene placito.* 15 *Ed. 2.*

15 *Ed. 2. pars 1. memb. 2.* The King first replevins to the Aldermen, Sheriffs, and Citizens the Office of Mayor, who present to the King *Hamond de Cbigwel* for the Office, and the King admits him; and then the King grants to the Aldermen, Sheriffs, and Citizens, the Mayoralty to hold at the King's Pleasure.

26 *Ed. 2. memb. 5.* The King absolutely restores to them the Mayoralty, to choose as before the Seizure into his Hands.

16 *R. 2. pars 1. memb. 28. dorso.* A Commission issueth to the Duke of *Gloucester*, and several Lords and Judges, to enquire of the Defaults of the Mayor, Aldermen, and Sheriffs, upon the Statute of 28 *Ed. 3.*

16 *R. 2. memb. 2. dorso.* The Commissioners sate at *Eaton, in Com. Bucks*, and the Mayor, Sheriffs, and Aldermen, were convicted of several Mifcarriages, and the Liberty of the City (by the Judgment of the Court) seized into the King's Hands; and the King (by the Advice of his Council at *Windfor*) constituted *Baldwyn Badington* Mayor in the Room of *William Venner*, and two other Sheriffs, and 24 Aldermen, to hold during the King's Pleasure; and they all took their Oaths before the King and his privy Council: And in that Record the Prior of *Christ Church* was sworn an Alderman.

16 *R. 2. pars 2. memb. 31.* In the same Year the King, at the Intercession of the Queen, grants to the Aldermen, Sheriffs, and Citizens, that they might use their Franchises as they did before the Seizure; but with this Clause of Restriction, *Quousque aliter ordinaverimus.* Upon which the City chose *John Hend* Mayor, and *John Sbadworth* and *Henry Venner* Sheriffs, who were removed the same Year by the King, and *Henry Dalingsrug* appointed Mayor, to hold during the King's Pleasure:

16 *R. 2. pars 1. memb. 36.* The Record assigns the Cause, *Pro minus discreta & insufficienti gubernatione & regimine civitatis nostre.*

20 *R. 2.* The King makes full Restitution to them of their Liberties; in Print, and in the Charter pleaded.

22 *H. 6. memb. 25. dorso.* Elections of Mayor and Sheriffs beginning again to be tumultuous, a Writ in the nature of that in *Edward* the second's Time issued, commanding the Choice to be *per Aldermannos, necnon discretiores divite civitatis, ad hoc specialiter summonitos*, according to the ancient Custom: And after in *Edward* the Fourth's time the Choice was settled upon the Livery-men by Act of Common-council.

So then there can remain no Question, but that the Mayor, Sheriffs, Aldermen, and all the Commons in Council assembled, may commit Acts for which their Franchise may be seized: And though there may be no real Difference where all the Commons assemble, and where only a certain Number elected by the rest; yet I shall not farther discuss that Point at this Time, because that Question doth not arise upon this Record. For the Offences wherewith they are charged are both laid, in the Replication, to be committed by the Mayor, Citizens, and Commonalty of *London*, by which must be intended the whole Body.

The whole Body plead to it; but in the Rejoinder they do not traverse; and deny they did the Facts: So that as to the Actors, it must be intended they are the same Persons, who are sued and defend upon Record, which are all the Members of the Corporation.

There are two Branches of the first Offence laid in the Replication:

1. That the Mayor, Citizens, and Commonalty in Common Council assembled, did make and publish a Law for levying of Money.

2. That the Mayor, Citizens, and Commonalty, by Colour of that illegal By-law, did exact and levy upon the King's Subjects divers great Sums of Money.

In the Rejoinder they take it by Protestation, that no Act or Fact of the Mayor, Aldermen, and Common Council, is an Act or Fact of the Body corporate, or politick; which is *Protestatio Juris, non Facti*, and is that Error I have endeavoured to refute, that the Acts of all the Members of the Corporation assembled in Common Council, are not the Acts of the Corporation. But yet by this Protestation of Matter of Law they would insinuate a Not Guilty as to making of the Law, and seem afraid to own it, and do not bare-facedly own it. But after they have intited themselves to the Markets, in such a Manner as I afterwards consider, then they proceed to number the People, which surely was not done upon any legal Ground to move your Judgments. Then say they, that Time out of Mind there hath been a Common Council not exceeding 250 Persons, elected out of the Freemen; but do not say of what Number it doth consist, nor by whom elected, whether by Citizens or Foreigners, by the Mayor, Aldermen, or by whom chosen, so as the Court may judge of the Matter of Law so strongly protested, whether they were the Representatives of the whole Body, or no. Then they say, Sir *William Hooker* Mayor, and the Aldermen of the City, *ac communarii, sive cives de Communi Concilio ejusdem Civitatis*; which may as well be intended of Mr. Recorder and the Common Sergeant, who are *de Communi Concilio civitatis*, as of any other; for the Persons are not named, nor is it said they were elected, nor by whom, nor any Words of Reference to the Custom alledged; but generally, that they met in *Communi Concilio secundum consuetudinem civitatis*, not referring to the former Custom alledged. But being met, they made the By-law for the several Sums of Money, to be received for the Use of the Mayor, Citizens, and Commonalty. Which Rates, and no other, the Mayor, Citizens, and Commonalty, *exegerunt & perceperunt*, according to the By-law. *Qui quidem Actus sive Ordinatio est eadem Lex* supposed, by the Replication, to be made by them the Mayor, Citizens, and Commonalty. And traverse *absque hoc*, that any Law was made for Monies of Persons coming to the Markets *aliter vel alio modo* than they had before set forth. I know those learned Gentlemen who signed this Plea, and the other to the Charge of the Petition, if they could have found sufficient matter of Justification to either, they would not have suffered them to appear upon Record in such uncouth Dresses; and therefore Deficiency of Matter may excuse the Insufficiency of Pleading; for there is Skill shewed in the Contrivance to have drawn on a Demurrer; for nothing was dreaded more than an open Examination of the Facts upon a Publick Trial, which would have fallen very little short in both Cases, as to the Aggravation laid in the Replication.

Upon this Pleading the Mayor, Citizens, and Commonalty have confessed, that the By-law was made for them, and the Monies to be levied for their Use. They have also confessed, that by force

of that By-law they exacted and received the Monies ; and their Justification will be considered by and by. But as to the making the Law, they neither confess it made by themselves, nor by any deriving Authority under them ; neither do they traverse, or deny it. For the Averment, that it is the same Law, and the Traverse, that any Law was made *aliter vel alio modo*, is no legal Denial, that the whole Corporation (consisting of Mayor, Citizens, and Commonalty) did not make that Law upon which an Issue could be taken. Besides, if Mr. Recorder would have the Court intend, that the Common Council, set forth in the Rejoinder, is a distinct Body of Men from the Politick Body of the whole City, the whole Plea amounts but to the General Issue. What the consequence thereof will be, I will consider upon the Point of the Crimes set forth ; but at present the Court cannot otherwise intend, but that they that made this Law and this Petition, were the same Mayor, Citizens, and Commonalty, who are expressly charged therewith, and in their Pleas they do not traverse or deny it. It is just such another Plea, as where an Information is brought against several Persons for killing and taking away of the King's Deer ; the Defendants should plead, that certain Persons (not naming them, nor from whence they come, nor by whom sent) pretended a Custom to kill the King's Deer, and according to that Custom they killed the King's Deer, for the Defendants Use, and the Defendants carried away the Deer. Who (I pray) shall the Court intend killed the Deer, but the Defendants, or some by their Authority ?

I now come to the main Point of the Case :

Whether by any thing disclosed upon those Pleadings, there appears a sufficient Title to the King, for the Court to give Judgment of Seizure of the Franchise of the City of London ? The Title I insist upon for the King, is for a Forfeiture by Acts done by the Mayor, Citizens, and Commonalty, in breach of their Duty, and the Publick Trust reposed in them upon their first Erection. It is my part to maintain, that the Causes assigned are sufficient in themselves, and sufficiently disclosed to the Court, for the Court to give Judgment upon ; I shall consider them,

First, As they stand upon the Replication, as Crimes laid to their Charge, which will amount to a Forfeiture of the Franchise.

Secondly, How they stand upon the Rejoinder and other Pleadings, whether sufficiently traversed or denied, confessed and avoided, or in the least extenuated.

First, The Crimes laid in the Replication, are two in general :

1. Oppression of the King's Subjects by colour of Law : And,

2. Stirring up Seditions by Libelling their Prince and his Government.

These two only are laid in the Replication, but collected out of many sufficient Causes for Seizure of any Franchise. The notorious Riots committed in the Face of Justice, to the comforting and abetting of Criminals, and Terror of the Judges ; and those not only not suppressed or punished by the Magistrates ; but countenanced and encouraged by them. The Tumults of many Thousands, exposing and burning in Effigie several of the King's Protestant Subjects, not suppressed or punished by the Magistrates ; but by some encouraged, and by Contributions supported. The Encouragement of Libels and Libellers of the King

and Government, by and within the City. These and many more I could enumerate are common Offences to the City of London, with other Cities, and populous Corporations ; but these are such as have been in the Cases produced adjudged Causes of Forfeiture of the Franchises for Misgovernment.

And in these London hath but imitated it self in former Times, and other Cities and Burroughs.

But in the Cases insisted upon, London hath outdone it self, and all other Cities and Burroughs too, by assuming a Power to make Laws for levying of Money upon Foreigners for their own Use ; and to deliberate, adjudge, and condemn their Prince's publick Actions, and publickly libelling of them to his Subjects. Never did London before now, or any other City or Burrough (in times of Peace, and not under an actual Rebellion) commit the like Breaches upon the Government, to assume a Power superior to any the King hath in like Cases, to lay Burdens upon his People, and to levy Money, and to invade the King's Prerogative, by deliberating and determining of his publick Actions to the consequences thereof, and publickly libelling them to the rest of his Subjects. And in Execution of such unjust Power, that the Mayor, Citizens, and Commonalty, did make and publish a Law for levying of Money upon the King's Subjects, as well Foreigners, as others, coming to the publick Markets with Provisions. And chargeth several particulars, and divers other Sums imposed upon all Comers to the Markets, whether they sell or no ; and that if any Person refused to pay, he should be put out of the Market.

Again, that the Mayor, Citizens, and Commonalty, by pretext of this Law (made by themselves, and for their own private Lucre) did exact and levy yearly of the King's Subjects, Sums of Money amounting to Five thousand Pounds *per Annum*, and converted and disposed the same to their own use, in subversion of the good Government of the City ; in oppression and depauperating the King's Subjects coming to the Markets ; in raising the Prices of Provisions in Markets, to the Damage of the King's Subjects ; to the manifest Disherison of the King and his Crown, contrary to the Trust reposed in them as a Body Politick.

In the first Branch of their levying Money, there is this Crime laid to their Charge : An Abuse of the Liberty of a Body Politick in its highest Point of Trust, *viz.* of making Laws for the better Government of its Members, and other the King's Subjects repairing to the City. This is no distinct Liberty from the Body Politick, but incident to it, as hath been shewn, and therefore cannot for any Abuse be singly lost, or severed from their Body Politick, no more than the Body Politick can subsist or attain the Ends of good Government without such a Power, which the Law raiseth for a better Discharge of that Trust. But the Law entrusteth no Corporation with a Power to levy Money for their private Profit, be the Colour what it will ; nor can such Power be derived from the Crown to any Corporation ; neither can any Authority be produced, that gives the least Countenance to such an Authority : The Case of *Blackwell-Hall* is express against it ; that was ruled good, because it was *pro bono publico*, and not *pro privato lucro* ; it was but a small Reward for the Officer who attended that Business ; the City got nothing thereby. Corporations, as well as other Communities not incorporated, are by Law entrusted with Power to raise Money

Money for Uses publick to the Community; but such Power is confined to the Precincts of the Community; they cannot lay their Charge upon Foreigners; as for Reparation of Churches, Highways, Bridges, and such like publick Charges. These Crimes, at Common Law, came the nearest Treason of any. Sir *Thomas Halley*, 20 R. 2. for preferring a scandalous Bill, was adjudged to die as a Traitor; his Life spared at the Instance of the Bishops; and after 1 H. 4. N. 9. upon his Petition the Judgment was reversed. To lay Impositions upon the King's Subjects was not only an Incroachment on Royal Power, but of the Power of Parliaments. And what Incroachments of Royal Power were Treason, what not, was in the Breast of the Judges, as appears by the Petition in Parliament 21 Ed. 3. N. 15. and after settled by the Statute 25 Ed. 3. Certainly that they have an immediate Tendency to a Rebellion, is evident. To alienate the Subjects Affection from their Prince is a great Step that Way; and for so great a Body of Men (both for Riches and Reputation) to adjudge and publish, that the King, by his Prorogation, hath interrupted the publick Justice of the Kingdom, and the necessary Provisions for his own Safety, and the Preservation of his Protestant Subjects, is in effect to determine and publish the King unfit for the Government, and by necessary consequence would aliene the Affections of such as should believe them. Add to this the Power they assume, and justify, to levy Money to their own use, upon Foreigners as well as Citizens, and that to any Sum; which Mr. Recorder pressed as the force of his Argument, that little or more made no difference. When those they have persuaded to draw their Affections, shall be assured of such a Legislative Power to assist them with Supplies; what Consequences may be expected, every Man may judge. Especially if one thing more had been effected, as was contrived and endeavoured to be established; that *London* should become the *Asylum* of all Malecontents, as *Rome* was heretofore, who might there vent their Gull against the Government *impune*, and without fear of Conviction.

I shall consider the Offences particularly, as they stand upon the Replication, as to the Levying of Money.

1. They are charged, that they in Common Council assembled, respecting only their private Lucre, and in breach of the Trust reposed in them for good Government, did assume upon them an illegal and unjust Power and Authority to levy Money upon the King's Subjects to their own Use, without any lawful Authority. And the City of *London* have by several Charters such express Power given them, but it is confined to their own Members; neither the King nor the Law ever gave them any Power over Foreigners, to charge them for the private Profit of this City. Now to assume such a Power is a plain Usurpation by a Body Politick upon the Crown and the Law, and is a manifest Breach of that Trust for good Government, by an open and avowed Oppression of the King's Subjects by colour of Law, which is the worst of Oppressions; and therefore the Law not only gives a new Name, but layeth heavier Penalties upon Oppressions committed by Persons in publick Trust. It is called Extortion, and Oppression, where committed by any Person in publick Offices or Trusts. It is not sufficient that the in-

jured Persons may have their Actions, or that they may be fined at the King's Suit; but the Law gives a Forfeiture of the Places of Trust, and all may be exacted from them, if the King please. The Persons injured may recover their Damages: They may be fined at the King's Suit, and their Offices seized, the Law adjudging all these Penalties but equal to the Crime. The Markets, as they stand upon the Replication, must be intended Free Markets, as the Streets of *London* are for all the King's Subjects to have recourse to with their Provisions, for supply of the Inhabitants, without payment of any Toll. The Sums of Money, for buying whereof the Law is made, as set out in the Replication, cannot be for any Toll of Markets, nor for Piccage or Stallage, which may be annexed to Markets; but Imposition upon the Persons, or Goods, coming and brought thither, whether they sell, or not, and whether they have any Stalls, or not. And the Process is admirable, that if the Person refuse to pay, he shall be turned out of the Market; as if the Law were, that every Man that walks in the Streets should pay 6 *d.* and if he refuse, he should be turned out of the City. I must confess, the Process is as good as the Law. Thus this Crime stands upon the Replication. How have the Mayor, Citizens, and Commonalty varied it in their Rejoinder? Not one jot; for as to this point of Charge, that they usurped such a Power, and did execute it by making a Law for levying of Money in Oppression of the King's Subjects, they give no Answer at all, either by traversing, or denying, confessing and avoiding. If they had traversed their making of the Law, the Special Plea had amounted to the General Issue; but as it is, there is no Answer at all given to it. And therefore, if the making of such a Law, in the manner set forth in the Replication, be an Abusion of the Franchise, Judgment of Seizure must be given for that Abuse.

The Reasons given by Mr. Recorder, that the making of this Law will not forfeit the Franchise, were these:

(1.) That if the King had made such a By-law in the Charter of Incorporation, that would not have forfeited the Corporation; no more can it, if it be made by the Corporation afterwards.

I do not understand the mystick Inference of this Argument, unless it be to continue the Allegory of resembling Corporations to Kings, that they can do no Wrong, and consequently can forfeit nothing by their Acts, though against Law. Where the King annexeth any Power to any Offices or Corporations, which the Law allows them not to exercise, the Law doth not adjudge the whole Grant void, but only those Powers: But if Officers or Corporations shall assume upon themselves to exercise Powers which the King could not grant, against the End of their Institution, by Extortion and Oppression of the King's Subjects, it is not sufficient that the Acts are void, because illegal; but the Offenders shall be punished in such manner as the Law provides.

(2.) In all the Suits where By-laws have been adjudged unreasonable and void, it was never held or said, that such By-laws forfeited the Corporation; and if it should, every little Mistake in the By-law should forfeit the Corporation, which would render the State of Corporations very unsteady and uncertain.

1.) I Answer, first, That in those Suits between
Party

Party and Party, there was no occasion for the Court to declare how far the By-law has in- trench- ed upon the Prerogative, by breach of the Condition in Law annexed to the Liberty. But I remember, in the Case of the Mayor of *Wiccomb*, *Mich. 27 Car. 2.* upon Complaint in this Court to my Lord Chief Justice *Hales*, of his refusal to sign the Poores Rates, he publicly declared to him, That if he persisted in his Obstinacy, a *Quo Warranto* might be brought to seize the Franchise.

2.) There is a plain Difference between By-laws, for regulating the Actions of the Members, and others within the Corporation, with a Penalty to enforce Obedience, and a Law directly for levying of Money: In the latter Case, the levying of the Money is the principal End of the Law; and to levy it *pro privato lucro*, and upon Foreigners, can receive no Palliation from being a Mistake against all the Laws and Authorities that are extant. But in the former Cases they have a Semblance for common Benefit, and possibly might be for the Benefit of all the Members, could the Restriction be made by Law; and the Penalty is but collateral, to enforce Obedience, and will stand and fall as the Law determines of the Principal. And the Law no where determines all the Cases, where the Liberty of any Members (as to Trade) may not, or may be restrained, where- by there is Room left for Mistakes; but against so known and universal a Principle, that no Corporation can levy Money for their private Profit, no Excuse of Mistake can be admitted.

3.) That which shelters all other By-laws from Oppression, is wanting in this; that as to the Recovery of the Penalty, they refer to a Course of Law, whereby they submit their By-law to the Judgment of Law for its Validity, that if they have committed any Mistake, it may be corrected by Law. But here the Remedy is plain Force; if the Person do not pay, he shall be turned out of the Market with his Goods: What was settled by Wrong, shall be recovered by Force. Thus Mr. Recorder's arguing makes the Duty a meer voluntary Payment; it is *solvo, aut abi*, he hath his Election to pay, or be gone. I have not met with a more arbitrary Principle asserted, or defended in a Court of Law. Should the King lay an Imposition of 12 *d.* on every one that entered *Whitehall*, with Order to the Porter to turn him out upon Refusal of Payment, what a Dust would this make, that the Subjects Rights to have access to their Prince were invaded? Why, it is no more than *solvo, aut abi*. The Right of all the King's Subjects, to come with the Provisions to publick Markets, is far greater, and as great as of the Lord Mayor, or of any of the Citizens to come there; and the putting such Terms upon their Right is absolutely illegal in the worst Sense that Word is at any time used. And herein Mr. Recorder was in the Right, that more or less are not material, because every Sum imposed in such Case is illegal, and what is illegal, cannot be reasonable; which absolutely precludes the Averment, that the Sums were reasonable; which obtains only in such Cases, where of common Right some Sum may be taken.

4.) In the last Place, the questioning of a Liberty in a *Quo Warranto*, whether upon the Title, or for a Forfeiture, is upon the Right between the King and the Corporation. In Case of Mistakes and common Errors committed, those

are not to be justified upon a Question of Right; and if they be, they are no longer Mistakes, but wilful Crimes. And therefore, in all times such Mistakes, both in making of Laws and Matters of Fact, have been passed by, and pardoned by the Charter of Confirmation, *etiamsi abusi fuerint*. And in the Multitudes of *Quo Warranto's* that have been brought, most ended by Submission before Pleader. But where it shall be insisted upon in Point of Right, though in a smaller Point of Oppression, upon such Grounds as may equally intitle them to commit the greatest Oppressions, *Magis & Minus* do not affect the Case in Point of the Right of Forfeiture; but the Question is, Whether they have broken their Trust? And if so adjudged, Forfeiture is a necessary Consequence.

(3.) The Third Reason Mr. Recorder insisted upon is 19 *H. 7 cap. 7.* That there had been no need of that Law, if Corporations By-laws would be Cause of Seizure.

1.) I answer, That Statute extends not to the By-laws of Cities and Boroughs incorporated; but to Guilds and special Fraternities.

2.) It extends to good By-laws as well as bad, for greater Caution, that they put no new By-laws in Use till allowed; but the Allowance makes them neither better nor worse, only shelters for the 40 *l.* Penalty, as in the Taylor's of *Ipswich's* Case, *c. 11. b. f. 54.* So that the By-laws are but of the same Force they were before that Statute, &c. if they are good Laws, they may be executed without Allowance; and I have before shewn, that the Addition of another Penalty doth not dispense with the Penalty upon breach of the Condition given by the Common Law. The other Crime of Oppression they are charged with, is, that they did exact and levy, to their own Use, the several Sums, and others, amounting to 5,000 *l. per Ann.* in Oppression of the King's Subjects, and raising the Prices in the Markets for their own private Lucre.

Secondly, In their Rejoinder, taking by Protestation they are not of that Value, the Mayor, Citizens, and Commonalty acknowledge the exacting, and receiving the Monies to their own private Use, but say not of what Value they are; but be they of what Value they will, attempt a Justification. It must be admitted, that if the Justification be insufficient, the Court cannot otherwise judge of the Crime than as it is laid in the Replication; where it appears to be as great Extortion and Oppression of the King's Subjects, and continued for many Years together, by colour of an Authority usurped by them, as ever was practised by any Subjects upon their fellow Subjects; which cannot be denied to be an apparent Breach of that Trust committed to them, for the better administration of the Laws and Justice to the King's Subjects.

The Parts of their Justification are these:

(1.) A Custom, that Time out of Mind, there have been publick Markets within the City.

(2.) They make Title to these publick Markets by Prescription, but claim not any Toll of common Right belonging to these Markets.

So that both upon the Custom alledged, and Prescription made, the Court cannot otherwise intend but they were free Markets, as in truth they were. Then they alledge a Custom, that Time out of Mind, they used at their Charge to provide Places where the Markets were held, and

Stalls and Stations, and other Accommodations for the Market People, and Surveyors, and other Officers, for the better Government of the Market People; and did cleanse and were bound to cleanse the Market-places. And for defraying of their Charges for all the time aforesaid, they had and used to have *diversa rationabilia Tolneta, Ratas, sive denariorum summas*, of all Persons coming to the Market, for Stalls, Stations, and other Accommodations for the selling of their Provisions. Although they received Monies time out of mind, and until the By-laws, they cannot tell what these Sums were, nor what to call them, whether Tolls, Rates, or Sums of Money. Tolls they could not be, that is admitted of all Hands, because against common Right, and to be paid upon entry into the Market, whether fold, or not. They do not intitle themselves so much as to Picage or Stallage; for they make no Title to the Land where the Markets have been, or are held. And we all know, that before the Act of Parliament provided at the Publick Charge fit Places, and settled them upon a publick Trust for Market People; what Provision was made of Places by the City, *viz.* in the Publick Streets, where there ever was a Free Market for Provisions, as would have been made evident, had the City tendred a sufficient Issue. Besides, the Sums charged in the Replication can neither be of Picage or Stallage; but laid upon Goods brought within the Market, whether the Vender made use of any Stall, or Breaking of the Ground, or no. Neither is it averred in this Plea, or by any Words of Reference can it be inferred, that the Sums in the Replication are the same with those they claim; they claim only by custom *rationabilia Tolneta, Ratas, sive denariorum Summas*.

(3.) Mr. Recorder would justify this Plea, that such a general Claim, with an Averment that they are reasonable, is a sufficient Justification of particular Charges, which are against common Right; and insisted upon the Claim of the City of London of the Water-Bailiff's Office, with the Fees thereto belonging; and the Case of *Maidenhead* in *Palmer's* Reports, of the Market, with the Toll thereto belonging. These Precedents answer themselves, there was no particular Charge for the Toll or Fees, but what is charged particularly is answered; besides, the Toll and Fees are claimed of common Right, as belonging to the Market and Office. In *Maidenhead's* Case the Judges agreed, that Toll according to common Right might be granted by general Words; but Toll against common Right could not, nor be prescribed for but in certainty. In that Case reported by my Lord *Hales*, Franchise, *pl.* 11. the Difference is expressly taken; and the Authorities cited of 9 *H. 6.* 45. 11 *H. 6.* 14. *Fit. Avowry* 126. That Demands against common Right ought to be prescribed for in certainty; and the Authorities produced by Mr. Recorder in the Lord *Cobham's* Case, 1 *Len.* 218. *Hickman's* Case, 2 *Roll. Abridg.* 125. and *Roll. 2. Abridg.* 265. The Case of *Dublin* for *Keyage* or *Crantage*, so the Case of *Hill* and *Hawks*, and the *Bell-Man of Litchfield*, prove it. No Man questions but Cities and Boroughs, upon good Consideration, may prescribe for Sums of Money against common Right; and may prescribe for an apt Remedy for Recovery of such Sums; but all the Authorities prove it must be prescribed for in certainty, that

the Court may judge of the Reasonableness of it. And whoever claims against common Right, must make out his Demand, both in certainty, and that it is reasonable; it is otherwise, where according to common Right, as in Fines for Copyhold Estates, it is incumbent on the Tenant to shew if unreasonable. Besides, this Custom is void, because they do not intitle themselves to any Remedy for these uncertain Sums.

(4.) The next part of the Justification is, that time out of mind, within the City there hath been a Common Council; the Imperfection whereof I have already observed.

(5.) They set forth a Custom for this Common Council to make Laws for the better Government of the Markets, and appointing convenient Places and Times for the Markets. *Et ex Assesione & in certitudinem reductione* of reasonable Tolls, Rates, or Sums of Money to be paid by Persons coming to the Market, *pro Stallis, Stationibus, & aliis accommodationibus*; so as these Laws be profitable to the King and his People, and not contrary to the Laws of the Land. For the first part of the special Custom, for the better Government of the Markets, and appointing convenient Places and Times, it needed not; for it is incident of common Right to every Lord of a Market, and the Grantee of every Market, without special Clauses, hath the same Power and Trust. And yet it is ushered in with great Solemnity, a Confirmation by *Magna Charta*, a Charter in Parliament, 1 *Ed.* 3. & 7. *R.* 2. to make good a Custom, which is but the Common Law. Unless they set up this Custom to divert themselves, who have pleaded themselves Lords of the Markets, and so to fix it in others who are no Lords of the Markets; and thence to infer that the Custom having intrusted others, than the Mayor, Citizens, and Commonalty, with the Government of the Market, they the Lords of the Market ought not to suffer for the Misgovernment of those other Members. The second part of the custom is insensible. To make Laws and Orders, *ex Assesione & in certitudinem reductione* of reasonable Tolls, Rates, or Sums of Money, to be paid by all Persons coming to the Markets, for Stalls, Stations, and all other Accommodations. What is meant by *Assesione* without an *Anglice* I cannot imagine; it is no Law Term; in its proper Signification, it significeth sitting together; whence our Sessions quarterly, and Sessions of Parliament, have their Name. The general Rates set by the Parliament upon the several Counties are sometimes called Assessments, and those intrusted with equally dividing the Rates in the several parcels upon the Inhabitants, are called Assessors. In which of these senses, or what sense, the City's Counsel apply this Word, I cannot resolve; for Mr. Recorder did not resolve it. It seems by the subsequent Words to be explained *in certitudinem ponere*, and to have some resemblance to the Parochial Assessments, where the Duty before is imposed by Law, but the ascertaining of every Man's Proportion is done by the Assessors: And this Mr. Recorder inclined to in his Endeavours to support the Custom, generally for reasonable Rates. And in this sense too the City seems to understand it, by waving of the Assessment in their Rebutter. In our Surrejoinder we traverse the Prescription of taking of the Rates mentioned to be by the By-law assessed, and reduced into certainty; which Issue they wave, and

and insist only upon their Prescription generally alledged. Now, if taken in this sense, the Clause is wholly insensible and incertain, because the Tolls, Rates, or Sums of Money to be paid, are not referred to any former Law that imposed them; they do not so much as refer to the Prescription, and the Sums claimed thereby; but the Clause is independent and absolute of it self. Neither can the Court now intend it to refer to those Sums claimed, because we would have so intended it; and therefore took an apt Traverse; but the City waved it in their Rebutter; and they do lie under this *Dilemma*, that either it must be so intended, and then being traversed and waved by them, the Issue must be taken against them; or it cannot be so intended, and then the Custom is incertain and insensible. And it cannot be intended by the Court for levying of Money by a new Imposition for the private Advantage of the City; that (as I have shewn) would be against Law, and is contrary to the Prescription they have made, and would vitiate their Plea, by claiming the Thing by Prescription, and by a new Law.

(6.) They set forth a By-law, which imports a new Imposition throughout, of several Sums to be paid to the Mayor, Citizens, and Commonalty; and they provide a new Remedy, that the Refuser shall be removed out of the Market. They aver indeed, the Sums are reasonable; but set out no Fact upon which the Court may any ways judge they are so; which are incumbent upon him that will claim any thing against the common Right. They do not so much as aver, that the Mayor, Citizens, and Commonalty laid out one Penny out of their Revenue, for providing the Markets and Stalls, or what other Stations or Accommodations they furnished the Market People with, so as to give the least Support to this extraordinary By-law.

And this Averment was industriously left out, lest Issue might be taken upon it; and sufficiently proved, that both the Places, Stalls, and Conveniencies, were provided for out of the publick Monies granted by Parliament, in Trust for all the King's Subjects coming to the Market, as we have set out in our Surrejoinder. Then it would have evidently appeared, that this By-law was not only in Breach of the Common Law Trust reposed in them for good Government; but in Breach of that Trust reposed in them by Act of Parliament. For all the King's Subjects, and these publick Monies received and laid out upon that Trust, are made the Consideration to ground the Subjects Oppressions upon by this By-law. Though they laid out not one Penny, as appears to the Court, yet they acknowledge to have received all the Money to their own Use; and their Justification failing, it must be intended, they did it in such manner as is set out in the Replication, which chargeth the highest Oppression that can be possibly committed by Subjects upon Subjects, and is destructive of common Justice and good Government. It is likewise as great an Usurpation upon the Crown, to lay Taxes upon the King's Subjects without his Authority, and openly and avowedly to justify it. How much superior this Offence is to those, whereupon Instances of Seizure have been given, I leave to the Observation of the Court. Their reply, that the Toll only can be forfeited, or at most the Markets, can weigh little. That the Markets cannot be forfeited, Mr. Recorder admits upon the Authori-

ty of the Case of *Maidenhead*, that Toll is not incident to a Market. This Imposition is wholly foreign to the Markets, which must be intended Free-Markets, wherein all the King's Subjects have Right to sell and buy, discharged of Toll, which shall be intended to have its commencement by Erection, not by Grant to any Person, which the King may do in cases of Fairs and Markets. Or if they be granted to any Person, if without Tolls, such Grants are upon Trust, for benefit of the King's Subjects to buy and sell in; and the Grantee intrusted with the Rule and good Government thereof, for the benefit of others. Besides, the seizing of the Markets is no Punishment of the Corporation, but of all the King's Subjects, who are the Persons oppressed, and whose Rights are invaded by this Imposition. The Oppression is by the Corporation, and by an Authority they claim over the King's Subjects, to lay an Imposition upon their Goods, and to levy it by Force; which is an Abuse of the Power the Law hath intrusted them with, and a Misuser of the Franchise to Oppression. To forfeit the Sums exacted and levied is idle, and no Punishment; for they never had Right to them, and so no Right can be forfeited. In the Case of *Maidenhead*, where a reasonable Toll was granted, they had a Right to Toll, which may be forfeited by Abuser, in taking an unreasonable Toll; but where there is no Right to take any Thing, there is no Right to be forfeited, but that Right by colour whereof the Extortion or Oppression is committed. If an Officer, by colour of his Office, oppress, the Office is forfeited, or the Officer may be fined; the

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Cases were cited by Mr. Solicitor. The Levying of two Shillings for the Penalty of breaking the Assize, forfeited the View of Frankpledge. Using of false Weights and Measures forfeited the Franchise of *Evesham*. And generally, whatever is an apparent Breach of good Government, wherewith every Franchise is intrusted, will in point of Right between the King and the Franchise amount to a Forfeiture; because it is a Breach of publick Trust reposed in them by Law.

2. I shall conclude with the last Branch of the Crimes laid to their Charge:

For invading the King's Prerogative, and publickly libelling of him, and his Publick Acts to the People.

The Replication chargeth the several Facts thus:

(1.) That the Mayor, Citizens, and Commonalty, in Common Council assembled, maliciously, advisedly, and seditiously, and without any lawful Authority, took upon them to censure the King, and the Prorogation of Parliament made by the King.

(2.) That they gave their Suffrages, and ordered a Petition should be presented to the King, in the Name of the Mayor, Aldermen, and Commonalty, containing the scandalous Matter alledged.

(3.) That they maliciously, advisedly, and seditiously, and to the intent the said Petition should be dispersed and made publick, to persuade them, that the King by the Prorogation had obstructed the publick Justice of the Kingdom, and to stir them up to a Dislike of the King's Person and Government, and to disturb the Peace of the Kingdom; did order the said Petition (containing the said scandalous Matter) to be printed.

(4.) They afterwards maliciously, advisedly, and seditiously, and to the Intent that the Petition should be dispersed and published among the King's Subjects, to aliene and withdraw their Affections from the King and his Government, did print, and cause to be printed and published the said Petition, in Contempt and Scandal of the King and his Government, and to the promoting and exciting of Sedition and Disturbance of the Peace within this Kingdom.

These Crimes, at Common Law, were *contra Pacem*, and punishable by Fine and Imprisonment in particular Subjects; where committed by Persons in publick Office, or intrusted with Government and Preservation of the Peace, they are of a deeper dye. In the Title of the Statute, 13 Car. 2. cap. 1. for Preservation of the King's Person and Government, they are called seditious Practices and Attempts; for prevention whereof that Law provides, *That if any Person or Persons shall maliciously and advisedly (by Writing or Printing) express, publish, or declare any Words, Sentence, or Thing, to incite or stir up the People to hatred or Dislike of the Person of his Majesty, or the established Government; such Person is made incapable of any Office or Place of Trust, and to be further punished, according to the Common Law and Statutes in such Cases.*

This Law takes Notice, they were Crimes at Common Law, and punishable as seditious Practices. Sir James Bagg's Case allows Conspiracies and ignominious Crimes to be Causes of Disfranchisement; much more a Conspiracy of all the Members to libel the Government, and alienate the Affections of the People from their Prince.

Now what Answer do they give to these Charges in either Rejoinder?

To the first and last they give none at all, they shew no Authority for them in Common Council to debate, deliberate upon, and to determine of Prorogations of Parliaments by the King, or the Consequences thereof, which are *inter ardua Regni*, and not to be treated of but by the King's Writ: They are not of the King's and Kingdom's Common Council, but intrusted to advise in Affairs of the City, and *ne sutor ultra crepidam*. They are charged to have done this advisedly, seditiously, and without any Authority; and it is charged precedent to the Petition.

To the fourth for Printing or Publishing of it, to the Intent that it should be dispersed amongst the King's Subjects, to aliene and withdraw their Affections from the King, laid to be 13 Jan. 32 Car. 2. they say it was printed by Samuel Roycroft, by the Mayor's Appointment; *Quæ quidem Petitiõ & Impressio sunt eadem Petitiõ, Impressio, & Publicatio*, in the Replication mentioned: And traverse, *Absque hoc quod aliqua Petitiõ concern' Prorogationem præd' fact', ordinat', publicat' sic impress. fuit, aliter, vel alio modo quam;* but do not add *vel alio tempore*. In which respect this Plea is stronger than the former, to involve the City in the Guilt.

Then they own the Petition was voted and ordered to be preferred and printed *nemine contradicente*, to be sure to leave not one Citizen out of the Guilt; but they do aver, the Printing was to undeceive their fellow Citizens, whereas the Charge is, that it was to deceive them. The whole Plea amounts but to the General Issue, admitting the Petition it self were justifiable, and

the making of the Petition lawful. Many things in themselves are lawful, yet if done with an evil Intent, and for an evil Purpose, become unlawful and criminal, and upon *Not Guilty*, Proof must be made of the evil Intent; where the Thing it self is unlawful, there needs no other Proof. To lie under an Hedge on

Shuters-Hill is lawful; but to lie there in wait to kill or rob a Man is unlawful, and imports Scandal. To lay Wool near the Sea Side is lawful; but laying it there with an Intent to export it, is criminal, and forfeits the Wool. And it is not good in Pleading to answer such Intent with contrary Averments; but where the Intent is Substance, it must be traversed or denied specially, otherwise the Plea amounts to but the general Issue. This manner of Defence, or shadow of Justification, proves one especial Ingredient of the Charge; that it was done *advisedly*. The City say it was done upon weighty Considerations, and many Occurrences deliberated upon, and relate to them, all upon Record, that the Court may judge, whether they had not good Reason for what they did. And if they could judge, that their whole History taken together are no sufficient Considerations for any Subjects to agree or order any Petition to be preferred and printed, to stir up the Subjects to a dislike of the King's Person and Government, which is charged upon them, and not answered; the Court must adjudge the Fact to be done maliciously, and seditiously. But the Words of the Petition are in themselves scandalous to the King and Government. Petitioning is lawful, and the City of London have often petitioned the King with good acceptance, and observed a good Decorum becoming Subjects, both in the Matter and Manner of their Petitions; they used not to advise or meddle in matters of State, but when sent for to advise, they confined themselves to the Affairs of the City. They never before, as I have met with, charged the King's Acts of State as Interruptions of the Prosecution of publick Justice.

The Words of the Petition are, *Your Petitioners were extremely surprized at the late Prorogation, whereby the Prosecution of the publick Justice of the Kingdom, and the making the Provisions necessary for the Preservation of your Majesty, and your Protestant Subjects, hath raised an Interruption. To delay, interrupt, or deny Justice, spoken of any Person intrusted with the Administration of Justice, and spoken of him in Point of his Trust, always imports Scandal; in the Case of the common Magistrates, they do necessarily import breach of Duty; neither in common Parlance amongst the Vulgar, nor any History or Author, that I have met with, were they ever used in any Sense of Credit or Reputation to the Person of whom they were spoken or published. Interruption of Justice is a greater Imputation than Delay barely, because the one may be a meer Omission, but Interruption imports some Act, whereby Justice is stopped; but both are temporary Denials of Justice, as Denial is an absolute Stop of Justice. Nulli negabimus aut differemus Justitiam*, are not only the Words, but the Duty of every King. To say or publish of, or to a King, in the Point of the Exercise of his kingly Office, and a Point of as high Trust as any is, that of the Prorogation of Parliaments, that he hath interrupted the Prosecution of the publick Justice of the King-

Lukner and
Cruchly,
4 Car. Cro. 142.
Lock and Lock
15 Jac. 1. Roll
Abr. 50.

dom, imports the greatest Scandal imaginable. For it was more of the King's Duty than of either Houses of Parliament, to promote the Prosecution of publick Justice, especially in the Cases set forth, which so nearly concerned his Person; and therefore the charging of the King with the Interruption of that Justice, is of greater Imputation to the King; and the more Instances they give, it is an Aggravation of their Crime, by charging the King with interrupting the publick Justice in all these Instances. And there is as much Venom concealed in as few Words, as ever I met with. *Tacitus* did never outdo the Penner of that Petition, whereby all the principal Attributes, the Law makes necessary for Princes, are impeached at once, both the Judgment, Mercy, and Wisdom of the King. The Interruption of the publick Justice reflects upon his Justice in a high manner. The Interruption of the Means of his own Preservation, besides his Justice, reflects upon his Wisdom; that the King should not take care thereof, or did not foresee the Danger he put himself into, by the Prorogation. The Interruption of the Means for the Preservation of his Protestant Subjects, impeacheth his Mercy too, and chargeth the King with Cruelty to his Subjects, in taking no better Care for their Preservation, when under such imminent Dangers; with a secret Insinuation, that as he had stopped Justice against his Popish Subjects, so he was regardless of the Preservation of his Protestant Subjects. What greater Malice could be inclosed in a Nutshell? If Words were dubious and of a double Signification, and might be taken in a good Sense as well as bad, they ought not to be published by Subjects of their Prince; and when charged to be spoken or published in the worst Sense, to withdraw the Subjects Affections from their Prince, the Court cannot intend them spoken in any other Sense; that must appear upon the Evidence, which cannot be in this Case, because they have not pleaded the General Issue, nor traversed that Point. But here the Words can bear no other Sense, but a direct Scandal to the King and his Government, in the Point of Prorogation of Parliaments. That the City so understood them is evident by the Petition, in that very Clause, where they say, they were extremely surprized at the late Prorogation. Why should they be surprized? If the King had done nothing thereby, but what was just and good for his People, they had often tasted of his Goodness, and could not be surprized at that. It must then be some very ill thing in the Prorogation, that so extremely surprized them, and filled them with such Errors, as throughout the Petition they express. And they discover their Minds plainly, that the Effects of the Prorogation were the Causes of their Surprisal, *viz.* The Interruption of the Prosecution of the publick Justice of the Kingdom, and of making the necessary Provisions for the Preservation of the King and his Protestant Subjects; and in the next Paragraph they explain themselves further, and call that a Delay, which before they called an Interruption; that they were even impatient of the least Delay, of the long hoped for Security, whilst they see the King's Life invaded, and the true Religion undermined, and their Families and innocent Posterity likely to be subjected to Blood, Confusion, and Ruin. The panick Fear, and dismal Consequences, are charged upon the Pro-

rogation. And to what other Purpose do they publish this severe Sentence upon the Prorogation, with their dismal Fears, but to affrighten the King's Subjects, and beget the like Fears in them? The natural Consequence whereof is to withdraw their Affection: *Oderunt quem metuerunt Populi.*

Mr. Recorder, though he could not produce one Authority, that to interrupt publick Justice, was ever used in a good or justifiable Sense; yet endeavours to evade the Scandal of the Words by proper Answers.

That these Words are not spoken of the King, but of the Prorogation, as Consequences of it. Is not this Quibbling? The Prorogation is only the King's Act of proroguing the High Court of Parliament. And to charge the Acts of a King, or other subordinate Magistrate in execution of his Office, with Injustice, Folly, or Infamy, is the same thing as to charge the Persons themselves.

No, saith Mr. Recorder, unless the Action had been charged to have been done with such Intention; but they do not charge the King: And that it is so explained in another part of the Petition, by saying, *But that which supports them against Despair, is the Hopes they derive from your Majesty's Goodness, that your Intention was, by this Prorogation, to make way for your better Concurrence with the Counsel of your Parliament.* Evil Intention may make an Act, otherwise good, to be bad and against Law, by Intendment of Law; the Intention is evil, and the Person answerable for all the Consequences thereof. If a Man throw a great Stone over the Wall, and a Person is killed, the Law adjudgeth it Murder: He cannot justify it by averring he had another Intention. So in the matter of Scandal, if an unlawful Act or Crime, which purports Scandal, be charged upon a Person, it is no Justification, or Excuse, to aver he did not charge the Person, nor his Acts, with doing it with an evil Intent; but as the Law supplies Malice in the Criminal, where the Act is unlawful, so it intends Malice in the Libeller, in a matter which in it self imports Scandal. Several Cases may be put to this purpose. To charge the Wife with poisoning her Husband, is Roll. Ab. 71.

actionable, though not alledged done voluntarily, or with an intent to kill; the Law intends it. In this Case they charge that the King by his Prorogation interrupted the publick Justice of the Kingdom, and with the dismal consequences, which in their Judgment would follow thereupon, and publish this to affrighten the whole Kingdom; and that they were near despairing of their Safety, but hoped his Majesty did likewise intend by the Prorogation to make way for his better Concurrence with the Counsel of his Parliament. A pretty Complement for so infamous a charge; and if it import any thing, it is a further Reflection upon the King, that he had not before concurred with the Counsel of his Parliament. But to fix the matter home, Mr. Recorder in the last place justifies this Libel from the truth of the Fact, that the publick Justice of the Kingdom, and finding out means for Preservation of the King and his Subjects, had received an Interruption by the Prorogation. This toucheth to the quick, and is more than the City have averred in all their Pleadings; they have nakedly represented their several Facts, precedent to the Petition; and leave it to the Court to judge, whether

whether there be sufficient to justify them, to make and publish such a Petition. But to aver it to be true, is to equal the Crime of the Petition, in charging the Prorogation with the Interruption of the publick Justice. But I hope, upon better Consideration, he will change his Opinion, and likewise upon the Inference he made, that if true, it is no Scandal to print and publish it to the King's Subjects; for in both Points he is apparently mistaken. It is admitted there was a Plot, and such Proceedings as are set forth against Delinquents; and that the King by his Proclamation and in his Speech expressed his Sense of the Plot, and pressed the Parliament to proceed to Trial of the Lords in the Tower committed for the Plot, and that there are many such Bills depending in Parliament. And it shall be admitted, that upon the Prorogation all these Proceedings were stayed, and, if Mr. Recorder please, received an Interruption; and to say so is true. But in this Case, if the City had been of an Opinion, that the Parliament, upon the King's Signification of his Pleasure they should proceed to the Trial of the Lords, did not make such haste to try them, as the City judged was necessary for the Preservation of their Lives and Fortunes; and thereupon the City should have petitioned the Parliament to proceed to the immediate Trial of the Lords in the Tower, and thereby charge them, that they had delayed them the publick Justice of the Kingdom, by not proceeding sooner to the Trial of them, according to the King's Desire, Mr. Recorder would not have averred the matter of Delay of Justice to be true, and therefore no Scandal to the Parliament; but he would then have found out the Difference between staying of Suits, and Proceedings in Courts by the proper Judges, and the Delays and Interruptions of common Justice; the latter are unlawful and criminal, and against the Duty of the Judges, but the former upon just Grounds are lawful, and many times in Prosecution of common Justice; and many times to proceed in such Cases would be great Injustice either to the Criminal or the Publick, where the Witnesses on either Side are not ready, or for some other good Cause the Judges put off Causes till another time, or adjourn a Court before all the Causes be tried. No Lawyer can truly say, that by the putting off the Cause, the Prosecution of Justice hath been interrupted; or will it be any just Justification for him for such Scandal, that there were Causes depending before the Adjournment. The Acts of inferior Magistrates are not to be examined, censured, and adjudged, much less scandalized by those that are under their Magistracy; that would let in Confusion, and tend to the Overthrow of all Government. To say of a Justice of the Peace, *You have perverted Justice*, is actionable; *Seignior De la Ware and Pawlet, Trin. 37 El. More 409.*

Mich. 1. Car. 1. Cro. 14. Sir John Isham versus Yorke; I have been with Sir John Isham for Justice, but could never yet get any at his Hands but Injustice.

Trin. 7. Car. Cro. 223. W. Marsham versus Briggs; Sir William Marsham is but an half-eared Justice, he will bear but one Side.

Mich. 8. Eliz. Rot. 1. Walsh was indicted for scandalizing one *Sir Robert Catline*, Chief Justice, and this Court, by saying, *My Lord Chief Justice is incensed against me, I cannot have Justice, nor*

can I be heard; for it is made a Court of Conscience. He was afterwards discharged upon the general Pardon, 8 *Eliz.*

They may be judged by Superiors, but not by Inferiors. Where the Common Law alloweth or authorizeth the staying of Proceedings by Adjournment, or otherwise; to say the Act is done to delay or interrupt the publick Justice of the Kingdom, or that thereby the publick Justice of the Kingdom hath received Interruption, is not only highly scandalous, but absolutely untrue: For it is according to the Rules of Common Law, and the publick Justice of the Kingdom, and may be the promoting of Common Justice, and for the Benefit of the Publick, and ought to be so intended, when done according to Law. For the Reasons of such Acts, much less the secret Intentions of the Judges, or of the Persons whom the Law hath entrusted with such Powers, are not to be examined, censured, or condemned by any Subjects, by any Corporation whatsoever. Petitions may be rejected by either House of Parliament, and so may Bills too, though they have the greatest semblance of common Benefit; yet this is no denial of Justice, nor to be scandalized under any such Notion: They may defer the Consideration thereof, or enter upon other Business; that is no Delay or Interruption of common Justice.

The King may do the like, he may reject the Bills passed by both Houses, or he may advise upon them by these Acts, which the Law allows to be no Interruption of publick Justice: The King may adjourn or prorogue the Court of Parliament. Anciently those Words were used and taken promiscuously, though now from the different Effects they are differently used. And Mr. Recorder owns, that the King is by Law intrusted with this Power, and it is happy for the Subjects he is so intrusted, it being for their Benefit; which is a flat Contradiction to his Position, that it is true that the publick Justice of the Kingdom is interrupted, or hath received an Interruption by the Prorogation: Because what is just and lawful, *secundum legem terræ*, cannot be unjust or unlawful, which every Interruption of publick Justice is; and if the Act be not unlawful, it is no Delay or Interruption of Justice. And if the Subjects cannot examine into or censure these lawful Actions of their Princes, but must intend them to be upon just Grounds, and for their Benefit, and in order to their common Safety; to charge their Prince's Actions with the interrupting of publick Justice, and of the Means for his own and his Peoples Preservation; and to publish this to all his Subjects, is, in Judgment of Law, a false, scandalous, and malicious Libel; and if not sufficiently punished, where will it end? To publish a Libel is in no Case lawful, be the Matter never so true, nay, though the Party who is libelled be dead; and the Degrees of the Crime, where against a private Person, and where against a publick Person, appear in the Case cited by Mr. Solicitor in the Reports, *fo. 125.* And that it is against all Laws both of God and Man, and the Miltchies there represented. In the Case of all Common Pleas the Offender shall be fined, and by the Statute of 13 *Car. 2.* all natural Persons are for the future disabled, and incapable of any Office or Place of Trust, where the Libel is against the King. But where the Matter is false, and the Libel published against the King, to

withdraw his Peoples Affections from him, and that by the joint Counsels of a Corporation; there can little Room for a Question remain, but they have broken their original Trust for good Government, and misused their Liberty to Licentiousness. How criminal is it for private Subjects to deliberate of and determine, and publickly to censure the Counsels and Actions of their Princes, will appear by the Case of *Stubs, Mich. 21 & 22 Eliz. Rot. 3.* where the Case was, that a Treaty of Marriage being on foot between the Queen and Duke of *Anjou*, *John Stubs* published a Book called, *The Discovery of a gaping Gulpb, whereinto England is like to fall by another French Marriage*, containing a Disswative against the Marriage: And therein amongst other Things chargeth, *That this Marriage bath Sin in it self, and of it self only, for being against the Law of God.* And in another Place, *That it opens all the Ports of Foreign Enemies*, with several bad Reflections upon the Duke. This Book was delivered by *Stubs* to *Hugh Singleton*, a Stationer, to print, who caused it to be printed and published. They were both indicted for it in this Court, and the Indictment laid to be, with intent to hinder the lawful Purpose of the Queen and Duke to marry, and to animate and stir up the Queen's Subjects to Rebellion, and to raise Discord between the Queen and her Subjects, and to subvert the good Government of the Kingdom. Upon *Not Guilty* pleaded (for they had not the Confidence to justify) they were found Guilty, and Judgment given for cutting off their right Hands upon the Statute 1 *Eliz. cap. 6.* for libelling the Queen. In this Case the censuring of the Queen's lawful Purposes, in a more private Matter than the Administration of her Regal Office, by common Subjects not called to advise, is a Subversion of good Government within the Kingdom; and the publishing the Effects and Consequences thereof to be sinful and dangerous to the Kingdom, is a libelling of the Queen and her Government within the Statute. The censuring of the Exercise of the King's lawful Prorogation, and charging it with the Interruption of publick Justice, is of a more dangerous Nature. Every natural Person convicted of this Offence, is by the Statute of 13 *Car. 2.* disabled for any publick Trust; the Proceeding against the natural Person could not be for want of Proof, it being transacted in their Council. In this Process against the Whole, they have confessed it with the Aggravations laid. If the King pass not a Bill which the City of *London* have a mind to, this Rejection of such Bill shall in print be published to all his Subjects, to be a Denial of Justice. If the King reprieve a Malefactor, it shall be a Delay or Interruption of publick Justice. To pardon a Malefactor, shall be a Denial of the publick Justice of the Kingdom. So that the Tenor whereby the City of *London* hold their Franchise, and all their Liberties, will be quite changed and altered, without the Aid of an Act of Parliament. The City will no longer hold all their Liberties from the Crown *quam diu se bene gesserint*, which was their ancient Tenure, reserved by the Crown and the Laws of the Land upon their first Erection, but will gain *absolutum Dominium*. And the King shall exercise no just Prerogative, but at their good pleasure; otherwise they will blast him to his People, and aliene their Affections from him. I have done with the Case. I have nothing more to offer. I have

at large proved, that the Corporation of *London* is a great Franchise and Liberty. I have proved that Point of Forfeiture, and their Demeanors towards the Crown: they stand in the same Level with other Cities and Boroughs, which be forfeited and seized. I have presented to the Court two superlative Offences, both against their Prince and their Fellow Subjects, as well can be; wherein they have exceeded all other Cities and Boroughs, and themselves too in any former Age. The Manner of their Pleading, and Defence at the Bar, argue the Disease to be dangerous and infectious to other Cities and Boroughs, and of the Nature of the Kings-Evil, incurable without the King's Hands. I have this Day brought them in Judgment before the Court, in order to their Cure. Nothing remains for effecting of the Cure, but the Judgment of the Court for Seizure of the Franchise of *London* into the King's Hands; which I demand for the King.

Mr. Attorney General having taken up so much time, the Court put off the hearing the Counsel for the City till another Day, when *Mr. Pollexfen* argued, as follows,

Mr. Pollexfen. IN this Case, when I consider the Greatness and Consequence of it, That it affects the King, the Parliament, the Laws, the very Government under which we have lived, this great City of *London*, and all other Corporations and People of *England*, and their Posterities, for ever, I cannot but be troubled that I should be the Man to whose Lot it should fall to argue it; but that which comforts me is, that your Lordship and the Court, upon whom the Judgment of this great Case depends, will help out my Defects, and according to what is required in the great Places you bear, take care and provide, that by your Judgment the ancient Government and Laws of this Kingdom receive no Damage or Alteration. The King's Counsel have on their side only some general words out of old Records of Forfeitures and Seizures of Liberties, which are of uncertain and doubtful Sense; but there is not on their side produced any one Precedent, Judgment, or Opinion, to maintain the Point in question, *viz.* That a Corporation, or Body Politick, ever was determined, or dissolved, or taken away for a Forfeiture: No, not in the maddest of Times, in the Times of *Edward the 2d.* and *Richard the 2d.* when the Tumult and Disorders were so great, that they not only seized and took away Liberties and Franchises, but the Lives of Princes, Nobles, Judges, Lawyers, and all that stood in their way: In those times, though they have hunted and searched with all diligence, not one instance of a Corporation taken away, or dissolved by a Forfeiture, is cited. So that from hence I hope I may safely conclude, that I argue in this case for the old and known Laws, as they have been ever practised through all Ages, and against that which never hath been practised or known, which is a great Encouragement to me. The Pleadings being very long, I shall only repeat so much of them as I use, when I come in order to speak of them.

I. The first thing proper to be spoken to is the Information it self, and therein I make this Question: Whether as to that part thereof that chargeth the Corporation with usurping upon themselves the Being of a Corporation, whether that

that be properly brought against the Body Politick, as this is, or ought to have been brought against the particular Persons? I do agree, that as to the other things mentioned in the Information, the having Sheriffs, Justices, &c. the Information is properly brought against the Corporation: And I do also agree, that it may be good as to those things, though bad and insufficient as to the charging the Corporation with Usurpation of their Being, without lawful Warrant or Authority. And that I may come rightly to this Question, I do put out all the other Franchises in the Information, and take only what concerns this Point; and then the Information, as to this Point, chargeth, That the Mayor, Commonalty, and Citizens of London, by the space of a Month last past before the Information, did use, and claim to have and use, without any Warrant or Regal Concession, within the City of London, the Liberty and Franchise following, *viz.* to be a Body Politick *Re, Facto, & Nomine*, by Name of Mayor, and Commonalty, and Citizens, and by that Name to plead and be impleaded; which Liberty, Privilege, and Franchise, the same Mayor, Commonalty, and Citizens, upon the King, by the time aforesaid, have and yet do usurp. This is the Substance of the Information as to this Point; and, Whether this Information thus brought, as to this matter, be sufficient in the Law, upon which a Judgment can be given, or ought to have been brought against particular Persons, is the Question. I conceive it ought to have been brought against particular Persons, and is insufficient as it is, and that no Judgment can be given upon it, supposing the Defendants had demurred, or pleaded nothing to it. To make out the Insufficiencies, I desire to consider what it imports.

1. The very bringing the Writ, and exhibiting the Information against the Corporation, imports and admits the Mayor, Commonalty, and Citizens, to be a Body Politick, capable to be sued and impleaded, *respondere, & responderi*; otherwise there is no Defendant, no Person in Court, against whom the Suit is brought. It is not enough that the Person sued be a Person by supposition, or a pretended Person, but none in reality. If a Writ or Information be brought against a Baron and Feme, this must admit that they are Baron and Feme really and truly; and if there be any thing after in the Writ or Information, that shews that they are not truly and really Baron and Feme, but that they do wrongfully and unduly take upon them to be Baron and Feme, when in truth they are not, this would be contrariant and repugnant, and abate the Writ or Information. The like is supposed by the bringing the Writ or Information against the Body Politick; it supposeth and affirmeth them really and truly to be such, and the subsequent Affirmation that they usurped so to be, and are not so really, is contrariant and repugnant.

2. When in the Information it is alledged, that the Mayor, Commonalty, and Citizens, the Liberty, Privilege, and Franchise of being a Body Politick *Re, Facto, & Nomine*, and to be sued and impleaded, upon the King have and yet do usurp; to usurp or do any Act of Necessity, imports and admits a precedent Existence of the Person that doth usurp, or do the Act, to the Act done. Particular Persons may usurp, and

take upon themselves that which they have no Right unto: The Persons that do the Act did before exist, and had a Being. And when a Corporation is said to usurp, it of necessity must be supposed to have a precedent Being. The sense of Usurpation in a *Quo Warranto* is the Subject's taking upon him Franchises without Warrant.

My Lord *Coke* saith, That Usurpation in the Common Law hath two Significations: *Inst.* 1. 277. b.

1.) The one when a Stranger presents to a Benefice, and his Clerk instituted and inducted, he gains the Advowson by Usurpation.

2.) The other when any Subject without lawful Warrant doth use any Royal Franchises, he is said then to usurp upon the King.

So that an Usurpation supposeth of necessity a Subject or a Person precedently *in esse*, that useth the Franchise, or that doth usurp. That which is not *in esse*, that hath no Existence, cannot use any Franchise, cannot usurp. The very alledging that they usurp, doth admit of necessity an Existence precedent in the Corporation, such as can usurp, or act, and therefore this Information is inconsistent with it self.

3. But another Reason to prove that it ought to be against particular Persons, and cannot be against the Body Politick, is drawn from the Judgment that must be given upon this Information, if Judgment for the King. The Judgment must have two things in it.

1.) To damn the Corporation, *Quod penitus extinguatur & excludatur* from being a Corporation for the future; for being wrongfully usurped, it cannot be continued: A Judgment to continue Wrong and Usurpation can never be a right Judgment.

2.) A Fine to the King for the usurping it for the time past. This Judgment may and ought to be given; where the Information is against particular Persons, for usurping upon themselves to be a Corporation, and they shall be fined and imprisoned; but this cannot be where the Information is against the Body Politick; for by the Judgment the Body Politick is extinguished and dissolved, and no Fine can be imposed upon that which is not: So that hereby the King must lose his Fine, which the particular Persons usurping ought to pay, and the Law is agreeable always to it self, and the means answerable to the end. I suppose no Man will affirm, that where a Suit or Judgment is against a Corporation, that the Fine or Execution shall be against all, or any particular Member.

For the Precedents and Authorities in this Point,

(1.) I do agree, that there be Precedents in the Crown Office of *Quo Warranto's* brought against Corporations in such manner as this is brought, for usurping to be a Corporation, and to claim divers other Liberties.

Quo Warranto against the Bailiffs and Burgessees of *Stratford*, for claiming to be a Corporation, and to have divers Liberties and Franchises; thereupon a Plea put in, and a Confession of their Claim by the King's Attorney *P. 2 El. r. 1.*

The like against the Corporation of *Reading*, the like Plea and Confession, the very next Term after the Information filed. *M. 3 & 4 El. r. 4.*

Against the Corporation of *Horsbom*, a Plea and Confession by the Attorney. *H. 14 Jac. r. 37.*

The like against the Corporation of *Dover*, but nothing done upon it besides Plea put in. *H. 19 Jac. r. 26.*

The like against *Batb*, a Claim put in, and confessed. *H. 20 Jac.*

The like against *Brackley*, and a *Noli prosequi*. *H. 20 Jac. r. 58.*

The like against *Baston*, a Claim put in, and confessed. *T. 3 C. 1. r. 22.*

The like against *New Sarum*, Impar lance, and nothing more upon it. *T. 2 C. 1. r. 47.*

The like against *Bridport*, Claim and Confession. *T. 6 Car. 1. r. 43.*

The like against *Biddesford*, a Claim and *Noli prosequi*. *M. 2 C. 1. r. 36.*

The like against *Wiccomb*; they plead themselves a Corporation by another Name, and traverse the Name in the Information; nothing more on the Roll. *M. 8 C. 1. r. 42.*

And it is probable there may be more like these, but if of any authority, they are for me, and not against me.

1.) For that they all being for claiming other Liberties, as well as to be a Corporation, and being good and sufficient as to the other Liberties and Privileges that the Corporation claims; though insufficient for this of claiming to be a Corporation, they must be proceeded upon, if the Attorney pleaseth. But is any to be found where only the claiming to be a Body Politick, and nothing else? or if other things questioned, yet only proceeded in as to this particular of claiming to be a Body Politick, as in this Case? That will be like.

2.) In all these nothing is done; a Claim or Plea put in, and that confessed, or *Non prof.* or not proceeded upon to Judgment. Perhaps not proceeded in because insufficient, and so are Authorities for me: For there being so many of these, which are either *Non prof.* or not proceeded in, perhaps the Reason might be, because insufficient in the Law, as to the Corporation, and so are Authorities for me in this Case. But one there is found.

Quo Warranto vers. Bailiffs and Burgeffes of *New Malton* in *Yorkshire*; *T. 6 Jac. 1. r. 3.* *Quo Warranto* they claim divers Liberties, as Courts, Markets, and others, and amongst the rest, to be a Body Politick. They put in a Plea, and make their Claim by Prescription; Issue is joined, and tried by *Nisi Prius* at *York*, and found against the Corporation, and a Judgment entred, *Quod Libertat' & Franchesia' predicta' in manus Domini Regis capiantur & seiscantur, & quod Ballivi & Burgenfes capiant' ad satisfaciend' Dom' Reg' pro Fine suo pro Usurpacion' Libertat' & Franchesia' predicta'*

There is no mention of this Case in any Book or Report, as far as I can learn; so that this passed *sub silentio*. Next, how can this Judgment be good?

[1.] How can that be a right and lawful Judgment, which shall be given for the continuing a thing that is by the very Judgment adjudged to be unlawfully usurped, and a Fine for it? It is directly *oppositum in objecto*.

[2.] How can the Corporation be seized into the King's Hands? *Extinguatur & excludatur* is proper; the Corporation cannot be in the King.

[3.] How could the Bailiffs and Burgeffes be

finid? when they are vanished and gone, there is no Corporation in Being; that which is laid upon a Corporation cannot be levied upon the particular Members.

I have made Inquiry after this Borough of *New Malton*: It is a small Borough, within the Manor of the Ancestors of my Lord *Eure*; it did anciently send Burgeffes to Parliament, but from the time of King *Ed. 1.* to the beginning of the Long Parliament, 1640. it sent none then; upon Petition a Writ was ordered, and they then and ever since have chosen Burgeffes: My Lord *Eure* being Lord of the Manor, and offended with them, did prosecute this *Quo Warranto*, and they having neither Lands, Revenues, or Estates to defend themselves, he easily prevailed, they never in truth being incorporate, nor having any Charter. But that which I give for Answer to these Precedents is,

1.] They are all, where not only the Being of the Corporation, but also divers other Liberties were in question; so that the Informations were good in Part, and not worth the while to question whether good, as to that Part of their being a Corporation. The Fine upon them for usurping the other Liberties, would have been more than they could bear or pay.

2.] That this is but one Judgment, and in a Case of a small Borough, and that Judgment, as entred, not agreeable, but inconsistent with the Rules of Law or Reason. The Body Politick could not be seized into the King's Hands; but whenever a Judgment is given for the King, for Liberty which is usurped, or extinct in the Crown, the Judgment must be *quod extingatur, and that the Person that claimed them deinceps Libertat' & Franchesia' predicta' nullatenus intrumittat', sed ab usu earund' amodo omnino cessat; quodque* the Person that used them, *pro usurpacion' Libertat' & Franch' predicta' super Dominum Regem capiat' ad respondendum dict' Dom' Reg' de Fine suo pro Usurpacione Libertat' & Franch' predicta'*. That this is the Form, *C. En. 559. a 537. 527. b.*

3.] That this Judgment of *New Malton* passed *sub silentio*; for there is no mention of it in any Book, nor doth it appear that ever the Question was moved or debated. And for Precedents in Matters of Practice and Process, they are of Authority; but in Point of Law, unless they have been upon Debate, are of little Authority to prove what the Law is. *Rep. 4. 94. Slade's Case, L. 5. E. 4. 110.*

But on the contrary, all the Precedents that are in any printed Books of Informations, were brought to question, Whether Body Politick, or not, are against particular Persons by Name:

Against *Christopher Helden*, and others, *C. En. 527. Pal. 9. fo.*

Quo Warranto against *Cusack*, and others. *Rol. 2. r. 113, 115.*

Quo Warranto against the *Virginia Company* was brought against *Nic' Farder*, and others, *Quo Warranto* they claimed to be a Corporation. *Rol. 2. 455.* Some of them pleaded insufficiently, upon which there was a Demurr, and a Question, How the Judgment should be entered? for that the Master and chief of the Company were left out of the *Quo Warranto*. By which it appears, that it ought to be brought against the Master, and particular Members by Name.

Next, for the express Authorities in this Case, to prove it cannot be against the Corporation.

Rol. Rep. 2. 15. is exprefs, That if a *Quo Warranto* be brought to difsolve a Corporation, the Writ ought to be brought againft the particular Perfons; for the Writ fuppofeth that it is no Corporation. The Difference there taken, when the Attorney General fuppofeth the Defendant to be a Corporation, otherwife when he queftions them as Inhabitants of a Vill, then they ought to enable themfelves, they muft then fhew themfelves a Corporation, alfo prove it.

My Lord *Hales*, in his Common Place Book in *Lincoln Inn Library*, fol. 168. faith thus: *Nota, ſc. Quo Warranto ſoit port pur uſurper de une Corporation ſerra port verſ. particular Perfons, quia in diſaffirmance del Corporation, & Judgment ſerra donne que ſerra cuſte; mes ſi le Quo Warranto ſoit port pur Liberties claim. per Corporation, ſerra port verſ. le Corporation.* This is poſitive.

This, if it were only my Lord *Hales's* Judgment were of no little Authority; but I think it is a Report taken upon the Caſe of the *Quo Warranto* againft *Cuſack* and others. But Mr. Attorney finding, as I believe, all the Precedents to be againft him (For in them all there are either *non Prof.* or no Proceeding to Judgment, the Cauſes whereof, or at leaſt ſome of them, probably might be the Inſufficiencies of theſe Informations) and finding alſo the Authorities in Print, which have been cited to be all againft him, and none for him, endeavoured to maintain the Information as brought not againft the Corporation, but againft the Citizens or Inhabitants of the City in their natural Capacities, and to that purpoſe cited the Caſe, *C. En. 537.* of a *Quo Warranto* againft the Inhabitants of a Village, *Quo Warranto* they claimed to be a Body Politick; and argued, That a *Quo Warranto* lies againft the *Cives* of ſuch a City, or *Burgenſes* or Tenants. This ſeems to be rather a ſudden Conceit, and altogether undigeſted, and not well conſidered. But in answer thereunto, and to prove that this Writ is brought againft the Defendants as a Corporation, and cannot legally be taken in any other Caſe; if a Mayor and Commonalty plead that they are ſeized in Fee, they need not ſay in Right of their Corporation, the Name ſhews them to be a Corporation, it need not be alledged, *Leo. 1. 153.* An Action there brought by the Guardians and Fellowſhip of *Weavers*; the Book ſaith, That they need not ſet themſelves out to be incorporate, the Name ſhews it; ſo of Cities, ſaith the Book, *Hob. 211.* So then, when the Writ is brought againft a Mayor and Commonalty, or Mayor, Commonalty and Citizens, the Law takes notice of them to be a Corporation, and the Writ againft them as ſuch; the Name ſhews it. But againft Inhabitants of a Village, a Writ brought by that Name, that cannot be taken to be other than Inhabitants, the Name ſo ſhews it; and in ſuch Caſe, ſome of the Inhabitants, by Name (*viz.*) *A.* and *B.* appear in Perſon, in their own, and Names of the reſt of the Inhabitants, and plead, and are Defendants, *Co. En. 537.* So did they, as appears in that Precedent. No Appearance ever was of Inhabitants in other manner. But in this Caſe here are no Perſons that do appear by Name, but the Corporation appear, and make an Attorney under their Common Seal. The Corporation, and no particular Perſons, are the Defendants before you, or elſe you have no Defendants before you; for there is none appearing in Perſon, here is no Defendant, nor none a-

gainſt whom you can give Judgment; but all the whole Proceedings vain and againſt no body. So that if we ſhould admit, as Mr. Attorney argues, That this Information is not brought againft the Corporation; then there can be no Judgment for want of Defendants appearing in their natural Capacities; you muſt have it againſt the Corporation, or no body. A Mayor cannot be, but where there is a Corporation; therefore this Notion is impoſſible, as I conceive. So that if there were nothing elſe in the Caſe, if the Information be ill brought, they can have no Judgment againſt us.

II. But admit that the Information as to this Point be ſufficient, then I proceed to conſider the other Parts of this Caſe; the Plea: That contains the Defendants Title (*viz.*) That ſhe is a Corporation time out of mind, and many Confirmations by Acts of Parliament and Charters. It is not denied, but that the Title made by the Plea is good.

But next the Replication, that contains,

1. An Iſſue upon the Preſcription (*viz.*) That the Citizens of *London* have not been time out of mind a Corporation by Name of Mayor, Commonalty, and Citizens, &c.

2. A pleading over, That the Mayor, and Commonalty, and Citizens taking upon them (*aſſumentes ſuper ſe*) to be a Body Politick, and to have Power to make By-laws.

1.) *Colore inde*, but for their private Gain, & *contra fiduciam per Dominum Regem & Leges bujus Regni* in them repoſed, took upon them to raiſe Money upon the King's Subjects by Colour of an Ordinance by them *de faſto* made, and in Proſecution of this uſurped Power, the Mayor, Commonalty, and Citizens, in their Common Council aſſembled, publiſhed a Law for levying Money upon the King's Subjects that came to the Markets within the City, 17 *Septemb. 26 Car. 2. (viz.) De qualibet Perſona*, for every Horſe Load of Proviſions brought into any publick Market within the City to be ſold, 2 *d.* a Day, for every Dorſer of Proviſion, 1 *d.* a Day, for every Cart-load drawn with not more than three Horſes, 4 *d.* a Day, if with more, 6 *d.* a Day; that if any reſuſed to pay, he ſhould be moved from his Place in the Market: That by Colour of this By-law, the Mayor, and Commonalty, and Citizens have extorted great Sums of Money for their own private Gain, amounting to Five thouſand Pounds *per Annum.*

2.) And farther, That whereas there was a Seſſion of Parliament holden 21 *Octob. 32 C. 2.* and continued till the 10th of *Jan. 82.* and then by the King prorogued to the 20th of that inſtant *January*; the Mayor, Commonalty and Citizens, *Jan. 13.* in their Common Council aſſembled, *malitioſe, aduſate, & ſeditioſe, abſque legali Auctoritate, in ſe aſſumpſerunt ad cenſendum & judicandum diſp. Dom. Regem nunc, & Prorogationem Parliamenti*, by the King prorogued; and in the ſame Common Council, *Vota & Suffragia ſua dederunt & ordinaverunt*, That a Petition *ſub nomine* the Mayor, Aldermen, and Commons of the City of *London*, in Common Council aſſembled, to the King ſhould be exhibited: In which Petition it was contained, That by that Prorogation the Proſecution of the publick Juſtice of this Kingdom, and the making neceſſary Proviſion for the Preſervation of the King, and his Proteſtant Subjects, had received Interruption. And that the Mayor,

Mayor, Commonalty, and Citizens, in the same Common Council, did unlawfully, *malitiose, advise, & seditiose*, with Intent that the same Petition might be published and dispersed among the King's Subjects, to induce in them an Opinion, that the King had by that Prorogation obstructed the publick Justice, and to incite Hatred against the King's Person and Government, and to disturb the Peace, did order that Petition, containing the said scandalous Matter, to be printed, and thereupon to those ill Ends and Purposes they caused it to be printed and published: By which the Mayor, Commonalty, and Citizens, the aforesaid Liberty and Franchise of being a Body Politick *forisfecerunt*, and after, by the time in the Information, have and yet do usurp it.

Before I come to the Matter, I would speak to the Pleading herein, and in the subsequent Surrejoinder: And for the Pleading in it, I think it is as singular and unprecedented as the Matter of it is. This Replication, supposing the Matter had been the Act of the Body Politick, and good and sufficient, yet, as pleaded, is insufficient, and not warrantable by any Law or Practice ever known. It contains,

1. An Issue, *viz.* no Corporation time out of Mind.

2. Two Causes of Forfeiture of the Corporation, admitting they once were a Corporation.

So that though the Point in Question be but one, *viz.* Whether we are lawfully a Corporation or no Corporation, though the Plea is single, that we are a Corporation by Prescription time out of Mind, yet here is, to try this Point,

1. An Issue.

2. A double Plea, alledging two Causes to avoid it for a Forfeiture.

This I conceive cannot legally be done, though in the King's Case. I do agree, the King hath great Prerogatives in Pleadings, and as far as ever they have been allowed or enjoyed, let them be so still; but that the King can to the same Matter both take Issue, and also plead over at the same time, that I deny. It is most reasonable, that the Law should be careful to preserve the King's Rights; but on the other Side, I think it is not reasonable, that the Law should admit or allow as legal, any way of Proceeding that should destroy or render the Subjects Right indefensible, be his Right as good as it may be. If so be that Mr. Attorney may both take Issue upon the Fact, and also plead over, I would, by your leave, ask how many Issues, and how many Pleas over the King's Attorney may have? Suppose the King bring a *Quare Impedit*, or Writ of Right, or any other Action, the Defendant makes his Title, which is usually done, by many Grants and Conveyances from one to another, to bring it to himself. May the King's Attorney now take as many Issues as Facts issuable, plead as many Pleas as he pleaseth, and all this *simul & semel*? It is true, that in this Case Mr. Attorney hath assigned only two Breaches, or Causes of Forfeiture; but he might, if he had pleased, by the same Reason, have assigned two hundred. If this may be, are we not all at Mr. Attorney's Mercy? If this may not be, then how many Pleas? Is it in Law defined? *In favorem Vitæ* a Man may plead a special Plea, and plead also Not Guilty, but not several special Pleas; but that there is any such Prerogative for Mr Attor-

ney, in Suits betwixt the King and his Subjects, I can find no Instance or Authority for it: For though it be true, as I have said, that the King hath great Prerogatives in Pleading, yet it is as true, that this is not boundless; but that if in the King's Writs there be Mistakes, or his Writ or his Action misconceived, he shall be bound by it in like manner as Subjects are or shall.

Partridge against *Strange*, *Com.* 84. a. 236. a. and in the same Book in my Lord *Berkley's* Case, it is expressly said, That though the King hath many Prerogatives concerning his Person, Debts, and Duties; yet the Common Law hath so admeasured his Prerogative, that it shall not take away, or prejudice the Inheritance of any.

The King hath a Prerogative that he may waive his Demurrer and take Issue, or waive his Issue and demurr upon the Plea: But saith the same Book, *fol.* 236. he must do it the same Term, not in any other Term; for then he may do it *in infinitum*, without end, and the Party hereby may lose his Inheritance; and for that the Common Law will not suffer the King to have such a Prerogative. These are the Words of the Book. And in the Point that this Prerogative must be made use of the same Term, and that the King's Attorney cannot vary in another Term, and waive his Issue, is *13 E. 4. 8. Bro. Prer.* 69. 28 *H. 8. 2.* So in making Title to a *Quare Impedit*, he at the end of the Term waved his first Title, and made another. But it is true also, that as to the Point of waving Demurrers, and taking Issue in another Term, there is Authority that he may so do; *Rex vers. Bagshaw*, *Cr.* 1. 347. but whether it may be done or not in another Term is not material to our Case: But the use I make of these Cases is to prove that the King's Attorney should not have both together *simul & semel*, as in this Case he hath done; he must waive one before he can have another Plea. For those Debates about his varying his Plea by waving his Issue and Demurring, or waving his Demurrer and taking Issue, signify nothing, if he may in one Plea, and at the same time take Issue and Demurr, or plead over to the same Matter or Point, as is done in this Case; therefore those Books strongly prove, that the Prerogative that the King hath, is by waving or relinquishing one, and choosing the other; and therefore not to have or use all together and at once, as is done in this Case.

The King shall be bound by one Issue, he shall not have divers, *9 H. 4. 5.* So that as this Replication is at the same time *simul & semel* to the same Matter, to take Issue that we were not a Corporation time out of mind, and to plead two Matters of Fact for Forfeiture, is the first Attempt that ever was of this kind, and in its consequence confounding the Right of the Subject, and leaves him perhaps only but a Colour of Law, but most difficult, if not impossible by it to be defended, let his Right be what it will, if Issues and Pleas without number may be by the King's Attorney joined and pleaded, and the Subject must answer. The very Charge besides will undo the Subject, and wrest him out of his Estate by the Law that should preserve him. This Point, if I mistake not, will deserve Consideration, if it be new, and the first Project (for so I beg leave to call it) of its kind; for I know no Book or Instance of the like, unwarrantable

by old Laws and Rules of Pleading. The old Laws and Ways are good and safe : *Eventos varios res nova semper habet.* Perhaps the Consequence and Mischiefs attending this way of joining Issue, and at the same time pleading over as many Pleas as Mr. Attorney pleaseth, are as great as any other in this Case, and not less to be minded or regarded. As of the one side great are the King's Prerogatives, and most necessary to be preserved, and maintained ; so it cannot be denied but that the Law hath set Limits and Bounds, which must be kept and observed in pleading, which is the Method and Mean of preserving and determining Rights, without which no Man can be preserved by the Law. But supposing that several Causes of Forfeitures may be assigned, yet they must be all Facts done at the same time, or they confound one the other ; for if the first Fact was a Forfeiture, thereby the Corporation was determined, and at an end, and the subsequent could not be the Act of the true lawful Corporation ; for that was forfeited, determined, and gone, by the precedent Forfeiture : And if so, that it was forfeited and gone by the precedent Act, *viz.* the making the Ordinance *Septemb. 17. 26 C. 2.* then how could it act and forfeit it self six Years after, in the Year Thirty two ? This seems impossible. But to avoid this, Mr. Attorney in his Argument doth hold, That though the Act be a Forfeiture, yet till there be a Judgment, or something on Record to determine the Corporation (and in this Case the Judgment to be given shall do that Work) till such Judgment, the Corporation remains. Then taking it as Mr. Attorney will have it, and as the truth is, supposing a Forfeiture, until that Forfeiture appear on Record, or that there be some Office or Inquisition that finds it, and that returned, and on Record, were it of any Estate in Lands, Tenements, Hereditaments, or Offices, it is not determined or vested in the King, but continues. This is quite contrary and contradictory to all that you have done, and the very Foundation of this *Quo Warranto* ; for if you admit, as then you do, that the Forfeiture *ipso facto* did not determine, but that it must be this *Quo Warranto*, or Judgment upon it, that must determine the Corporation, and that the Corporation, notwithstanding such Act, was or is in being ; then they have not usurped upon the King, they are the same Corporation they were ; they have the same Power to act they had ; they have the same Warrant and Right they had, only subject to a Judgment against them, that may be given hereafter, for a Fact already past ; for since that an Usurpation is a sordid and wrongful using a Liberty or Franchise upon the King, without lawful Authority. Then, supposing such an Act of Forfeiture doth not *ipso facto* determine or dissolve, but a Judgment, or some other Act of Record, must first be had before such Dissolution ; then till such Judgment, or Act of Record, they are lawfully a Corporation in being, and their lawful Warrant remains, and they did not, nor could so long usurp their Being, and then hereby is your own Information destroyed and abated : For there you say that they did by the space of a Month, without any Warrant, use and usurp the Liberty to be a Corporation. But hereby you grant that it was not used unlawfully, nor usurped, but notwithstanding the Forfeiture the Corporation lawfully continu-

ed, unless there had been some Judgment, or other Act on Record to determine it. This I rest upon as impossible to be avoided. Is it possible that a Corporation or Body Politick can at the same time be lawfully and rightfully such, and not lawfully and rightfully such ? Can Right and Wrong be the same ? Can the same thing rightfully be, or have its Being, and at the same time not rightfully be, or have its Being ? Can we possibly be at the same time, *viz.* the time mentioned in the Information, a lawful Corporation, and yet an usurped or unlawful Corporation ? Could we then have a lawful and rightful Authority to be a Corporation, and at the same time have no lawful or rightful Authority to be so ? These seem to be Contradictions, and if so, are the most difficult of all things to be believed or imposed ; therefore to be plain in this Matter, either tell us that we are yet till Judgment a Corporation or Body Politick lawfully and rightfully, or not. If you say we are, then as yet we are no unlawful Corporation, nor have usurped to be one, as in your Information and Replication you have alledged. We have not then unlawfully taken upon us to be a Corporation, and therefore cannot have Judgment against us, or be fined for having or being that which we lawfully have or be, as you now admit we are ; consequently you must go some other Way, you have destroyed your own Information, and can have no Judgment upon it. But perhaps this Concession of Mr. Attorney, that the old and lawful Corporation and Body Politick is still in being, and shall so continue, till by Judgment or Matter on Record determined, may only be some sudden Thoughts ; for not only the Matter, but the whole Proceedings in this Suit, being at least unexperienced, and perhaps much out of Practice, it might easily happen, that in an hasty Proceeding all things might not be thought on, nor all the Objections or Inconveniencies foreseen, and perhaps the Consequence of the Position, that a Mis carriage, or doing an unlawful Act, should *ipso facto* forfeit the Body Politick or Corporation, might make a Man start, and cast about how to avoid it, and flying from one Danger run into another. These are things ordinarily happening, and perhaps have in this Case happened, and were the Cause of this Concession, that the old and lawful Corporation is yet in being, which is contrary to the whole Frame and Scope of both the Information and Replication, and probably never thought on or intended when the Information or Replication was made, being quite contrary and inconsistent with the Frame and Foundation of them both. If it be holden according to this Concession, that the old and lawful Corporation was not by the supposed Acts of Forfeiture dissolved and determined *ipso facto*, but remained and continued lawfully a Corporation, and yet is so ; then we have not usurped, but are a lawful Corporation during the Time in the Information, and not as therein supposed by Usurpation, and without lawful Authority ; and thereby the Information confounded and abated.

But supposing, according to what the Information and Replication suppose, that the Acts of Forfeiture did *ipso facto* dissolve and determine the Corporation, for they will at last, I doubt, come to that again ; for this present thought that it shall be forfeit, but not dissolv-

ed or determined till Judgment, will be subject to almost all the same Inconveniencies; for when Judgment is given, the Forfeiture must relate to the Time of Offence, and to avoid all mean Acts, as in other Cases it doth. But to pass this over.

III. Supposing the Information good, the Replication good, and the Matters alledged for Forfeiture to be as in the Replication alledged: The next thing I pray leave to speak unto, is, Whether the Matter alledged in the Rejoinder be not sufficient to justify or excuse the two Facts alledged for Cause of Forfeiture. I conceive they are. The Pleadings here must first be stated.

1. As to the Ordinance or By-laws for the Toll in the Markets. As to that the Defendants in their Rejoinder have alledged, that the City of London is, and was always the capital and most populous City of the Kingdom. That there are and always have been great publick Markets within the said City. That the Mayor, Commonalty, and Citizens, are and always have been seized of those Markets in their Demefne as of Fee; and at their own proper Charges provided Market places, Stalls, Standings, and other Accommodations for Persons coming to those Markets; and Overseers and Officers for better Regulation and keeping good Order, and cleansing the same. That for defraying those Charges, they have, and always had and received divers reasonable Tolls, Rates, or Sums of Money, of all Persons to those Markets coming, for Stalls, Standings, and other Accommodations by them had, for exposing to Sale their Victuals and Provisions in those Markets. That the Freemen of the City of London are numerous, above fifty Thousand. That there hath been time out of Mind a Common Council, consisting of the Mayor, Aldermen, and certain Freemen annually elected, not exceeding the Number of two hundred and fifty, called the Commons. That there is a Custom within the City, that the Common-Council make By-laws and Ordinances for the better Regulation and Government of the publick Markets, and for the appointing convenient Places and Times when and where, within the City, the Markets shall be kept; and for the assessing and reducing to Certainty reasonable Tolls, Rates, or Sums of Money, to be paid by Persons coming to the same Markets, for their Stalls, Stations, and other Accommodations by them had, for exposing to Sale their Victuals as often as and when to them should be thought expedient, so as their Ordinance be useful to the King and his People, consonant to Reason, and not contrary to the Laws of the Land. That this Custom is confirmed by *Mag. Char. Stat. 1 E. 3. Stat. 7. R. 2.* That after the Burning and Rebuilding London, and the Alterations thereby made, Controversies did arise within the City concerning the Markets and Tolls. That thereupon Sir William Hooker, then Mayor, and the Aldermen, and Commons in Common Council assembled, did make an Ordinance, intituled, *An Act for the Settlement and well ordering the severall publick Markets within the City.* By which reciting, that whereas for Accommodation of Market People with Stalls and Necessaries for their Standings, for cleansing and paving the same, for defraying incident Charges about the same, reasonable Rates had always been paid:

To the end the Rates to be paid might be ascertained, that the Market People might know what to pay, and the Officers what to take, to avoid Extortion, it was ordered there should be paid by the Market-people for their Stalls, Standings, and Accommodations in the Markets, For every Horfe-load of Provision under publick Shelter, 2 d. a Day; for every Doffer 1 d. a Day; for every Cart-load drawn with not above three Horses 3 d. a Day; with more Horses 4 d. a Day; and upon refusal to pay to be removed. Then they aver that these Rates are reasonable. That they are all the Rates that are paid by such Market-people to the Use of the City. That these Rates they have received since the making these Ordinances. That there is no other Ordinance for raising Monies for such Provisions exposed to Sale in their Markets in any manner made.

To this Rejoinder Mr. Attorney hath sur-rejoined, and taken it by Protection, That the City were not seized of the Markets, nor at their own Costs provided Stalls and other Accommodations; and that the Rates by the Ordinance appointed were not reasonable. For Plea sets forth an Act of Parliament made 22 Car. 2. enacting, *That to the end apt and convenient Places within the City should be put out for Buildings, and keeping the Markets; and that the Royal Exchange, Old Baily, and common Gaols and Prisons within the City should be made more commodious;* for the enabling the City to do these Things, they should have a Duty out of Coals imported betwixt May 1670, and Mich. 1687. into the Port of London 12 d. per Chaldron; which Duty they have accordingly received, amounting to a great Sum, and notwithstanding that Duty, without Title or Right, the Defendants made the By-law for their private Gain, *absq; hoc*, that the Mayor, and Commonalty, and Citizens, have time out of Mind had, or accustomed to have *Tolneta, ratas, five denariorum summas per ipsos Majorem, Communitatem, ac Cives Civitatis prædictæ superius suppositæ fore per præfatam legem sive ordinationem prædictæ assess. Et in certitudinem reduci prout per placitum superius rejungendæ supponitur.*

The Defendants they rebut, and say, that they have always had reasonable Tolls, Rates, or Sums of Money of all Persons coming to their Markets to sell their Provisions, for their Stalls and Accommodations: *Et de hoc ponit se super patriam:* the Attorney demurs. Upon his Pleadings the Questions are, Whether the Matters alledged by the Defendants, in Justification of the Ordinance, or By-law, be a good Justification in Law, or not? If it be, Mr. Attorney in his Sur-rejoinder hath given no Answer to it at all; he hath neither confessed it, nor denied it. The Rejoinder saith, that the Defendants are, and always have been seized of the Markets in Fee. That they at their Charge provided Market-places, Stalls, Standings, and Officers for the Accommodations of the Markets, and cleansing them. That for defraying those Charges they have always had divers reasonable Tolls and Rates for Standings and other Accommodations. That the Common Council have, as often as expedient, always made Ordinances for regulating those Markets, and for assessing and reducing to certainty reasonable Tolls, Rates, and Sums of Money to be paid by the Market-people for their Accom-

Accommodations. That according to this Custom, they made the Ordinance and By-law. Mr. Attorney in his Sur-rejoinder hath not denied any Part of this; but offers a Traverſe to that which is no where alledged or ſuppoſed. It is never pretended that the City have had time out of Mind the very Tolls and Sums of Money for Toll aſſeſſed by the Ordinance. There is not a Word in the Rejoinder to that Purpoſe, but to the contrary; (*viz.*) That they in their Rejoinder claim a Power by Ordinance of Common Council to aſſeſs and ſet the Rates of theſe Tolls and Payments, as often as and when to them ſhall ſeem expedient. It is admitted in the Rejoinder; that theſe Sums were not time out of mind, only they had Power to ſet, aſſeſs, and aſcertain, as often as expedient. Therefore when Mr. Attorney traverſeth our having time out of Mind the Tolls, Rates, and Sums of Money by the Ordinance aſſeſſed, and *in certitud' reduci'* this is plain, beſides any thing claimed or pretended unto, if he had intended to traverſe what we have alledged, that we have had time out of Mind divers reaſonable Tolls and Sums of Money for Stalls and Accommodations: Or if he would have traverſed the Inſtance alledged for the Common Council aſſeſſing thoſe Tolls, as often as expedient, that was plain and eaſy to do; but that he hath not done: He hath only traverſed whether the Tolls, Rates, and Sums of Money, by the Ordinance aſſeſſed, and reduced into Certainty, have been time out of Mind. This is the proper Senſe of his Traverſe, but if doubtful in its Senſe, his Traverſe is nought for that Cauſe; for dubious Words can make no Iſſue for the Jury to try, elſe Men ſhould be tricked and enſnared by doubtful Words to pervert Right. So that if the Matter alledged in the Record be ſufficient in Law to juſtify the making this Ordinance or By-law, then what is done therein by the Act of Common Council is lawfully and rightfully done, and no Forfeiture. I do agree, that for a Lord of a Market to preſcribe to have a Toll uncertain, and as often as expedient, to aſcertain it, is no good Preſcription. But that is not our Caſe; I do diſtinguiſh betwixt that and this Caſe: Where there is by Cuſtom, confirmed by Acts of Parliament (for I ſhall ſhew that they are Acts of Parliament, notwithstanding what hath been objected againſt them) a Power and Authority veſted in the Lord Mayor, Aldermen, and Common Council, to regulate and order the People, Trades, and Markets in the City, and the Places, and Conveniencies, and Officers, from time to time, and conſequently to regulate and aſcertain the Tolls or Rates to be paid by the Market-people, to prevent Extortion and Diſorders; that ſuch Cuſtom is legal. The Chamberlain of *London's Caſe*: An Ordinance that no broad Cloth ſhall be ſold in the City, before it be brought to *Blackwell-Hall* to be ſearched, and a Penny for every Cloth to be paid for Hallage, under pain of forfeiting 6 s. 8 d. a Cloth, to be recovered in the City Courts, *Rep. 5. 69.* Though objected that this was an Impoſition of payment of Money upon the King's Subjects, yet adjudged good, and a *Procedendo* granted.

An Ordinance that no Unfreeman ſhall uſe a Trade in *London*, adjudged good, *City of London's Caſe, Rep. 8. fol. 1.* A multitude of Ordinances they have for regulating all manner of

Trades, and of Rates and Prices; and as much reaſon there is to object againſt them, as this Ordinance, or the Cuſtom in this Caſe: But the City of *London* have a Government and Power of making Ordinances, for governing and regulating Trades, buying and ſelling within the City, placed in the Common Council, and confirmed by Act of Parliament; and therefore not like the Caſe of any private Lord of a Market. But it is true, their Ordinances muſt not be unreaſonable. The Payments that are impoſed by this Ordinance, are only impoſed upon thoſe that are under ſhelter; it is reaſon a Recompence ſhould be paid, and there is no Unreaſonableneſs or Injuſtice appears in the Ordinance, but a reaſonable Recompence. But the Cuſtom or Power of the Common Council is not denied, as I take it: For they have not denied the Power to regulate and aſcertain the Tolls or Sums of Money alledged to be in the Common Council; if they had, that muſt have been tried: Nor have they denied the Rates ſet to be reaſonable. So that I think, as to this Matter we have well intitled our ſelves, and juſtified our making our By-law, and taking the Tolls or Rates thereby appointed; and nothing in the Surrejoinder againſt us to the contrary is objected.

But for confirming and making good our Cuſtoms, in the Plea, there are three Acts of Parliament pleaded,

1. *Magna Charta.*
2. *Stat. 1. E. 3.*
3. *Stat. 7. R. 2.*

The King's Counsel have not denied *Magna Charta* to be a Statute, but have denied the other two to be Statutes, or Acts of Parliament; and the Reaſons given by them are:

Becauſe not in Print, nor Roll of it to be found; or becauſe no body knows where to find it.

As to the firſt, Private Acts of Parliament do not uſe to be printed, few are.

As to the ſecond, Suppoſe there were no Roll to be found, doth this after ſo long a time conclude there was none ſuch, eſpecially ſince Mr. Solicitor was pleaſed to acknowledge that there are no Parliament Rolls of *E. 3.* till *4 E. 3*? It is true that almoſt all the Parliament Rolls of *H. 3. E. 1. E. 2.* and till *4 E. 3.* are indeed loſt. But beſides, in thoſe Days publick Acts were not only entred upon the Parliament Rolls, but from thence tranſcribed, and ſent under the Great Seal to be publiſhed by the Sheriffs of the Counties, in the Cities and Boroughs, and alſo by Writ to the Courts in *Weſtminſter-hall* to be there entred and recorded, of which there are many found, eſpecially in the *Exchequer*; and hence came the Rule in Law, that Judges, *ex Officio*, are bound to take notice of general Acts of Parliament: But for private Acts they were put under the Great Seal, and the Parties intereſted had the ſame to produce. But that theſe in this Caſe ſhould be queſtioned to be Acts, is ſtrange.

But to prove them Acts: As to the Act *1 E. 3.*

(1.) We have pleaded it under the Great Seal of King *E. 3.* that made it with a *profert hic in Cur'* and ſhewn it with our Plea as we ought; and this is Evidence ſufficient of it ſelf. If the ſame, produced under the Great Seal put to it when made, be not ſufficient Evidence to ſatisfy, what can be?

(2.) But in this Caſe it is enrolled upon Record

also, *Inter placita Coronæ penes Camerarios in Scaccario*; it is enrolled there, *Trin. 1. E. 3. r. 61, 62.*

But perhaps it may be objected also, That this was no Act of Parliament, but only a Grant or Patent in Parliament; because it is that the King *de assensu Prælatorum Comitum Baronum ac totius Communitatis regni in præfenti Parlamento.*

In answer, that Acts of Parliament observe not any certain Form. In the Case of the Earldom of Oxford expressly, *Jones 103.* that there was variety in penning Acts of Parliament in ancient time, *Dominus Rex per Consilium fidelium subditorum suorum statuit*, and other Forms there, are yet good Acts. But that they were anciently in form of Patents or Grants in Parliament, *Magna Charta, C. 1.* is in form of a Charter or Grant. The form of the Act of Parliament, *11 E. 3. Princeps Case, R. 8. fol. 8.* for creating the Prince, Prince of Wales, begins, *Edwardus Dei gratia, &c.* in form of Patent, and is *De communi assensu & consilio Prælatorum Comitum Baronum & aliorum de concilio nostro in præfenti Parlamento*, and adjudged a good Act of Parliament; and the Authorities and Reasons to prove it an Act of Parliament are *fol. 18, 19, 20.* so full, that it might be thought that this Objection would never have been made: And that this is in the same Form that all the rest of the Acts of this very Parliament of the *1 E. 3. Memb. 17.* are, appears by the Patent Roll of the same Parliament. A Charter granted by the King *de assensu Prælatorum Comitum Baronum Communitatis Regni in Parlamento apud Westm'* to enable the City to apprehend Felons in *Southwark.* An Act in the same Form, for the annulling the Conviction of Treason, that was against *Roger Mortimer*, in the time of *E. 2. Rot. Claus. 1 E. 3.* An Exemplification then entred of an Act made in the same Form, in the same Parliament, for the annulling the Attainder of *Thomas Earl of Lancaster*, attained *tempore E. 2. Rot. Pat. 2 E. 3. P. S. 1. M. 17.* Divers other Acts of Parliament in the same Form made *1 E. 3.* for annulling divers other Attainders that were *tempore E. 2.* So that as to this Act of Parliament *1 E. 3.* I think the Objections are answered, and that it is an Act, as pleaded. *Rot. Pat. 2 E. 3. P. S. 2. M. 11. Inft. 2.5 27, 639.*

And as to the other Act *7 R. 2.* that that is no Act of Parliament, only a Prayer of the Commons, that there might be a Patent granted to the City, confirming their Liberties, *licet usi vel abusi fuerint*; and the Answer was, *Le Roy le veult.*

They object for Reasons against that being an Act of Parliament,

First, that it wants the Assent of the Lords.

Secondly, It is only a Prayer of the Commons to have their Liberties confirmed, and the King's Answer *Le Roy le veult*, but nothing done to confirm it.

As to the first Objection, supposing it true that there is no mention made of the Assent of the Lords, yet the Act is a good Act.

1.) It appears to be in Parliament *ad instantiam & requisitionem Communitatis Regni nostri in præfenti Parlamento.*

2.) The Answer in Parliament, that is given by the King to the making all Laws, is given to this, *Le Roy le veult.*

3.) And next, it is admitted to be upon the Parliament Roll, *7 R. 2. Num. 27.* I have before said, that Acts of Parliament are not in any certain Form; sometimes entred as Char-

ters or Grants, sometimes as Articles, sometimes and frequently as Petitions; the Books I have already cited prove it. But according to the Course of Parliaments, let it be in what Form it will, let it begin in which House it will, yet it must go through both the Houses of Parliament, before it can come to the King for his Royal Assent. If either House rejects or refuseth, there it ends, it comes not to the King; nor is the Royal Assent in these great operative Words, *Le Roy le veult*, in Parliament given to any thing, but what the whole Parliament have assented and agreed unto. So that this is an Objection grounded upon a Reason contrary to all the Course of Parliaments, which shews that the Lords Assent was to it, though not mentioned. *Selden's Mare Claus. 249.* gives a full Resolution herein: *Certissimum est*, saith he, that according to Custom no Answer is given, either by the King, or in the King's Name, to any Parliamentary Bills, before that the Bill, whether it be brought in first by the Lords, or by the Commons, hath passed both Houses, as it is known to all that are versed in the Affairs and Records of Parliament. And in the Prince's Case before cited, there the Act is said to be *de Assensu & Consilio* of the Lords, but doth not name the Commons; And this answers the other Reason also, *viz.* That it should only be a Prayer and Petition also, to have a Charter of Confirmation granted: For since the Forms are in manner of Petitions, since the Royal Assent or Words, *Le Roy le veult*, is never put to any Bills in Parliament, but such as are thereby made and passed into Laws, the giving the Royal Assent is sufficient in this Case to prove it a Law. But for further Evidence, we have it under the great Seal of King *R. 2.* thus penned: *Ad instantiam & requisitionem Communitatis Regni nostri Angli in præfenti Parlamento nostro, pro majori Quietate & Pace inter Legeos nostros focendis, & pro bono publico de assensu Prælatorum, Dominorum Procerum, & Magnarum nobis in eodem Parlamento assistentium, &c.* So that hereby it is fully proved, and shewn, that though the Assent of the Lords be not mentioned in the Copy, yet that it was had, and under the great Seal of *R. 2.* it so appears. We have also, in our Book of the Acts of that time in the City, the Proclamation made upon the first promulging this Act, in the time of Sir *Nicholas Brember*, Lord Mayor, *Lib. H. f. 169. a & b.* and therein it is also entred in the same Words, as before, under the great Seal of *R. 2. de assensu Prælatorum, &c.* Next, our Books and continual Practice ever since. It is true, that in the *7 H. 6. fol. 1.* when it is said, that the Customs of *London* were confirmed by Statute, *Quære* what Statute; but it is not there made a *Quære* whether this were a Statute; *Inftit. 4. 250. Rep. 5. 63. Rep. 8. 162.* all say that the Customs of *London* are confirmed by Parliament, *7 R. 2. Justice Jones 283.* hath it *verbatim* out of the Parliament Roll. The constant Course of Pleading the Customs of *London* is to plead a Confirmation of them by this Act of Parliament: So that as to this Point there is not any one Book or Opinion, before this Day, in favour of what is affirmed, that these are not Acts of Parliament; and our Plea stands good in Law, and the Ordinance, and By-law, and Custom is good, and then no Forfeiture thereby.

But suppose, and admit, that this By-law be the Act of the Corporation, and not good and sufficient in Law, nor in Law justifiable, *Quid sequitur?* Then it is void in Law. Then if it be void in Law, how can it make a Forfeiture? Suppose a Lessee for Years, or for Life, makes a Feoffment, but it is not duly executed for want of Livery and Seisin, by which it is void in Law, can this make a Forfeiture of the Estate of the Lessee? Suppose a Corporation *Tenant pur autre vie* makes a Feoffment, which is void for want of Livery duly made, will this forfeit their Estate? A void Act shall not destroy or forfeit a precedent Estate. A Parson, that hath a former Benefice, accepts a second Benefice incompatible, was instituted and inducted, but did not read the Articles, his first Benefice was not forfeit or void hereby, because by the Statute the not reading his Articles had made his Institution and Induction void. *Dyer 377.b* So that then whether this By-law or Ordinance were good or void in Law, perhaps is not much material; it cannot make any Forfeiture of the Corporation, it can have no such effect; for if it be a good and lawful By-law, no Forfeiture can be for doing a good and lawful Act. If the Ordinance be not warrantable by Law, then it is void in Law; if void in Law, a void Act can make no Forfeiture.

But you received, say they, and exacted from the King's Subjects Sums of Money by this Ordinance.

I answer, Suppose we did, and that we had no Right to have this Money; if an Officer, by colour of his Office, receive more than is due, it is Extortion, and a Crime punishable: But if a Person, that is no Officer, take Money that is not due, or more than is his due, the Parties injured have their Remedies by Action; but this no Crime for which any Forfeiture or Penalty is incurred by the Person that so takes or receives the Money. Suppose a Lord of a Manor exact or take greater Fines or Sums of Money from his Copyholders or Tenants, than he ought, they have their Remedies by Actions against those that receive; so if a Corporation receive or take Money supposed to be due, but in truth is not, how can this forfeit any thing?

But you took upon you, say they, a Power and Authority to tax the King's People, and to take and receive the Money so taxed.

I answer, This is but the same thing, only put into greater Words. It is still but the making of an unlawful By-law, and thereby appointing Money to be paid which ought not, or more than should be; and as to the turning of it, or expressing it in stately Words, of taking upon you, or usurping Authority to impose upon, and tax the King's People; whosoever doth any Act or Thing, he takes upon him, and doth also execute the Power and Authority of doing that Act or Thing, which is comprehended in the Thing done. The making a By-law, or Ordinance, whereby more is ordered to be paid than ought, or Money appointed to be paid where none is due, is still all the Fact and Thing done; and if that make no Forfeiture of the Corporation, or Crime punishable by Indictment or Information, except only as the Statute 19 H. 7. c. 7. which I shall hereafter mention, hath appointed for Forfeiture of 40s. the taking or usurping the Power to do it, cannot be more, or effect more, than the doing the thing which comprehends it.

2. As to the other Cause alledged in the Replication for Forfeiture, the Petition, printing, and

publishing it; in the Replication 'tis alledged, That the Parliament the 10th of January was prorogued to the 20th of January. That the 13th of January the Mayor, Commonalty, and Citizens of London, in their Common Council assembled, *maliciose, adversate, & seditiose*, took upon them *ad judicand' & censend'* the King, and the Prorogation of the Parliament by the King so made; and that the Mayor, and Commonalty, and Citizens of London, so in the said Common Council assembled, did give their Votes and Order, that a Petition, in the Name of the Mayor, Aldermen, and Commons of the City of London, in Common Council assembled, should be exhibited to the King. In which Petition it was contained, that by that Prorogation the Prosecution of the publick Justice of the Kingdom, and the making necessary Provisions for the Preservation of the King, and his Protestant Subjects, had received Interruption. And that the Mayor, Commonalty, and Citizens of London, in Common Council, as aforesaid, assembled, maliciously, and seditiously, to the intent the same should be dispersed among the King's Subjects, and to cause an Opinion that the King obstructed the publick Justice, and to stir up Hatred and Dislike against the King's Person and Government, did order the said Petition to be printed, and afterwards they did print it, and caused it to be published.

The Defendants in their Rejoinder to this Breach set forth and alledge, That there was a Plot against the Life of the King, the Government, and the Protestant Religion; and set forth all the Proceedings upon it, the Attainders and Impeachments of the Lords in the Tower in Parliament depending, the Proclamations declaring the Dangers by this Plot, that they could not otherwise in human Reason be prevented, but by the Blessing of God upon the Consultations and Endeavours of that great Council the Parliament, and commanding a General Fast to be kept in London the 22d of December, and that it was kept accordingly. The Proceedings in the Parliament towards the Trial of the Lords, and preparing Bills to be enacted into Laws, for Preservation of the King and his Subjects against these Plots and Conspiracies. That divers of the Citizens, loyal Subjects, being much affrighted, and troubled in their Minds, with the apprehension of these Dangers, did exhibit their Petition to Sir *Patience Ward*, then Lord Mayor, and the Aldermen, and Commons in Common Council then assembled, containing their Fears, and Apprehensions, and Expectations, from the King and that Parliament; did petition, that the Common Council would petition for the sitting of that Parliament, at that time prorogued. And thereupon the Mayor and Aldermen (naming them) and Commons in Common Council assembled, from their Hearts truly loyal to the King, and for the Satisfaction of the Citizens, who had exhibited that Petition, and of intent to preserve the Person of the King, and his Government, did give their Votes, and order a Petition should be exhibited to the King in the Name of the Mayor, Aldermen, and Commons in Common Council assembled, and set forth the Petition in the Name of the Mayor, Aldermen, and Commons in Common Council assembled *in hæc verba*: Wherein among other things it is contained, That they were extremely surpris'd

at the late Prorogation, whereby the Prosecution of the publick Justice of the Kingdom, and the making Provisions necessary for preserving the King's Person, and his Protestant Subjects, received Interruption. And did farther agree and order, that that Petition, after it had been presented, should be printed, which was so ordered with intent, that false Reports concerning the Petition might be prevented; the Enemies of the King, and the Conspirators, from proceeding in the Conspiracy deterred; the Troubles in the Minds of the Citizens alleviated, and the Citizens know what had been done upon their Petition. That the Petition was delivered to the King, and afterwards printed. That this is the same Petition and Printing in the Replication mentioned *abiq; hoc*, that any Petition of or concerning the Prorogation of the Parliament was made, ordered, published, or printed in any other manner than they have alledged, as the Attorney General supposeth. To this part of the Rejoinder Mr. Attorney hath demurred generally by the Demurrer, the Fact alledged in the Replication is admitted to be true. And it is true, that there are no Words, that are written or spoken, but are subject to various Constructions: But I take it that no Words, whether written or spoken, ought to be taken in an ill sense, if they may reasonably be taken in a better, *Nemo præsumitur esse malus*; and therefore the Words must stand as they are penn'd. And having first expressed their Fears, and next their Hopes, from the King and Parliament's Proceedings in Trial of those that were impeached, and making Laws for their Security, and how they were surpris'd at the Prorogation, then they say, That by that Prorogation, the Prosecution of the publick Justice of this Kingdom, and the making necessary Provisions for the Preservation of the King and his Protestant Subjects had received Interruption. It is mentioned only as a Consequence of the Prorogation, it is not said or expressed that the King did interrupt; for I think there is great difference betwixt the one sort of expression and the other. An ill Consequence may attend a good, and commendable, and most necessary Act; but no Consequences can make an ill Act good; and therefore the expressing the Consequence doth not necessarily condemn or declare the Act to be an ill Act. Suppose that in the time of the great Plague a Man had had a Suit in *Westminster-Hall*, wherein all his Estate had been concerned, and had said or writ, that by the Adjournment of the Terms by the King, the Proceedings of the Courts of Justice in his Suit had received an Interruption, had these Words been punishable? The Adjournment was then the most necessary and commendable Act that could be for the Preservation of the King's Subjects in that raging Pestilence; and the Act it self being so good and necessary, though there were such Consequence as to that particular Suit, the writing or saying that it had such a Consequence, such an Interruption, did not, I conceive, condemn, judge, declare or express the Act to be ill. Suppose a Man had had a Bill depending in that Parliament, to be enacted for the enabling him to sell his Land to pay his Debts, to free him from a Gaol: Or, suppose that some one of the Lords impeached in that Parliament had made a Petition for the Sitting of the Parliament, and had therein expressed as a Reason and Ground of his Petition,

the like Words as in this Petition: What would the Court have judged of it? are not the Cases much the same? If they are, there will be no distinction of Persons in Judgment; I am sure there ought not. Perhaps when this Petition was made, there might be too much Heat in the Minds of Men; and it is true, that Heat increaseth Heat, and Fire kindles Fire; it is time for all sorts to grow cool and temperate, and to weigh and consider we are, or should be, considering Men. This Petition was made *Nemine contradicente*, and undoubtedly among such a Number as the Common Council, there must be Men of variety of Tempers and Dispositions: But for the greatest number of the Aldermen, and Common Council, think of them; we know the Men, many of them; can we imagine, that they had either the least ill thought or meaning towards the King, his Person, or Government, in this Petition, or the printing it? And as for the printing it, that, my Lord, stands upon the same Reasons and Grounds: For if there be nothing ill or unlawful in it contained, then the printing and publishing of that which contains nothing ill or unlawful, is not, as I conceive, ill or unlawful. Printing is but a more expeditious way of Writing, and is good or bad as the matter printed is good or bad. The Defendants in their Rejoinder have set forth their whole Case, the Reasons and Grounds of what the Common Council did, and the manner and intent of their doing it; all which Fact cannot be denied to be true, but is now confessed by the Demurrer. It hath not, nor can be said, but it is well pleaded, and might have been traversed and denied, if not true: But it is confessed by the Demurrer to be true, and therefore that must be taken to be the Fact, and not as alledged in the Replication, and then so taken, I submit it to your Judgment.

3. But the next thing considerable is, Whether, supposing and admitting, that if done by the Body Politick, it had been a Misfortune or a Crime, whether not being done by the Body Politick, nor under the Common Seal, but by Common Council, whether thereby the Being of the Corporation shall be forfeit?

A Common Council in Corporations is generally a select Number of the Body corporate, constituted to advise and assist the Corporation in their ordinary Affairs and Business. There is no certain Rule nor Measure of their Power, wherein all the Common Councils agree. In some Corporations the Common Council have greater Authority, in some less, according to the several Authorities by the respective Charters where the Corporations are by Charters; or by Custom or Usage, where the Corporations are by Prescription: But in all they are a subservient Number of Men, constituted and authorized for particular Ends and Purposes. And in this Case I think the Court can take Notice of the Common Council no otherwise than upon the Record they appear to be. The Replication doth not say what they are, but would go in the Dark, by Intention and Presumption, the best Way and Method to arbitrary Determination. The Rejoinder saith, that the Citizens and Freemen are a great Number, Fifty thousand, and more. That there hath been time out of Mind a Common Council, consisting of the Mayor and Aldermen, for the time being, and of certain Freemen, not exceeding

ing two hundred and fifty, annually elected to serve as Common Council Men, and are called the Commons of the City. That time out of Mind there hath been a Custom, that the Mayor, Aldermen, and such Citizens, so elected to be of the Common Council, according to Custom, have been accustomed to make By-laws and Ordinances, for the better Regulation of the publick Markets, for appointing Times and Places, and assesseing and reducing into Certainty reasonable Tolls, Rates, and Sums of Money, payable for Stalls and Standings in the Market. For any thing appears upon the Record, this is all they have Power to do: *Non constat* to the Court that they have any other Power or Authority over Lands, Estates, or any thing else. Next, if this which in the Rejoinder is alledged, of the Being and Power, be true, and so admitted, then what they did in making the Ordinance, was done by good and lawful Power and Authority, and then can be no Offence: But if to make the Ordinance be an Offence, and an unlawful Act, you deny the Custom to be good, and say, the Custom is void, and against Law, and for that Reason the Ordinance illegal. Then *non constat* that they had any Power at all to do any thing, and then a Common Council to advise without Power to do any Act: And if so, how can a Parcel or Part of a Corporation, not authorized to do any Act, do an Act that shall forfeit? Suppose a particular Company, as the Mercers, had done this, could this be a Forfeiture? But if to avoid this you will say, that the Court shall take Notice of the Common Council of *London*, to have the Management of the Business of the Corporation belonging to them; this I think the Court cannot do, and I cannot see how possibly they can, as a Court, judicially take Notice hereof. Suppose our Question had been concerning another Corporation, could the Court then, as a Court, judicially have taken Notice of the Power or Authority of their Common Council? Mr. Solicitor in his Argument held, that there was no Difference betwixt *London* and another Corporation, except that *London* was the biggest. Then put the Case of any other Corporation, could the Court judicially have taken Notice of their Power or Interest, without having it specially set forth? Is it possible the Court can, since they differ one from the other, as much as their Charters or Constitutions do differ, of which there is hardly to be found two in *England* that do agree in their Powers? If it had been of another Corporation, of Necessity the Constitution of the Common Council must have been set forth. If you are upon a By-law, made by any other than the Body Politick it self, must not the Power and Authority of those that made it be shewn, and set forth in Pleading, in any Case where there is Occasion to use it? How otherwise could the Court judge or determine of it? So that taking the Law to be as the other Side saith, that *London* differs not from any other Corporation; it is no where alledged in the Pleading, that they have Power to make By-laws, for the ordering and governing the City, or that they can bind all the Corporation in Sale or Disposition of their Lands, or have the Power of the Common Seal: Therefore when the King's Counsel argue from these Powers, their Power of forfeiting, they argue quite out

of the Record; they have no where alledged or pleaded what they are, or what Power they have, as they should have done, if they had so intended. So as to this Particular, here is nothing before the Court, nothing upon Record, to shew how or which way the Body Politick should be concerned in these Acts of about Two hundred and fifty of their Members, called the Common Council. Wherefoever any By-laws or Ordinances are pleaded, the Power to make these By-laws or Ordinances is pleaded, and so are all particular and derived Authorities, whenever Occasion to plead them, and necessary they should be so: For it is Fact that the other Side may and ought to be at Liberty to deny it, if he see Cause; and therefore if they will have it that the Common Council have abused some Power or Authority they have, thereby to forfeit the Corporations, they ought to have shewn it; to say that notice shall be taken, or it shall be intended or presumed, is in truth a Presumption upon the Court, as if the Court should take notice of, intend, or presume, what the King's Counsel would have, which the Court cannot, nor will do, more in this than in other cases. But supposing the Court will take more notice of *London* than any other Corporation, and will take notice of the Common Council there, and of their Power and Authority; and I will suppose, as the other side do, that they have the Power of making By-laws, of leasing, granting, and managing the City Lands and Revenues, and of sealing with the common Seal, and that this they have by Custom; then surely, say the other side, they have the Power of furrendring and forfeiting the Corporation. If I should answer, surely and without doubt they have not, this would not argue they have not; but the Argument should come of the other side, to prove they have; they have not, nor can produce any Case or Opinion to prove it; and the very thought that they could is so new, that I believe none can be found like it. But let us consider the nature of this thing a little particularly: Though general Discourses are most easy, and florid, yet perhaps a particular Enquiry may best discover. Admit that they have the Power the other side say they have; yet they are not the Corporation, but a part constituted for these particular ends and purposes, for which they are impowered. Corporations had their Creations by Charter; that gives them their Being, and the Form, Method, and Power of Action. Suppose that the first Charter of Incorporation that was granted to *London* did grant, that the Citizens should be incorporate, and a Body Politick, by the Name of Mayor, and Commonalty, and Citizens; that there should be a Mayor, so many Aldermen, and so many of the Citizens, annually elected, that should be a Common Council; and that they should have Power to make By-laws, to demise or grant their Lands, under the common Seal, in the name of the Corporation: If they do any Act not within their Commission, is not that void? Suppose a Grant made to the Common Council, would not that be void? Suppose a Grant made by the Common Council, in the Name of the Common Council under Seal, or in the Name of the Corporation, but not under Common Seal; is not all this void? This I only instance to shew that their Charter and Authority

is their Power and Warrant they are to act by: Did ever any Man hear of, or see a Charter giving the Common Council Power to surrender the Corporation? Or was it ever thought of before these Days? If then no such Power by the Charter be given, if they cannot do it without Power given them, shew me their Power, or else I think I may conclude sure they cannot surrender the Corporation without Power. But the Common Council in *London*, that is by Custom, and their Power is by Custom. Then if the Question be what is their Power? It is answered, what they have used and accustomed to do, that they may do; what they have not used or accustomed to do, that they cannot do; for if Custom and Usage be the Authority, that Authority can go no farther than their Custom and Usage goes. Then put the Question, Have the Common Council used to surrender or forfeit the Charter? No Body can say it. What Reason then is there for any Man to say they can do it? It is probable, that the Common Council in *London* had first their Institution from some By-law or Ordinance, though now not to be produced, but consumed by Time. But be it that, or any other imagined Commencement, can it be imagined that those that gave them their original Authority, gave them Power to surrender the Corporation, or forfeit it? Suppose that the Power given them did authorize them not only to make By-laws and Ordinances for the good Order and Government of the Corporation, to grant or demise their Lands and Revenues, but had some general Words in it to act and manage the Matters of the Corporation: Is it not against all Sense to suppose, that that which is deputed and constituted for the well ordering and managing of the Corporation, should have Power to surrender it? Then as the Counsel of the other Side argue, that because they may surrender, they may forfeit: By the same Reason, I hope, I may argue, if they cannot surrender or dispose of the Corporation, they cannot forfeit. Next, those Acts of the Common Council are not done neither in the Name, nor as the Acts of the Corporation, nor under any Seal; but do import in themselves only to be the Acts of the Common Council: The Ordinance, that is made by the Mayor, Aldermen, and Commons in Common Council assembled. The Petition is the Petition of the Lord Mayor, Aldermen, and Commons in Council assembled. Their Leases or Grants are in the Names of the Corporation, and under the Common Seal, and the Common Council only ministerial to the Corporation in ordering, managing, and disposing all for the Benefit and Advantage of the Corporation, to avoid the Inconveniency of assembling the numerous Body. But that any thing that hath but a ministerial Power, for the Service and Benefit of their Principal, should have Power to dispose of, sell, convey, or surrender, and destroy their Principal, is no Consequence in Law or Reason. No Deputy, Assistant, or Bailiff hath such Power; if he exceed his Authority, his Act is void. Is it not so with all Authorities and derived Powers? what they do beyond their Authority cannot bind those from whom they derive it. It cannot be the Act of the Corporation; for a Corporation cannot make a Petition, no more than they can make a Deed, or subscribe a Writing, except under the common Seal. Corporations cannot make a Lease at will, license a Man to enter upon their Lands, or do

any like Act, but under their common Seal; nor can they commit a Trespass or Disseisin but by Command precedent, or Assent subsequent, under their common Seal. How then can this be their Act? There is nothing in it that imports it should be theirs, nor ever intended to be theirs; it is not done by them, nor in their Names, but by the Common Council, and in the Name of the Common Council. If we may take notice of what is out of the Record, we know that they have in *London* a greater Assembly than the Common Council, viz. the Common Hall, wherein the Common Council are no more than others. Can the Petition of the Mayor, or Mayor and Aldermen, in their Names, be taken to be the Act of the Corporation? if that cannot be, why should the Petition of the Common Council in their own Names be any other than their own Petition, as their Ordinance and By-law are theirs, and not the Corporation's? 12 H. 7. 25, 26, 9 E. 4. 39.

The Case of Corporations takes notice of their Power, as Common Councils, to exclude the Commonalty and the rest of the Corporation. The Act allows the Common Council's ordering Petitions. But where is it to be found that it was ever said or thought on before, that they could forfeit or dissolve the Corporation? Rep. 4. 77. 13 C. 2. cap. 5.

4. But supposing all that I have said against me; and supposing the Acts of the Common Council to be the Acts of the Corporation, and supposing those Acts, viz. the making the Ordinance and Petition, not justifiable or excusable; then the great Point will be, whether they or either of them are such Mis-carriages or Offences in Law, for which the Charter, that is the very Being of the Corporation, shall be forfeit? This I call the great Point, for I think it to be as great in Consequence as ever any at this Bar, as if *Magna Charta* were at stake; for in my apprehension, not only *London*, but all the Corporations of *England*, and the Government of *England*, will be deeply concerned in the Question. For let us but consider what a vast part of *England* is concerned in the Corporations of *England*:

(1.) Ecclesiastical, or mixt, as Archbishops, Bishops, Dean and Chapters, Parsons, Vicars, Universities, Colleges, Hospitals of all sorts.

(2.) All the Cities and considerable Towns and Boroughs in *England*.

(3.) The very Frame of our Government is concerned; for one of the Estates of the Kingdom, viz. The Commons in Parliament, consists of Knights, Citizens, and Burgeses; the Citizens and Burgeses are usually chosen by them that are free of the respective Cities and Corporations, and where not chosen by them, yet the Elections are generally under their Power and Influence, and the Return made by them.

Perhaps also a Peerage is a sort of Corporation. Perhaps the World it self, at least this little World, will no longer be able to subsist in Health than the due Order and just Temperament of the several Parts and Powers therein are preserved, and contain themselves within their own Bounds. The taking away or infeebling any principal Part brings a Lameness and Deformity, Pain and Disorder upon, and at length confounds the whole. The Laws answer their ends, whereof the principal is the Preservation of the Government, which preserves the Laws, they cannot subsist one without the other; therefore whatsoever it is that tends to the Subversion, or leaving

ing at Will and Pleasure, that which is so considerable in our Government as Corporations are, ought to be thoroughly considered.

The better to examine and consider this great Point: In the first Place, the Reasons given on the other Side are,

First, That if Corporations be not forfeitable for their Miscarriages, they will attempt and do extravagant Acts, raise Sedition or Rebellion, and there will be no adequate Punishment to their Miscarriages.

In answer to this Reason, I say that there is no illegal Act that they can attempt or commit, but that they are under the same Severities and Corrections of Law, as any other the King's Subjects not incorporate are. Though it be true, that the Corporation it self is only a Body Politick, an invisible Body, yet the Members of it they are visible. If they as Members of that Corporation commit or do any unlawful Act, they are punishable for it in their own private Capacities: If they make any Ordinance or By-law to raise Money unlawfully upon any of their Members, or others, the By-law or Ordinance is void: If they receive or collect any Money by it, the Receivers and Collectors are to answer it, they are to be sued as any other Subject. Suppose a Lord of a Manor or Market make an unlawful Order to collect or take Money from his Tenants or Copyholders, or unreasonable Tolls in his Markets; this Order is void in Law, and those that collect or receive any Money by it, are answerable for it, and the Parties grieved have their proper Actions and Remedies, and perhaps the Markets, or at least the Tolls, may be seized, or forfeit for this Miscarriage. This is the Provision that by Law is made against such Exactions, and this is just, and adequate, and reasonable. And if a Corporation make such Ordinance, By-law, or Order, and thereby there is the same Receipt or Exaction, the Subject hath the same Remedy, and there is the same Forfeiture of Toll or Market, as in Case of any natural Person, or Lord of a Manor, and the Provisions by Law made are just, and reasonable, and adequate, in this Case of the Corporation, as of the other. The like for any Offence that can be committed, it must be done by particular Members, and they must answer for it. And this is no new Opinion; 21 E. 4. 14. is express, that a Mayor and Commonalty, or other Body Politick, cannot commit Treason, although all the Commonalty do commit Treason; every of them is a Traitor in his own Person. I might cite other Authorities to this Purpose, but they have been already cited by Mr. Recorder in his Argument; and though the Counsel for the King would make these Books to be but some slight Opinions, yet unless they could shew some Authority, Book, or Case, to the contrary, their despising or little valuing what they can find no Answer for, will not render the Authority and constant Opinions of our Books of less Esteem than they ought to be. It is no Excuse if they do an unlawful Act, that they are Members of a Corporation, or did it as a Corporation. No Body can say this will excuse them; so that, notwithstanding their being a Corporation, they are as subject to the Law, be the Offence Treason, Sedition, or any other Crime or Offence, as any other the King's Subjects are; every particular

Member that acted or committed that Offence, is answerable to the Law for it. The particular Members, that commit the unlawful Act, and all that act under their Authority, are subject to the same Law as all other the King's Subjects. And therefore this Reason, that else there will be no Punishment upon them adequate to the Offence, and consequently a Mischief and Inconvenience, is but a Shadow, and nothing proportionable to the Mischiefs and Inconveniencies attending the Position of a Forfeiture of the other Side. But consider the Injustice that would be of the other Side, if this should be so: We know Assemblies determine their Acts by the major Vote, and great struggling there is, as we too frequently see in their Debates and Resolutions, and carried by Majority of one or two Votes, sometimes by Surprizes and undue Management, sometimes by Fear and Terror: Suppose an evil Act so carried or managed, is it Reason that all the whole Corporation should be thereby forfeit; and thereby all other Men, to whom they owe any Debts, must lose them, and the many Interests and livelihoods depending upon the Corporation, the Customs, Courts, Offices, and Privileges belonging to it, endless to enumerate, shall all be undone and destroyed?

Secondly, The next Reason that hath been given is, that it is a general Rule in Law, That the abusing or misusing of a Franchise, is a Forfeiture of the Franchise.

I answer, This is true in the Sense that the Books do say it; for if a Man misuse or abuse a particular Franchise, he shall forfeit that particular Franchise; but he shall not forfeit any other, except it be depending upon, and incident to it. And the Cases cited prove nothing farther: That when a Man hath divers Franchises not depending one upon another, and misuseth one Franchise, he shall not thereby forfeit the rest, but only that which he misuseth. 22 Aff. p. 34. Br. Fran. 34. And therefore the Cases cited, where the Abbot of Crowland and the Abbot of St. Albans had Franchises of Custodies of Gaols; one would not be at the Cost of a Commission of Gaol-delivery, the other did detain in Prison after legal Discharge, and Fees paid, 8 H. 4. 18. Rep. 9. 96. b. 24 E. 4. b. Inf. 2. 43. This was a Misuser of those Franchises and Forfeitures. So also perhaps if there be a Franchise that hath Incidents to it; as Pypowders to a Fair, Pillory to a Leet: An Abuser of the Incident, as the Court of Pypowders, or the not having a Pillory, may forfeit the Market or the Leet. If the Lord of a Market take outrageous Toll, he shall forfeit the Market, Stat. West. 1. cap. 31. Inf. 2. 219. But doth this prove, that if a Corporation have Fairs, Markets, Gaols, or Leets, and misuseth any of them, that the Body Politick, the Corporation, shall be forfeit? If this be so, the Abbots, they being Corporations, in the Cases of the Abbots of St. Albans, and Crowland, should have forfeited not only the Liberties of having Gaols, but the very Corporations, or Bodies Politick, of being Abbots; a Conceit never yet imagined. Can you say the City of London is either dependent or incident to the Markets; or on the contrary, that the Markets are so incident or dependent upon the Corporation, that they cannot be one without the other? Can this be said? If this cannot be said with Reason, how can then the taking these Tolls, admit they were

outrageous, and a Forfeiture of the Market, forfeit the Corporation? The making the Ordinance, supposing they made it, is but the Mean by which they took it. Your Books only prove the Abuse of a Franchise, a Forfeiture of that Franchise, or Incidents to it, and no other: But the Inference in this Case is not the Forfeiture of that particular Franchise, but of the Being of the Corporation that owned the Franchise; which is a plain *non sequitur*, unless you say the Corporation is incident to the Market. Arguments from general Rules are the most fallible, especially in Law; and that this is such, I hope most plainly to shew in the distinguishing the different Nature of Franchises; which I shall do presently, only taking in my Way their next Reason that they offer, and answer both together; which is,

Thirdly, That a Corporation is a Franchise; that it commenceth by Grant, and therefore is forfeitable and surrenderable, as other Franchises are; and if they be surrenderable, then also are they forfeitable.

I do agree, that *Franchise* is a large Word, it is of the like Sense of Liberty or Privilege. Therefore in *Quo Warranto* Franchises, Liberties, and Privileges, seem to be of the same Sense. To be a Subject born, and to have Liberty and Privilege of a Freeman, and no Villain, is a great Franchise; and therefore in Law, when a Villain is made free, we say he is enfranchised, he hath the Franchise, Liberty, and Privilege of being a Freeman. An Alien, he is made Denizen by Letters Patents, a Person attainted is pardoned by Letters Patents, and a Restitution in Blood granted, and made a new Creature. By these Grants the Alien and the Person restored have such Franchises, Liberties, and Privileges granted them, that though before they were not capable to take, hold, or enjoy, or act as natural born Subjects or Freeman; yet hereby they have such Capacity granted. Next, I think it will be granted that this Franchise, Liberty, Privilege, or Capacity, is not surrenderable or forfeitable, except only in Cases of Treason, or Felony, where they forfeit their Lives; by these Instances this is proved, that it is no true Position, That whatsoever is grantable is surrenderable, and if surrenderable forfeitable; which is one of the Reasons given by the King's Counsel, why a Corporation is forfeitable; for these Franchises or Privileges are by Grant, and yet not surrenderable or forfeitable; and this also shews that Arguments general and from general Rules are most fallible, and fit only to take weak Apprehensions. But next, consider what it is to be a Body Politick or Corporation. A Body Politick is framed and constituted in similitude or likeness of a natural Body, with Capacity to take, hold, and enjoy, and act as a natural Body, and can no more surrender or forfeit his Being, while the Members of that Body are subsisting, than a natural Body can while alive. It is only a Capacity framed and created in a Multitude to be and act as one Person; they are incorporate and made one Body Politick, that have Power, and Capacity, or Franchise of acting, taking, holding, and granting; this is their Franchise, admit it so, but differs from others. Franchises and Liberties of all other Natures are Estates and Inheritances grantable and conveyable from one to another, as other Estates are; this is no such thing, grantable or transferrable; other Franchises and Liberties af-

fect the King's Subjects, and are Privileges claimed, wherein the King and the rest of his Subjects not claiming the Franchise, are more concerned than in this of being a Body Politick; for other Franchises either convey some Profit from the King, as Felons Goods, Waifs, Estrays, Wrecks, or the like; or affect his Subjects, as Courts, Gaols, Returns of Writs, Fairs, Markets, and the like: But this of being a Body Politick is only a Capacity to be a Person capable of having and holding what may be granted unto it, and of granting and acting as a natural Body, and affects the King, or other his Subjects, no otherwise, than giving Capacity to take, hold, and enjoy what they can get, as other Persons capacitated may. Other Franchises, Liberties, and Privileges are distinct and separate Estates, and if any one be forfeit, as it may for Misuser, the rest are not; except Incidents and Appurtenances. But if the Being of a Corporation be forfeited, all their Estates, Lands, Goods and Chattels are gone at once: So that though you admit and call this a Liberty or Franchise, it is nothing like in its Nature to those Things generally known and understood by the Name of Franchises or Liberties; and general Sayings are generally to be understood of such Things as are generally so taken and called. If then there be such great and apparent Difference betwixt this of the being a Body Politick, supposing it being, in a general and large Sense, a Franchise, Liberty, or Privilege, and other particular Franchises, admitting that which is said, that the Misuser of a Franchise is a Forfeiture, holds generally true, yet it is not in every Particular true; where there is such apparent Difference and Reason to distinguish, as betwixt the Being of a Corporation or a Body Politick, which is only a Capacity, and other particular Franchises, which are Estates; there is also apparent Reason to distinguish betwixt one and the other, they being so much differing one from the other in Nature and Reality. But next, that this was never taken in Law to be such a Franchise, Liberty, or Privilege, as was comprehended under the general Meaning of Franchise or Liberty: By *Stat. of Gloſt* 6 E. 1. *Inst.* 2. 278. Writs were to go to all Sheriffs forty Days before the Eire, of general Summons, for all to come in at the Eire to claim their Privileges; and the second Day of the Sitting of the Justices in Eire a Proclamation made to the same purpose. In the Comment upon that Statute it appears, *Inst.* 2. 281, 282. that if the Party did not appear, his Franchises were seized into the King's Hands, *Nomine districtionis*, and if not replevied, sitting the Eire, they were forfeit or lost for ever. If the Party did appear, and did not claim, then they were lost for ever. In all the Proceedings in Eire there is no such Thing can be found, that the Corporations did come in and make Claims to their being Corporations or Bodies Politick, or that ever any were seized, if it be seizable, into the King's Hands, or was forfeit for not claiming. *Fulcher and Heyward's C. Palm.* 491. It appears, that the Dean and Chapter there surrendered their Charter, and all their Manors, Lands, Possessions, Privileges, Franchises, and Hereditaments, Spiritual and Temporal, and this with intent to surrender, that there might be a new Corporation erected; as is recited in the Letters Patents of new Erection.

In this Case, *Rep. 3. 75. And. 2. 120. Jones 168.* resolved, That by this Surrender the old Corporation was not surrendered. This Judgment doth conclude, and must be given, either because by the Word Franchise, and the other general Words, the Franchise of being a Corporation was not comprehended; or if the Word is sufficient, and did comprife it, that it could not by Law be surrendered. This I think sufficiently shews that Corporations were in Law as Persons natural are, and in like manner claimed, and that the being a Body politick, or Corporation, was not to be claimed, comprised, or meant within the general Word, Franchises, no more than the Liberty or Franchise of Denizen, or Manumission. Next, no Instance can be given of any Seizure of any Corporation, or Body politick; for any Forfeiture: Seizure of their Liberties, or putting Officers upon them, is quite another Thing, as I shall shew presently: So that these general Sayings in Law Books, that Misuser of a Franchise forfeits the Franchise, neither in Law or Reason extends to the Being of a Body politick or Corporation, but is applicable only to particular Franchises of other Natures; and the other Reason, that that which is grantable is forfeitable, is as fallacious; as before appears.

3. As for the Records cited to prove that the Corporation or Body politick may be forfeited, I will state those that are most effective, and do them Right therein.

Johannes Dennis, Mayor of *Sandwich*, P. 9. E. 1. and three more, were attached to answer *Domino Regi de placito transgr^o & unde Robertus de Stokko*, Sheriff of *Kent*, qui sequitur pro ipso Rege, complains that he had seitt his Bailiffs (naming them) to make Execution of the King's Writ, in *Villa de Stanore*, quæ est Baronia domini Regis, and that the Defendants with Swords drawn took away the King's Writ, and trod it under their Feet, and would not suffer it to be executed; unde dicit quod deterioratus est, & damnum habet ad Valentiam 2,000 Marks. The Mayor appears, and pleads to the Jurisdiction, that he ought not to answer this Matter, except in the Court of *Shipway*. The Sheriff replies, that *Stanore* is the King's Barony, belonging to the Barony of *St. Austins*, and relies upon a Record before Justices in Eire, where an Amerciament upon that Ville was formerly set. The Mayor refuseth to plead over. Then a Day is given over, then it is entred thus: *Posteaq; coram Domino Rege & ejus Concilii quia Barones de l' Cinq; Ports nec aliqui alii in Regno nostro possint clamare talem libertatem, quod non responderent Domino Regi de contemptu sibi facti ubi Dominus Rex eas adjornare voluerit; et quia prædicti Barones non protulerunt aliquas Chartas a Regibus concessas, in quibus non fuit excepta Regia Dignitas, consideratum est quod respondeant; & quia le Defendants would not answer any otherwhere than in Shipway, consideratum est quod babeantur in defensionem, pro convictis de prædicti. Transgr^o & Contemp^t. Et quia the said *John Dennis* is convicted of the said Offence, and the Fact of the Mayor, in those things, which touch the Commonalty, is the Fact of the Commonalty, consideratum est quod Communitas de *Sandwich* amittat Libertatem suam, &c. Then follows, *Postea*, in presentia of the Bishop of *Bath* and *Wells*, then Chancellor, and others, cum Assensu Regis, an Agreement betwixt the Abbot of *St. Austins*, the Men of *Stanore**

and *Sandwich*, de omnibus contentionibus. And then goes a long Agreement betwixt the Abbot and the Men of *Sandwich* and *Stanore*, concerning their Jurisdictions and Courts: *Et si aliqua pars contra concordantiam illam iuris vel facere, alia pars habeat suam recuperare per breve Domini Regis de iudicio exeunte de isto Recordo. Et pro hac prædicti homines vadant prædicti Abbati 100 Marks*, which the Abbot remits for 10 doliis Vini, prædicti 30 Marks, to be paid at the Feast of *St. John* the Baptist. This is the Record at large; and for the Extract in the Collections at *Lincoln's Inn*, whether it be of this Record, or any Execution that went out upon it, non constat: But that I think it could not be upon this Record; for the Record is not 30 Marks annuatim, as the Abstract is; and the Entry of the videtur at the Conclusion, quod iudicium extendit contra Barones quinque Portuum, & eorum Libertates, ut mihi videtur, that is not my Lord *Hale's* Note, nor doth it appear whose it was. Out of this Record how can a Man infer, that a Corporation shall be forfeit for the Miscarriage of the Mayor or Officer? How doth it appear from hence, that they should lose or forfeit their being a Corporation? By amittat Libertatem all that is meant thereby is their Liberty in *Stanore*, or the Liberty they claimed to be impleaded in the Court of *Shipway*; and the Note in the Extract, videtur quod iudicium extendit versus Barones, must be, I think, taken to be as to their Liberty in *Stanore*, or to be sued only in the Court of *Shipway*. I have taken the more Notice of this Record, because it hath Countenance of a judicial Proceeding; but as to all the other Records cited,

A Writ to the Sheriff of *Gloucester*, reciting, that the King, for Injuries and Contempts done by the Mayor and Commonalty of *Bristol*, the Liberty of that Ville by *Bartholomew de Baddlesmere*, Custos of that Ville; into his Hands had seized. 6 E. 2. R. Cl. m. 5. The Writ commands the Sheriff, that the Custos should have the Execution of Writs as the Mayor and Bailiffs used to have. And in the Times of *Henry* the Third, *Edward* the First, *Edward* the Second, and *Richard* the Second, there were frequent Seizures of the Office of Mayor; and the Kings did put in a Custos in the Place of Mayor, or made a Mayor, and these are called Seizures of Liberties.

King *Henry* the Third put in a Custos over *London*, which continued till the 54th of his Reign, and then was taken off, and the City restored to its Election. 49 H. 3.

Edward the First put in a Custos, and continued so to do till the 25th Year of his Reign, and then was taken off. 15 E. 1.

The 14th of *Edward* the Second a Seizure of the Office of Mayor by *Henry de Staunton*, and his Fellows, Justices in Eire in the Tower, and Mayors put in by the King till the 20th of *Edward* the Second, and then restored: But for that of *Richard* the Second, give me leave to digress, and give you the state of it out of the City Registers, which are more full than these cited.

A Writ from the King to the Mayor, Sheriffs, and Aldermen, commanding them to come with twenty four principal Citizens, before the King and his Council at *Nottingham*, in crastino Sancti *Johannis Baptistæ* tunc prox^o fut^o, and to bring sufficient Authority from the Commonalty to answer such things as should be objected. 16. R. 2. July 22. Lib. H. fol. 269. b. City Reg. They appear-

ed, and had a Letter of Attorney, *ubi pro diversis defectionibus in Commissione sua sub communi Sigillo, & aliis de causis*, the Mayor and Sheriffs were discharged of their Offices, and committed *diversis Prisonis*; and afterwards, the first of July, Sir Edward Dallingrigg, made Custos by the King, came to the Guildhall, and his Commission being read, he was sworn before the Aldermen, *secundum quod Majores ante jurare solebant*; the King also made the Sheriffs, and they were also sworn. This is also entred in the City Register, *Lib. H. fol. 270. b.*

It appears that the King first swore the Custos, and the Sheriffs, to be true to him, and also turned out the Aldermen. And that the Proceedings were before the Duke of Gloucester, and other Lords, by a Commission to inquire of all Defaults in the Mayor and Sheriffs, in the well governing of the City, awarded upon the Statute made by the King's Grandfather; and that they were convicted by their own Confession, and thereupon the Liberty of the City seized.

The Pardon and Restitution entred, and therefore it is recited, that the Proceedings were upon the Statute, and the Judgment was, That for the first Offence they should forfeit one thousand Marks; for the second, two thousand Marks; and for the third Offence, that the Liberty should be seized. 19 Sept. 16. R. 2. *Lib. H. fol. 272. a. ubi supra.*

The Statute 28 E. 3. cap. 10. enacted, That the Mayor, Sheriffs, and Aldermen of London, which have the Governance of the same, shall cause the Errors, Defaults, and Misprisions in and about the same, to be corrected and redressed from time to time, upon pain, that is to say, to forfeit to the King for the first Default, one thousand Marks; for the second Default, two thousand Marks; and for the third Default, the Franchises and Liberties of the City shall be seized into the King's Hands. And that the Trial of these Defaults shall be by Inquests of foreign Countries, and the Pains levied upon the Mayor, Sheriffs, and Aldermen. Upon this Statute were the Proceedings of R. 2. grounded.

The other side have likewise much relied upon another Seizure made of the Liberties of the City of Cambridge.

A great Riot committed by the Town upon the University, heard in Parliament by way of Petition, and Form of Articles exhibited by the Scholars against the Mayor and Bailiffs. Upon reading of which it was demanded of them, what they could say, why their Liberties should not be seized? After many Shifts they submitted themselves to the King's Mercy. The King thereupon, by common consent in Parliament, seized the same Liberties into his Hands, as aforesaid, and then granted divers Liberties to the Universities, and certain Liberties the King granted to the said Mayor and Bailiffs, and increased their former. These are the most substantial; it would be too tedious to repeat all, for there have been in those Days, but not since, many like Seizures of Liberties, as these; only general, but nothing particular to our purpose, and though not cited, I shall also mention those in *Crook. 5 R. 2. Rot. Par. N. 45. Inst. 4. 228.*

Certiorari to the Mayor of Fish; they disobeyed the Writ, and gave scurvy Words *Cr. 1. 252. Tyndal's Case*. and thereupon Mr. Noy cited two cases of Seizures of Liberties. The Bishop of Durham had contemned the King's Process,

and imprisoned the Messenger. An Information exhibited against him, the Offence proved; adjudged he should pay a Fine, & *quod capiatur*, and should lose his Liberties for his time; because *justum est quod in eo quod peccat in eo puniatur. 33 E. 1. Rot. 101.* Another in *Banco Com'* a Prohibition awarded to the Bishop of Norwich; and he communicated the Party that brought the Writ; 21 E. 3. *Rot. 46.* the Party brought his Action, adjudged against the Bishop; that his Temporalities should be seized till he absolved the Party, and satisfied the King for his Contempt, and that the Party should recover 10,000 *l.* Damages. I answer to them,

(1.) That they were all above three hundred Years ago, except that of 16 R. 2. which is above two hundred and ninety, and no such thing ever was done since; what stress or weight can be given to such Proceedings? To what Rules of Law, since known or practised, can we bring these Proceedings? Are they now legal Precedents for the like things to be done? The Writs out of old Records for the Ship-money, and the Knighthood-money, had as good Records to warrant them; and much more plain to the purpose than these. The Precedents of Edward the Second, and Richard the Second, either of their Lives, or of their Deaths, or of the Lives or Deaths of some of the Judges of those Days, ought, as I conceive, to be no Examples. And for H. 3. E. 1. E. 2. and R. 2. and those Times, they were Times of great Troubles and Disorders; and what was then done is no Rule or Precedent for this Court, or any other Court of Justice, to go by, unless by later Times allowed or approved. No Law-book or Report of any judicial Proceedings, either of E. 2. or of E. 3. or any later Book of Law, that I have yet heard of, or met with (and I doubt not but if there had been any, the King's Counsel would have made use of them) hath ever given so much Credit or Countenance to these Proceedings, as to take any notice of them. To make use of old Records or Precedents, the Grounds or Reasons whereof cannot now be known, to subvert any Law or Government established, is neither advisable nor commendable. But for further Answer to them:

(2.) As to that of 16 R. 2. that you see is grounded upon the Statute 28 E. 3. c. 10. and can signify nothing to the present purpose; for there, according to that Statute, they condemn the Mayor, Sheriffs, and Aldermen, upon their Confession, that they had misgoverned the City. The Mayor and Sheriffs being committed to Prisons, and this done before Dukes and Earls, by special Commission to that purpose appointed, and convicted by their Confession, for the first, second, third Offence, all at once, is this of good Authority in Law? And for the others, that of E. 2. was before Justices in Eire at the Tower, the Office of Mayoralty seized into the King's Hands, and replevied from Year to Year. And that Seizure that was made by King E. 1. for what Reasons or Grounds, or by what sort of Proceedings, doth not appear; all that doth appear of it is, that *de facto* Custodes and Mayors were put upon the City, but *quo jure* who can tell? We know these Times were Times of Trouble, in the Barons Wars. The Barons, Simon Mountford, Earl of Leicester, being their General, fought a Battle with the King at Lewes, and took the King and Prince Edward the first both Prisoners.

48 H. 3. The Barons differing among themselves, and the Earl of *Gloucester* joined with the Prince, who got out of Prison, another Battle was fought at *Evesham*, and the great Earl *Mouniford* slain; 49 H. 3. and then at *Wincheſter* by Parliament all his Party, and the Liberties of the City of *London* seized; and in such Times as these, and which followed in *E. 1. E. 2.* and *R. 2.* it is not to be marvelled if there were many Seizures and *Custodes* put on the City, it is more a marvel they were not destroyed. The Statutes made in these Times shew not only the Disorders, but that the Liberties were greatly infringed, or else there would not have been Statutes to confirm them; whether the infringing or seizing were the Cause or Effect is hard to know; but just before in those Times there were undoubtedly many extravagant Acts of all sides, which produced *Magna Charta*, made the 9 H. 3. for confirming of the Liberties and Privileges not only of *London*, but of all other Towns; and after these Times, in the three Reigns of the three succeeding Kings, how many other Statutes for confirming the Liberties and Privileges of the Cities and Towns were made 1 H. 4. *cap. 15*? The Penalties and Forfeitures imposed by the Statute 28 E. 3. *cap. 10.* upon the City of *London* put into the same Condition with other Cities and Boroughs as to Penalties and Seizures. A Statute confirming to all the Cities and Boroughs the Liberties and Franchises, which they by former Grants or Confirmations had, *viz. 4 H. 4. cap. 1.* confirmed in like manner by 7 H. 4. *cap. 1.* Again confirmed in like manner by 3 H. 5. *cap. 1.* Again confirmed by Statute of 2 H. 6. *cap. 1.* By which it appears what a Sense and Memory they had of the Seizures that had been of their Liberties and Privileges, that they never thought them sufficiently confirmed; but they were sufficiently confirmed; for from the time of *R. 2.* to this Day we do not find any Seizure of any Liberties or Franchises, or *Custos* made or put upon them. That which was in those Days of Violence done, shew them the worst of Times, but are no Precedents for the best. But next,

Supposing and admitting these Records of these Times of good Authority, and as authentick Precedents as can be, they are so far from proving against me, that I hope to make it most plainly to appear, that they are strong and plain Authorities and Evidence against them, and for me. It is ordinary in disputing or arguing to lose the Point disputed or argued. That I may not commit to great an Error, but may evince and make plain what I have affirmed, give me leave to look back to the Information and Replication, and from thence to make the Points that we argue, single, clear, and open. The Information, that faith, that we usurped upon the King to be a Corporation and Body Politick, but in truth are none. The Bar sets forth the Title to be a Corporation by Prescription time out of Mind. The Replication, that endeavours to avoid the Bar, by allowing that we were once a Corporation lawfully; but that by our Miscarriages we have forfeited our being a Corporation, and thereby became none, and after that usurp'd to be one. So that, that which the other side maintains, is, That by our Miscarriages we have committed a Forfeiture of our old lawful and rightful Corporation. This I deny; the Affirmation is upon them to prove, and they producing no Record that expresses a

ny such Forfeiture of a Corporation, but only Records generally saying, that the Liberties should be forfeited or seized, the Question is, What the Meaning is in these old Records of forfeiting and seizing Liberties? Mr. Attorney was pleased to take it, and so did Mr. Solicitor, as I think, that forfeiting and seizing were much one. I shall not dispute that; but whether in any of those Records the Corporation or Body Politick were by these Words taken to be forfeited? Mr. Attorney was so careful to avoid the Consequences of a Forfeiture of a Corporation, which are so great and destructive; that he would not by a Judgment in a *Quo Warranto* against a Corporation have the Corporation determined, no more than he would by the Forfeiture *ipso facto* have it determined, but that there should be some Seizure into the King's Hands; but what that is, or how to be understood, I cannot imagine. For if the Corporation be not to be dissolved and determined, in whom should it rest or remain after such Forfeitures, or during such Seizure? Shall it after Forfeiture remain in the same Persons that it was in? Shall it subsist, live, and act as before? or shall it be in *Limbo patrum*, or in *Nubibus*? Is a Corporation transferrable to any other Person or Persons? Can a Corporation be conveyed or transferred? that is impossible; and so it appears in the Dean and Chapter of *Norwich* Case, and *Fulcher* and *Heyward*, and 1 *Inst.* in the Case of the Homage Ancestral before cited. That a Corporation is not transferrable from one Body of Men to another; therefore the King cannot possibly have it, nor can he grant it. Ay, but saith Mr. Attorney, it shall be seized, and in the King's Hands; what is meant by these Words? How can it be in the King's Hands, if not transferrable? Next, What shall the King do with it, shall he grant it to others? No, that is impossible; by the Cases cited, it so appears the King may make a new, but he cannot grant an old Corporation, because not transferrable. Then if he cannot grant, if it be not transferrable, if a Corporation or Body Politick be by Law framed in similitude of a natural Body, then it is no more transferrable than a natural Body is. The Body Politick cannot be taken out of the Hands of the Persons Incorporated. From hence then, if this be so, it will follow of necessity that the Corporation, if it cannot be transferred to the King, or by the King's Grant, out of the Persons in whom it is, to others, it must remain where it is, or be dissolved. Next, that which I shall shew is,

That by the Words *forfeiting* and *seizing* Liberties in those old Records, it cannot be meant forfeiting and seizing a Corporation or Body Politick; they still continued. But that which is the true sense of these Words, forfeiting and seizing Liberties in those Records was, if the Abuse or Misuse were of a particular Franchise, as of Courts, Prisons, Markets, or the like, the King had them forfeited to him. If the Abuse were by a Corporation, they acted by their active Parts, by their Mayors, Bailiffs, Sheriffs, Coroners, or the like; the King seized these Offices, turned the Corporation Officers out, and put others into their Places. This was the Course in the Eires, where these Seizures in those Days usually were: But for seizing Corporations as forfeit, there hath been no Instance of it in any time; but the contrary is most evident. For the Corporations, notwithstanding the supposed Forfeitures or Seizures, remained

remained still in being; and this is evident even to sense. The Seizures, that have been mentioned, have been of London, Bristol, Gloucester, Cambridge, and Cinque-Ports, Ipswich, and Winchester.

I offer to your Consideration, whether these Cities of London, and Bristol, Gloucester, Cambridge, and also the Cinque-Ports; ever since, have not continually in all Pleadings, Claims, and Titles, made themselves a Title by Prescription? Are they not by Prescription to this Day? Do they not claim their Markets, Tolls, and all their Privileges by Prescription? Do not the Acts of Parliament that immediately follow these Seizures made by H. 4. H. 5. H. 6. in the Times succeeding, all confirm their Privileges? Not a word of granting new Privileges, but confirming the old; which shews plainly, that in those Days the Corporations were not thought or imagined to be determined or dissolved. By these Seizures, or supposed Forfeitures, the Enjoyment or Possession, for the space of three hundred Years, is Evidence sufficient of their remaining and being Bodies Politick by Prescription, which they could not be, if they were forfeited, as pretended. For by Forfeiture they must mean the losing their Corporation, or being divested; no other sense can be, or ever was of Forfeiture. Could they forfeit them, and yet keep them? Could they lose them, and yet have them? If they could not, then it is plain that since they always have had them, they never forfeited or lost them. But for farther Evidence hereof, I shall make it most plainly to appear, that during the very Times of these Seizures the Corporations remained and acted as Corporations; and that at that time it was never thought or imagined that during the Seizures the Corporations were forfeit; all that was done was, that the Election of their Mayor, or of their Sheriff, was *de facto* taken from them, and either a *Custos*, or a Mayor, by the King put over them, and continued till those Kings Displeasures were over, and then they chose their own Officers again: But no thought then of forfeiting the Corporation. By the City Books, as well as Records, this is most evident. The putting a *Custos* by King E. 1. continued for the space of eleven Years, from the 15 E. 1. to the 26 E. 1. and then they chose their Mayor again. By the City Books it appears, that their Court of Hustings all along continued, as at other times, Aldermen all along. *Lib. A. fol. 50, 51, 135.*

Radulphus de Sandwyco Custos Civitat' London, Henricus le Walleys, and others, Aldermen (naming them) & universalis Communitas ejusdem Civitatis, make a Conveyance of a House to John de Bagwell, 18 E. 1.

The Court of Aldermen holden before the *Custos* and Aldermen, 18 E. 1. *Lib. A. fol. 110.*

With the King's Remembrancer in the Exchequer, *Cives London venerunt coram Baronibus, & presentaverunt Jobannem de Canluar' & Willielmum de Betoynne ad respondend' pro Civitat' prædictæ & Com' Middlesex, de his quæ ad Officium Vicecomitis pertinent, & ad hoc faciend' præstiterunt Sacramentum, 16 E. 1. Ro. 1.*

Ibidem, The Presentment and swearing two other Sheriffs, 18 E. 1. Ro. 1.

Ibidem, The like, 21 E. 1. Ro. 3.

Ibidem, The like, 23 E. 3. Ro. 3.

Auby le Artbeir attachiatus fuit ad respon'd' Communitat' Civitat' London' de placito, for that he,

being no Freeman, merchandized in the City, 21 E. 1. *Lib. C. fol. 19. b.*

Another like Suit against an Un-freeman. *Lib. C. fol. 7. b.*

A Writ of Right in the Hustings, brought by the Corporation. *Communitas Civitat' London per Radulphum Pecoocs Attornatum suum petit versus Hugonem Episcopum de Bedlam unum Mes-suagium, &c. 22 E. 1.*

All the Aldermen, and twelve Citizens were called before the King and his Council, and the King restored them the Election of their Mayor, and they chose *Henry de Gabeys* Mayor. And on Monday following comes the King's Writ, whereby the King, for good Services, *reddidimus & restituimus Civibus London Civitatem, una cum Majoritate & Libertatibus suis, quas certis de causis dudum capi fecimus in manum nostram.* So that hereby it most evidently appears, the Corporation was not forfeit, lost, or dissolved, only a *Custos* put over them, which acted in the Place of Mayor; and when removed, they chose their Mayor again. 26 E. 1. *Lib. B. fol. 38.*

The Liberties not forfeit, only seized into the King's Hands; so saith the Writ *dudum capi fecimus in manum nostram.* The Record of Cambridge I have looked upon; it plainly appears in it, that the Corporation was not forfeited and dissolved, as you suppose: For it appears, that when they submitted to the King to do with their Franchises what he pleased; yet it was *salvo* to the Mayor and Bailiffs, their Response to all other Matters. And afterwards, at the same Time, the King grants to the same Mayor and Bailiffs divers Liberties, by which it appears that the Corporation was not forfeit, but still in Being, notwithstanding the Seizure and Forfeiture.

The Seizure that was by King *Edward* the Second was in no Sort any Forfeiture or Determination of their Corporation; but either under a *Custos*, or under a Mayor put in by the King.

The *Custos*, Aldermen, and Commonalty appeared, and turned out some of their Aldermen. *Lib. E. fol. 11. b.*

They chose and swore their Sheriffs, and by this Time they had a Mayor again; but the Office of Mayoralty, granted them by the King. *Lib. D. fol. 6.*

The King grants to *Nicholas de Farrington* the Office of Mayor *quam diu nobis placuerit.* 16 E. 2. *Lib. E. fol. 146.*

They had a Writ restoring to them the Office of their Mayor again, 20 E. 2.

Then for the Seizure of 16 R. 2. that continued but from the 22d of July unto the 19th of September following; and the Form or Colour of Law that they had for that, was the Statute of 28 E. 3. and the *Custos* put in sworn at *Guildhall*, and took the Oath of the Mayor, as appears in the Book which I cited; where it is mentioned to be upon that Statute. *Lib. H. 269. b. 16 R. 2.*

But for farther Evidence; in the Treasurer's Remembrancer's Office in the Exchequer, 4 E. 3. Ro. 2. in *Bago de Quo Warranto in Itinere Northampton & Bedford, Quo Warranto versus Villam de Bedford*; in that Record are these Things: First, that the Village of *Bedford* had not at the last preceding Eire made Claim of divers Liberties, and thereupon in that Eire adjudged, *quod omnes Libertates non clamat' capt' fuissent in manus Domini Regis*, and had not been replevied, but

the Corporation not seized. Thereupon the Corporation offer a Fine of eight Marks to the King, *pro licentia clamandi* their Liberties, and admitted to fine: But then it appeared, that the Mayor, and the Coroners had sat in Judgment, and condemned Men for Felonies committed out of the Jurisdiction; and thereupon *Consideratum est, quod prædictæ Libertas de Infangtheife, & Officia Major, Ballivorum, & Coronatorum ejusdem Villæ capiantur in manus Domini Regis. Sed quia cætera Libertates & Consuetudines Villæ prædictæ absque Ministris pro communi utilitate Populi ibidem nequeant conservari*, the Court puts *Johannem de Tound Custos, Johannem Wymound and Richardum Roundes* Bailiffs, and *Nicholas Astwood and William de Knight* Coroners, who are all sworn to execute those Offices, and to answer the King the Profits. Hereby it appears, that the Course was not to forfeit or dissolve the Corporation; they never were so unreasonable; for hereby all their Lands and Goods, and all the Debts owing by them, or to them, would all be lost: All they did was, they put in Officers to preserve the Corporations. So that I think there is nothing more plain, that though the Liberties were seized, and that Officers, *Custos*, or Mayors, were put upon them; yet the Corporations, or Bodies politick, or their Liberties, were not forfeit, or determined. If they had been either forfeited, or determined, could the Writs of Restitution have set them up again? The old could never be restored or set up again, but by Act of Parliament; they might have had new Charters, and have been made new Corporations, but the old could never have been restored, if once forfeited, as now imagined. So that the Point betwixt us is, Whether the Records of *E. 1. E. 2.* and *R. 2.* of Forfeitures and Seizures of Liberties, supposing the Causes or Offences for which they were seized were very great and provoking, as in all Probability they were, do prove that thereby the Corporations were forfeit, dissolved, or determined: It appears they were not forfeit. You can never avoid it. If abusing the Franchise or Liberty of being a Corporation be a Forfeiture, as you affirm, and that they were seized for being forfeit; then the Offences that were committed by these Corporations in those Princes times, were Forfeitures, and consequently the Seizures dissolved the Corporations. They could not forfeit and lose their Corporations, and yet keep them. And that they still had their Being, is most evident by the Records of those Times, shewing, that they acted, and enjoyed their Corporations under those Seizures, only a *Custos* instead of a Mayor, all other Things the same. That they have in all Ages ever since been allowed to be Corporations by Prescription, never denied or questioned. That the Acts of Parliament immediately following, confirming their Privileges, never questioned their having them. Never any Thoughts of making void any Forfeitures by these Acts, or any new Grants, but always pleaded by Prescription. These Things plainly shew, that the Offences committed in those Times did not forfeit the Corporation; and all that dark Authority they have out of those Records is directly against them, proves only that these Abuses gave only Cause of Seizure of some Offices, but no Forfeiture of the Corporation, that still continued.

Having thus answered those old Records, and

shewn that they are of Authority for me against them; and since it hath been stirred in this Case, whether a Corporation, or Body politick be surrenderable, or not, and insisted upon by the other Side that it is, and from thence an Argument drawn to prove, that if surrenderable, it is forfeitable: Whether it be surrenderable, or not, perhaps is also doubtful, so that I think a Man cannot argue from it any thing. First, I am sure there is no great Reason why it should be; for since that Men that are of the Corporation take, upon their coming to be made Free, an Oath to preserve the Rights, Liberties, and Privileges of it; and since the active Members are intrusted for all the other Members that elect and choose them, and also for their Successors; I cannot see how a Man can satisfy himself in so doing.

Sir *James Bagg's* Case, *Rep. 11. 98.* they forfeit their Freedom by doing contrary to their Oath and Trust. If every Freeman by his Oath and Trust be obliged to seek the Benefit of the Corporation, to surrender is against the Oath. The Law seems to have a care of preserving Corporations; and therefore provides that the taking any new Charter, though there be many Alterations in Offices and Names, yet doth not surrender the old. But were it of any other Franchise, the taking anew of the same thing is a Surrender of the old.

Dean and Chapter of *Norwich* Case, *Rep. 3. 73.*

Fulcher and *Heyward's* Case seems a strong one to prove it not surrenderable, *Jones 266.* And though the Bishop did not in that Case join in the Surrender, that cannot hinder; because the Bishop is no Part of the Corporation, and therefore cannot hinder them to surrender, if they will.

A Ville incorporate by the Name of Bailiffs; *4 H. 26. 22. b.* The King *de novo* incorporates them by the Name of Sheriffs; are their Privileges that they before had, gone? No, *Dieu defend*, saith the Book. But this being not my Question, I intend not to debate it thoroughly, but to keep to the Point of a Forfeiture of a Body politick or Corporation, and farther to examine the Reasonableness and Justice of this Doctrine of Forfeiture, and see how adequate and just it is; for that is the thing, I perceive, desired.

First, Their Position is, That a Corporation, or Being of a Body politick, is a Liberty or Franchise, and if abused or misused, is forfeited, determined, and dissolved.

That I may a little understand this Position, and consider of Abuse and Misuse, and of the Extents and Consequences of it: By Abuse or Misuse, every Act that a Corporation doth, that is not justifiable by Law, is, as I take it, an Abuser or Misuser. If a Corporation receive any Money, that is not due to them, if it be by Virtue of any By-law, that is a Forfeiture, though it be but a Groat. What if they by their Common Seal command their Servant to enter into such Lands, or distrain such a Man's Cattle for Rent not due; is not this a taking upon them to oppress the King's Subjects, and to extort from them their Lands or Moneys where not due? This is a Misuser. A Body politick, as I have said, is but a Person created in resemblance of a natural Person, to have a Capacity to take, hold, and enjoy to particular Ends and Purposes. And hold or enjoy is not possible, without acting; and all that act must

of necessity be subject to Errors sometimes, in their Actions, as natural Persons are. And must it be so penal to them, that every Error, Misuser, or Abuser, must be a Forfeiture? Can it be reasonable or just in Law that this can be? Laws are made for Preservation, not for Destruction; if every Abuser or Misuser forfeit, be it a small Transgression, is it either reasonable or probable that any Law shall punish it with Destruction of the Body? The greatest Offence, be it Treason or Rebellion, or the least illegal Act, Offence, or Misdemeanour, must have the same measure of Punishment by this Rule; and the Law then doth not distinguish. If a natural Body, or Person, hath a Market, and orders his Servants to take such Tolls, and he takes them; what would this Crime be, besides Forfeiture of his Market? Why should a Corporation then not only in such Case, or for any Offence or Miscarriage to the value of a Penny, forfeit and lose, as in the Case of High Treason, his Life or Being, Lands, Goods, and all? This cannot be agreeable to any Rules or Reason of our Law; and therefore I take it, it cannot be the Law. The next thing I design to insist upon is,

Secondly, The Mischiefs and Inconveniencies that must attend this Doctrine or Law of forfeiting and surrendering, if the Law be so.

Let us then consider, whether this at one stroke do not make all the Corporations in *England*, of all sorts, forfeit at once, and perhaps many Years since. Is there any Corporation in *England* that hath not offended or transgressed? all manner of Corporations fall under this Rule. If they have transgressed or done any such Act as makes a Forfeiture (as every Miscarriage, for any thing I can see to the contrary, doth) whether the Corporation be *ipso facto* dissolved by the Offence committed, or else by the Judgment, which must relate to the Offence, to avoid all mean Acts done by the Corporation; all that they have done since such Miscarriage, they have done without right; and all that they think they have a Title to, as a Corporation, they are mistaken in, they have none. Perhaps if a Parliament should be called, those forfeited Corporations can lawfully send no Burgesses. I do not know whether I am mistaken, or not, I only offer this to Consideration amongst others: As (give me leave to venture a little farther upon these Considerations of Surrenders and Forfeitures of Corporations) can a Bishop, Dean and Chapter, Prebendary, Parson, &c. surrender his Corporation or Body Politick? If they can, most of them, perhaps, are of the foundation of the Crown, and had their Lands from thence. We have many Statutes made to restrain their Alienations: Those of Queen *Elizabeth* did not extend to hinder their Alienations to the Crown; but perhaps, out of hope of Preferment, they aliened to the Crown till the Statute of 1 *Jacobi cap. 3.* took away that Power also of conveying to the Crown: Can these forfeit the Corporations? Perhaps we are Sinners all, or at least, as the Balance at some time or other may be holden, may be found too light: We are upon a point that goes to posterity; Fear, and Favour, what may it do, and what may it not do? If they may surrender or forfeit, what effects may this have upon the whole Ecclesiastical Estate? If this had been known in the Days of King *Henry* the Eighth, perhaps there would

have been no great need of Acts of Parliament to make him Head of the Church, or to have dissolved the Monasteries. Suppose that Colleges, Hospitals, and other Corporations founded for Charity, can surrender or forfeit; the present Masters and Fellows, and the Heirs of the Donors may truck; what effect may this have upon them? what ways may they find out? Also Cities and Boroughs; what Divisions and Contentions hath it already produced, some for surrendering, others for defending, what Animosities are about it? The end of the Law is to preserve Peace and Quiet. Divisions and Dissensions frequently end in the Destruction of both Parties. The Citizens and Burgesses are, I think, three parts of four of the House of Commons. It is considerable what Effects this may have in Parliaments, our Laws and Posterity perhaps not a little concerned herein; and if so, surely this is a great Case. But if only the City of *London*, give me leave to see what the ill Consequences and Mischiefs will be. Arguments from Mischiefs and Inconveniencies are forcible Arguments in Law. So saith *Littleton*, and my Lord *Cook* upon *Littleton*; and Men must be desperate and sensual that despise future Mischiefs and Inconveniencies, and many other places there cited. *Inst. l. 1. 11. 60.*

1. All their Lands will be gone and revert to the Donors, and their Heirs. By Dissolutions of Corporations, all their Privileges are gone, and their Lands revert to their Donors, or Lords, of whom they were holden. *Jones 190 F. N. B. 33. k. Inst. 113. b.*

2. All their Markets, Tolls, and Duties, that they claim by Prescription; whereby the Government, and the Honour of the City, the Publick Halls, Gates, Prisons, Bridges, and other Edifices, are in a great Measure maintained.

3. All the Debts owing to the City, and all their personal Estate, by the Death or Dissolution of the Corporation, will be gone; but who shall have them? Perhaps, *non definitur in jure.*

4. All the Liberties and customary Privileges that the Freeman claim, *viz.* to have customary Shares in their Husbands or Fathers Estates; to be exempt from Tolls in other Towns, Ports, and Markets; to exclude Foreigners and Unfreemen from using their Trades in *London*, and many others.

5. All the Acts of Parliament, that give particular Powers and Authorities to the Lord Mayor and Aldermen, or Common Council, or Corporation, respecting either the Government or Justice of the City; as about Ministers, and Payment of their Dues, Buildings, Paving of Streets, Sewers, Insurance Office, and many others.

6. What shall become of the Orphans, and all the Monies and Debts the City owes, and all the Charities in the City? We have seen the City burnt, and may remember what a Swarm were unhived thereby; but we never yet saw it dissolved, nor are the Consequences measurable. And though it please his Majesty upon the Dissolution of this, to grant a new Charter, yet it will be impossible any of these Things can be preserved: Their Lands, Estates, Debts, Privileges, Customs, are all Personal,

and annexed to the Corporation, and must live and die with it; the said Acts of Parliament are all fixed to this Corporation, and so are the Charities, and cannot, as I conceive, be ever transferred to any other to be new created. A new Corporation can be in no Succession or Privity with the old. If a Body politick be once dissolved, though a new one be founded of the same Name, that can have no Succession to the old, nor come in Privity to it: Therefore is it that in the Dean and Chapter of *Norwich's Case*, and in *Fulcher and Heyward's Case*, the Preservation of the old Corporation is insisted on. *Inst.* 1. 102. b. If every Abuser committed by a Corporation be a Forfeiture, Determination, or Dissolution, is there any one in *England* not forfeited and dissolved? Abuse is a Word of a wonderful large Sense: When the Law speaks of a Franchise abused or misused, it is applicable to a particular Franchise, as to a Market, Court, or the like; and if that Franchise be misused, or abused, in Oppression or Misuse, contrary to the Ends of it, some Certainty there is in it: But the Abuse of a Corporation extends to all its Acts, and all Estates of the Corporation; and all the Privileges of all the particular Persons, and all that are concerned in them, are Sufferers for every Abuse, or Misuse, or Misact, or Trespass, how small soever. Who can tell in the Actions of a Person what may be taken to be ill or illegally done, or an Abuse? Who will trust a Corporation, if its Duration and Existence be so fickle and infirm, that every Abuser or Misuser shall forfeit it? There will be no need of Officers to be amoved, thereby to determine this Corporation at Will and Pleasure, this Position contains enough to do all. These great Consequences, attending this Doctrine of Forfeiture, are Reasons to prove the Law otherwise.

But saith Mr. Attorney (if I understand him) We do not intend to destroy the Corporation, though we say in our Pleading, that you have forfeited your old Corporation, that you have without any lawful Authority usurped upon the King, and pray in our Replication, that *de Libertate, Privilegio, & Franchesia illa (viz. the being a Corporation) abinducantur & excluduntur.* These are but Words of Form, we only will lay the King's Hands gently upon it, and seize it, but the Corporation shall not be destroyed or dissolved.

In answer, this is wonderful, and a great Compliment to the City, as I take it; let us not flatter or deceive one another. We are not now in the irregular Days in the Records mentioned, nor in such sort of Proceedings as in those distracted Times. Let us not go by blind Conjectures, out of old Records, and bring in unknown Ways. We are now in a *Quo Warranto*, which, as Mr. Attorney truly saith, is in the nature of a Writ of Right; and a Writ of Right is the highest Writ that is in the Law; and the Judgment therein, and in this *Quo Warranto* must be conclusive to all Parties. If given against the Defendants, it must conclude them for ever, and dissolve their Corporation; and if given against the King, he shall never hereafter bring it in Question for any Cause precedent. *Rep.* 9. 28. *Inst.* 2. 282, 495. *Cook's Entries* 527. D. hath a Precedent of it. *Consideratum est, quod the Defendant de & in Libertatibus,*

Privilegiis, & Franchesiis præd. in Informatione prædictæ Specifical' nullo modo se intromittat, sed ab eisdem penitus excludatur. The like against *Ferrers*, and the *Virginia Company*, and many others may be found. *M.* 21. *Jac.* 1. r. 9. The Court cannot alter the Judgment, it will be erroneous if they do. And to talk of a Judgment of a Seizure, what is the meaning of it, or such Judgment? Is it final, or not final? The Court must give a final Judgment, that the Party, if he think fit, may have his Writ of Error. The Court will not take any of your old Records to go by, if any such are to be found, that would warrant any other Judgment: Therefore a Seizure, without such a Judgment, that determines the Corporation, cannot be any way brought to pass, as I believe, nor can I understand in whom, by your Seizure, you would have the old Corporation to subsist. Transferred from the Persons, in whom it now subsists, I think is impossible, but dissolved by your Judgment it may be: And I hope your Lordship will not be induced by singular unwarrantable Things, that a Judgment should be given that shall neither dissolve the Corporation, nor continue it, that shall neither be for Plaintiff, or Defendant, that shall leave the Corporation neither alive nor dead, but in *Transitu*, or *Limbo Patrum*: A Judgment, *quod capiantur, or quod Libertates & Franchesiæ prædictæ seisiantur in manus Domini Regis.* Was there ever any the like? What shall be understood by it? Shall we be afterwards a Corporation? Shall our Magistrates continue? Shall we have our Lands, Markets, Tolls, Customs, or Franchises, or not? Or shall we be none, and yet not dissolved? I must confess I am confounded in these Notions.

Next, as to the Authorities in Law for me:

1. I take it to be a great Authority for me, that there is no Precedent, or Judgment, or Book Case, produced or found, that ever a Corporation was forfeited. It lies upon the other side to produce it, or shew it; and no doubt they would, if there had been any, but there is none by the Authorities they cite; you may easily perceive, any sort would not be omitted.

2. The Nature of a Corporation, as our Books do describe it, shews it not forfeitable. I take it plain out of the Case of *Sutton's Hospital*, and the other Books there cited. *Rep.* 10. 92. b. 21 E. 4. 72. A Corporation aggregate is invisible, immortal, and rests only in Intendment and Consideration of Law, cannot commit Treason or Felony, be out-lawed, excommunicate, hath no Soul, cannot appear in Person, cannot do Fealty, cannot be imprisoned, not subject to Imbecillity or Death. *Br. Corp.* 24. 34. They cannot commit any actual Trespass or Disseisin, except under their common Seal, by Command, Precedent, or Assent subsequent: When our Books say, that they are a Body Politick, and rest or have their Being in Intendment or Consideration of Law, thereby is meant, that they are by Law enabled to act to particular Ends and Intents answerable to their Ends and Creations. Their Ends or Creations are only to be subservient to the publick Good, and Government, and Preservation of the City or Town incorporate, and of the Members thereof. And if there be any Act done by the Members, that are the active part of such Corporation, to any other Intent, End, or Purpose, this is not the Act of the Corporation,

but of the particular Members, and they only are answerable for it. And as to particular Offences and Miscarriages in this Case alledged, it cannot be denied, but that the particular Members are answerable for it; and if they, then according to all Books, they ought not to be doubly chargeable or answerable in both Capacities. And the Argument cited out of *Bagg's Case*, of a Freeman convict of Perjury, and thereupon disfranchised, doth not prove that they shall be punished in a double Capacity; for the Corporation is not thereby punished, but preserved. The Being of a Body politick is only a Capacity, and in resemblance of a natural Body, and no more forfeitable than a natural Body. It is seizing and forfeiting of Liberties, that we meet with, that is such as are generally spoken of; as Markets, Courts, Jurisdictions, and the like: And in the old Records, by seizing the Liberties of a Corporation is meant the taking from them their Officers, and putting in others upon them for a Time. But a forfeiting, dissolving, and determining the Body politick, never was yet done or known, nor, as reasonable to believe, ever entred into any Man's Thoughts till now; for I have already shewn that Offences and Miscarriages, that were committed by the Corporations in those troublesome Times of *E. 1. E. 2. and R. 2.* for which their Liberties were seized, were not Forfeitures and Determinations of those Corporations, they all remain Corporations by Prescription to this Day: And I have also taken Notice, that the Acts of Parliament, that were made in the succeeding Kings Reigns, of *H. 4. H. 5. and H. 6.* are only Acts of Confirmation to the Cities and Boroughs of their Liberties and Privileges. From that Time till within these three Years, I believe it never entred into any Man's Thoughts that a Corporation was forfeitable; for farther Proof whereof divers other Statutes, and the whole Series of Matter is Argument.

The Statute 15 *H. 6. cap. 6.* that provides against Abuses and Exactions made by Societies incorporate, by their By-laws and Ordinances, and appoints a Forfeiture of Ten Pounds, and of their Power to make By-laws: To what end should this be, if the Corporations themselves were forfeited, or thought so to be?

The Statute of 19 *H. 7. cap. 7.* recites the Statute of *H. 6.* and the Exactions and Abuses by Fellowships, by their By-laws and Ordinances, and appoints a Penalty of Forty Pounds if they exact Money by an unlawful and unwarranted By-law, not examined and signed by the Chancellor and Chief Justice.

The Statute of 12 *H. 7. cap. 6.* sets forth grievous Exactions by the Fellowship of Merchant Adventurers, by their By-laws, and imposeth a Penalty for the future.

The Statutes 22 *H. 8. 4.* 28 *H. 8. 5.* shew like Exactions by Corporations upon Apprentices by their Ordinances and By-laws, provides Remedy, and enacts Penalty. If in those Times it had been thought or imagined that a Corporation had been forfeitable, every of these Offences forfeited it, what need farther Remedy? In the Case of *Hoddy and Wheehouse*, of excessive Toll by the Town of *Northampton*, *Moore 474. 39 Eliz.* In the *Quo Warranto* against a Corporation, though the Question was concerning their taking Toll, and whether they had

forfeited their Market, or only their Toll; no Thought of forfeiting their Corporation was ever mentioned. So that I think I may conclude with the tumultuous Times of *E. 1. E. 2. and R. 2.* what was then done, doth plainly shew the Corporations were not forfeit or dissolved: That by all the Acts of Parliament, and Proceedings in almost all the Reigns of any Length or Duration, from that Time to this very Case, the Opinions and Thoughts of Men were otherwise; as by the Statutes and Transactions appears: Not one Opinion, Book, or Authority, produced, or to be found. The great Concern not only of this great City, but of all other Cities, Towns, and Corporations, Ecclesiastical and Temporal, all depend upon it. And which is more than all, the very Government by Law established will be in great Danger of Alteration by it.

I have argued long, and tried your Lordship's Patience; the weight and length of the Case, and rareness of the Matter, there never having been the like before in any Age, will, I hope, excuse me. But besides the whole Frame and Foundation, that the other side have laid, being all built upon general undigested Notions, as I take it, *viz.* that Abuser and Misuser of Liberties forfeits them, without distinguishing betwixt one thing and another; that the Words forfeiting and seizing Liberties, found in old Records, should be Authorities to prove forfeiting Corporations or Beings of the Body Politick, though no such thing then, or at any time since, till very lately, was ever thought on or imagined: It was necessary for me to open and set forth these general Notions, and to explain and distinguish; which, I hope I have done, that it may appear what the sense of them is, how far they agree with Law and Justice, and how far not. And if, in the doing hereof, or the setting out the repugnant or inconsistent Matters or Opinions arising in this Case to maintain this *Quo Warranto*, I have expressed my self in any other manner than became me, I humbly beg pardon for it; and that it may not reflect upon the Cause, nor prejudice it.

Upon the whole Matter, if this Information brought against the Body Politick for usurping to be a Body Politick, ought to have been brought against the Particular Persons; if it be repugnant or contradictory, that a Corporation can usurp to be a Corporation; that a Body Politick or Being can usurp to be a Body Politick or Being, before it had a Being, or to be that same Body Politick or Being, which it was when it did usurp; if forfeiting a Franchise, or Liberty, or other Estate, cannot determine or vest that Franchise or Estate in the King, till the Forfeiture appear on Record; then the old Corporation supposed to be forfeited, if it were so, did notwithstanding, and yet doth continue in Being, there being no Record to determine it; and consequently that which is pretended a new one by Usurpation is impossible. If by Seizure into the King's Hands (as pretended) the Continuance of the Corporation be intended, how inconsistent is it with Law or Justice to continue any thing in the King, that is wrongfully usurped, and the Parties to be punished, fined, and committed for usurping? If Mr. Attorney's Replication, taking Issue upon our Prescription to be a Corporation, and going over, and alledging several distinct Causes of Forfeitures, cannot by Law

e maintained, and in the Example doth introduce a way to bring all Mens Estates subject to Mr. Attorney's Will and Pleasure (for, let any Man's Right be as good as can be, it will be scarce possible to defend it, if such Pleadings as in his Replication be allowable by Law) then be the matter in Law as much against us as possible, yet Mr. Attorney can have no Judgment for him upon this Information. Next, Supposing the Information all good in Law; yet, if the Judgments, Records, and Authority, that have been cited by them for Seizures, do plainly shew that Seizures and Forfeitures are very different in their Natures; that the Corporations all continued notwithstanding the Seizures; and the Seizure was only the King's putting in Mayors and Officers to act in them instead of the others elected or constituted by the Corporation, and they remain Corporations by Prescription to this Day, and never were forfeited, dissolved, or determined by such Seizures; if the general Authorities in Books, that the misusing or abusing a Franchise be truly applicable to Franchises (that are Estates and Interests grantable or conveyable from Man to Man) and never were intended of such a thing, as is rather a Capacity or Being, than a Franchise; if there be no Case, or Precedent, or Opinion to be found for it; if, on the contrary, the particular Cases cited prove, that where the Corporations have by Miscarriages forfeited particular Franchises, they do not forfeir their Corporations; if there be scarce any Corporation in *England*, that have not at some time or other done something they should not, or omitted to do something they should, and thereby forfeited their Corporation, and consequently all are Usurpers, and their Corporate Acts since done all void: If the Corporation here hath done nothing, but that the Mayor, Aldermen, and Common Council, are only Delegates, Deputies, or Ministers of the Corporation for particular purposes; if Servants, Deputies, or Delegates, do that which they have no Authority to do, they must answer for it in their own Persons; but their Masters, or those that deputed or delegated them for another purpose, they are innocent; they shall not suffer by it, though no Acts of Parliament had been in the Case; if the Acts of Parliament against seizing the Liberties of the City, for or by reason of any Miscarriage of their Officers or Ministers, extend to these Acts of the Mayor, Aldermen, and Common Council; if so be that these Acts were the Acts of the Corporation; yet, with Submission, if they have shewn a good and legal Right, by their Custom and Title, to make By-laws for regulating and settling the Markets and Tolls, and that which they have done be, as pleaded, reasonable, and that there was reasonable Ground at that time for their Petition which they have set forth; if all these Particulars, that I have now summed up, be against me, then Judgment must be against me; though I know not what that Judgment can be. But if any one of these Particulars, thus repeated, be for me, and against Mr. Attorney; then Mr. Attorney can have no Judgment against the City; but Judgment must be for them; which I humbly pray.

THE next Term, viz. *Trin. 35 Car. 2.* (Chief Justice *Saunders* dying the Day of the Judgment given, or the next Day after) Mr. Justice *Jones*, Justice *Raymond*, and Justice *Wi-*

thens, being in Court, Justice *Jones* pronounced the Judgment of the Court, and Justice *Raymond* and Justice *Withens* affirmed, that Chief Justice *Saunders* was of the same Opinion with them, and that they all agreed,

1. That a Corporation aggregate might be seized. That the Statute 28 *E. 3. c. 10.* is express, that the Franchises and Liberties of the City, upon such Defaults, shall be taken into the King's Hands. And that Bodies politic may offend and be pardoned, appears by the general Article of Pardon, 12 *Car. 2.* whereby Corporations are pardoned all Crimes and Offences. And the Act for regulating Corporations, 13 *C. 2.* which provides that no Corporation shall be avoided for any thing by them misdone or omitted to be done, shews also that their Charters may be avoided for things by them misdone, or omitted to be done.

2. That exacting and taking Money by the pretended By-law, was Extortion, and a Forfeiture of the Franchise of being a Corporation.

3. That the Petition was scandalous and libellous, and the making and publishing it a Forfeiture.

4. That the Act of the Common Council was the Act of the Corporation.

5. That the Matter set forth in the Record did not excuse or avoid those Forfeitures set forth in the Replication.

6. That the Information was well founded.

And gave Judgment that the Franchise should be seized into the King's Hands, but the Entry thereof respited till the King's Pleasure was known in it. Justice *Raymond* and Justice *Withens* declare, that they were of the same Opinion in *omnibus*.

And accordingly after Entry made by Mr. Attorney, That as to the Issue joined to be tried by the Country; as to the claiming to have and constitute Sheriffs; as to the having the Mayor and Aldermen to be Justices of the Peace, and to hold Sessions, *quod ipse pro Domino Rege ulterius non vult profsequi*; Judgment is entered:

Ideo consideratum est, quod præfat' Major & Communitas ac Cives Civitat' Lond' as to the Issue aforesaid, betwixt our Lord the King and them joined, and as to the Liberties and Franchises aforesaid by them claimed, to have and elect Sheriffs, and to have their Mayor and Aldermen to be Justices of the Peace, and hold Sessions, *eant inde sine die, salvo jure Dom. Regis, si al' &c. Et quoad distas separales materias in lege unde tam præd' At' Gen' quam præd' Major & Communitas & Cives Civitat' præd' posuerunt se in iudicium Curia, the Court advise till Trinity Term; and then pro eo quod videtur Curia hic quod præfat' Major & Communitas ac Cives Civitat' præd' forsfeecerunt Domino Regi nunc Libertat' Privileg' & Franchef. præd' ob causas in Replicacon' præfat' Atorn' Gen' superius specificat' quod Placita præfat' Major' & Communitat' ac Civium Civitat' præd' superius rejungerendo & repellendo in ea parte placita materiaq; in iisd' content' minus sufficien' & invalid' in lege existunt ad præcludend' dict' Dom' Reg' a Forisfactura præd' aut ad Major' & Communitat' ac Cives Civitat' præd' ad clamand' Libertat' Privileg' & Franchef. præd' sibi allocand' & adjudicand' manutenend' maturaq; deliberacione superinde prius habi' Considerat' est, quod Libertat' Privileg' & Franchef. præd' fore de seipsis unum Corpus corporat' & Politic' in re, factio & nomine per nomen Majoris* Com-

Communitatis & Civium Civitat' Lond' ac per idem nomen placitare & implacitari, respondere & responderi per eosd' Majorem & Communitatem, ac Civives Civitat' London' præd' superius clamat' capiantur & seisiuntur in manus Domini Regis; & quod præfat' Major & Communitas ac Civives Civitat' Lond' præd' capiantur ad satisfaciend' dicit' Dom' Reg' de Fine suo pro Usurpatione Libertat' Privileg' & Franchef. prædict'.

Thus was the Metropolis of the Kingdom deprived of its Charter and Magistrates, till the Year 1688, when King James, terrified at the News of the Prince of Orange's intended Invasion, thought fit to restore it, October the 6th, and ordered Lord Chancellor Jefferies to carry it back himself; whereupon Sir George Treby was restored to his Place of Recorder, and the rest of the Magistrates, according to the ancient Constitution of the City.

P O S T S C R I P T.

THE Question concerning the Surrender of Corporations, or Bodies Politick, not being directly in the Case, but in the Arguments on both sides insisted on, it may not be unnecessary to state that Point, and collect what hath been in the Debates or Arguments alledged on either side, that the easier View and Judgment may be made of it. By Surrender in this Question is, by both sides, meant and intended some Deed or Instrument in Writing, whereby a Body Corporate or Politick can surrender and dissolve it self. It is agreed that a Body Politick may be dissolved, either by the Death of the Persons incorporate, or their Refuser to act, nominate, or elect Officers or Ministers, so as there remain not sufficient, authorized or enabled by their Charter or Constitution, to preserve their Being: This is admitted to be a Cesser, or Dissolution of the Corporation, and such a sort of yielding up, or Surrender, is admitted possible. But whether by any Deed or Instrument in Writing it can be done, that is the Question intended. For the Surrender, it hath been alledged,

1. That the Being of a Body Politick is a Liberty, Privilege, and Franchise, that had its Commencement by the King's Charter, or by Prescription, which supposes a Charter; and if it have its Beginning and Creation by Charter, which is the King's Deed that grants it, by Deed again it may be regranted and surrendered: And it is a Maxim in Law, *Unumquodque dissolvi potest eod' modo quo ligatur*. And instances in Fairs, Markets, Letts, and such like Franchises, granted by Charter, which, say they, may be surrendered by Deed, or Regrant.

2. That it is necessary that it should be dissolvable by Surrender. Perhaps a Town may come to decay, and not be able to defray the Charge that the Support and Maintenance of the Corporation may require; for every one sees that Ornaments and Officers must be, and these cannot be bought or maintained without Estates; and poor Men are not able, without Ruin to their Families, to bear the Magistracies and Offices; and therefore it is necessary there should be a Power in them to surrender.

3. That the Books and Cases in Law do prove, that a Corporation, or Body Politick, may surrender it self, and thereby be dissolved.

Dy. 273. There the Case is thus stated: The Deanry of the Cathedral Church of *Wells* was dissolved by the Surrender of *Fitz-Williams*, *tempore H. 8.* And the Prebend of *Currey*, in the same Church, was also surrendered by *Goodman*, Prebendary there, 1 E. 6. And in this Year the Dissolution of the Deanry was confirmed, and the Deanry extinct by Act of Parliament, and a new Dean erected and created, to which new Deanry the Lands and Possessions of the old were annexed, amongst other Possessions, and the Nomination of the new Dean and Successors given by that Act to the King, and that he should have the same Power in *Choro & Capitulo* as the old Dean had; saving to all Strangers, other than the Bishop of *Bath and Wells*, the old Dean, and the old Prebendary, and their Successors. In this case it is admitted, and taken for granted, that the Deanry, and also the Prebend, were surrendered.

Dy. 282. There the Archbishop of *Dublin* had two Chapters, *viz.* the Dean and Chapter of *St. Patrick*, and the Dean and Chapter of *Christ-Church*, and both these used to confirm the Bishop's Leases. The Dean and Chapter of *St. Patrick*, by Deed under their Common Seal, gave and surrendered all their Church, Houses, Lands, and Possessions, to the King, without License or Consent of their Bishop, being their Ordinary, and Patron of the most part of the Prebends. After this Surrender their Church was used as the Common Hall, for the four Courts in the Term there; and a Lease is made by the Archbishop, confirmed by the Dean and Chapter of *Christ-Church* only; and whether the Successor of the Archbishop were bound by this Lease, was the Question. The Judges in *Ireland* were divided in Opinion, and thereupon the Case was sent over for the Opinion of the Judges here; and the Opinions and Resolutions of five Justices, *viz.* *Catlyn*, *Dyer*, *Saunders*, *Wells*, and *Carus*, certified to the Lord Deputy of *Ireland*, under their Hands, were, *Quod non fuit aliud Capitulum in esse tempore confirmationis Dimission' præd' nisi Christ-Church tantum, quia Corporatio & Capitulum Sancti Patrick fuit per donum & sursum reddition' Decani & Capituli præd' legitime dissolutum absque consensu Archiepiscopi.*

Jones 168. The Opinion of Justice *Jones* there, that a Corporation may be dissolved by an Act proper, *viz.* by Resignation.

On the other side, it hath been answered,

1. Admitting it to be true, that to be a Body politick is a Liberty, Privilege, and Franchise, created by Charter, which is the King's Deed; yet it doth not follow that it may be surrendered by Deed: For the Charters that incorporate the Citizens, or Inhabitants of such a City, Town, or Place, and make them a Body capable of taking and having Lands, Goods, or Chattels, to sue and to be sued, and to have a Common Seal, and to act according to the Powers, Ends, and Purposes in their Charters contained, only give them a Capacity for those Ends. The Liberty, Privilege, and Franchise, that they have, goes no farther. They cannot transfer this Privilege, or Franchise, to any other Persons. These are only personal Franchises or Capacities, fixed in the Persons, to whom they are granted, like to Patents of Denization granted to Aliens, whereby a Capacity is granted to have, hold, and act, as a natural born Subject; Grants of enfranchising

enfranchising a Villain; these are Grants that cannot be surrendered; these are Franchises and Capacities like this; these are Exceptions to the General Rule, *Unumquodque dissolvitur eodem modo, &c.* So also of Fairs, Markets, Courts, &c. they are created by Charter, they may be granted over, or granted to the King; but if they be regranted to the King, they are not extinct, but remain in the King.

Abbot of *Strata Marcella's* Case, *Rep. 9. 25. b.* shews the difference thus: When the King grants Franchises, that were in the Crown before the Grant, as *Bona Feloniam*, Deodands, Wreck, &c. and these come again to the Crown, they are merged in the Crown, and the King is seized of them *Jure Coronæ*; but when a Privilege, Liberty, Franchise, or Jurisdiction, was at first erected or ordained by the King, there, by the coming of it again to the Crown, they are not extinct; and instanteth in Fairs, Markets, Hundreds, Leets, & *similia*. They are not dissolved or gone, for thereby Subjects would be prejudiced: For if the Court should be so granted, and thereby dissolved, the Subjects Judgments and Suits in those Courts would all be lost. These are other Exceptions to that general Rule, *Unumquodque, &c.*

2. That the Reason given for the Surrenders of Corporations from the Poverty that may happen, for the Conveniency of some Corporation, is answerable; for that doth not very frequently happen: But when it doth happen, if they are weary of it, they may let it alone, and not act, or choose Officers; it will cease of it self, they need not be at the Charge or Trouble of a Surrender: But on the other Side, the Inconveniencies are very great, and are some of them before specified. The Establishment of the Church is all in Corporations, Bishops, Deans, Chapters, Prebends, Parsons, Vicars; if these be surrenderable, as by the Cases cited, without Consent of Bishops (a Prebend is, as to his Being, but as a Parson, or a Vicar) the Universities, Colleges, Hospitals, all the Cities, considerable Towns, Trades, and Mysteries, are Corporations; if these be surrenderable, it affects our old Government.

3. As for the Books and Authorities, *Dy. 273.* the Dissolution of the Corporation thereby surrendered is only mentioned in putting the Case, it is not debated, nor was it material in the Case: For the Act of Parliament there settled the new Dean and Chapter; and the Prebendary, and the Matter of the Case ariseth upon the Deprivation of Dean *Goodman*, and the Appeal and Reversal of that Sentence, there is not as much as any Opinion in the Case concerning the Dissolution or Surrender, whether good or bad. But what may reasonably be inferred from that Case is, that the Surrender and Dissolution thereby was not good in Law; for if it had, what needed the having an Act of Parliament to secure against the old Dean and Prebendary? which yet appears in the Case was had.

And, *Co. Rep. 3. 75. b.* in the Case of the Dean and Chapter of *Norwich* this Case of *Dyer* is cited, and there it is expressly said, that that Surrender was not thought good, till confirmed by Act of Parliament.

And as for the other Case, *Dyer 282.* of the Surrender of the Dean and Chapter of *St. Patrick*, the Opinion of the Judges there given

is, by all the Judges 3 *Car. 1.* in the Case of *Heyward* and *Fulber*, in *Jones 168.* denied to be Law, and said to be a private Resolution. So that these two Cases in *Dyer* having been by those later Authorities denied, remain no Authorities: And as for the other Authority, *viz.* The Opinion of Justice *Jones 168.* that a Corporation may be dissolved by a proper Act, *viz.* by Resignation, that is true, taken in the Sense he speaks it: It is spoken of a Dean and Chapter resigning to the Ordinary, *viz.* the Dean resigning his Place of Dean, and the Prebendaries of the Chapter resigning their Prebends to the Ordinary, whereby their Churches and Prebends became void, and to be supplied by the respective Patron, collating or presenting, as in Cases of Resignation, by any Parson or Vicar to his Ordinary. But this is nothing of a Surrender of the Body politick to the King, and thereby dissolving the Corporation, and destroying all Supply, by new Presentments or Collations. And this appears by the very Words of Justice *Jones* there; for when he saith they may be dissolved by a proper Act, *viz.* by Resignation; the next Words are, or by Death of the whole Corporation, and the King being Patron, it is in his Election whether he will collate *de novo*, or not, and till he collates the Corporation is in suspense; but if the Bishop be Patron, then the Bishop, upon the Resignation, hath Power to collate, and thereby to continue the Corporation: So that it is very plain, that the Resignation he speaks of is not meant for any Surrender to the King, or any thing that determines the Corporation, except the Patron will not collate, and thereby suffer the Corporation to cease. But on the contrary, that a Corporation cannot be dissolved by any Surrender.

The Suppression and Dissolution of the Abbies, Priors, and Monasteries, by *H. 8.* was no Dissolution of their Bodies Politick. *Br. Extinguishment; 75. Br. Corporatian, 78. Davies, Rep. 1. Moore's Rep. 282.* Though their Houses and all their Possessions were gone, and the Persons either discharged of their Orders, or sent into other Houses; yet resolved, that the Corporations remained. And it can scarce be imagined, but in some of those Cases it would have been practised, or at least something said about surrendering their Body Politick, if it had been then thought surrenderable. But the Case of the Dean and Chapter of *Norwich, Rep. 3. 41 Eliz.* before cited, and the Case of *Heyward* and *Fulber* before mentioned in 3 *Car. 1. Jones, 168. Palm. Rep. 500, 501. Andersf. 2. 120.* have been cited as Judgments against Surrenders by all the Judges of the King's Bench. The Case was, That the Dean and Chapter of *Norwich, 3 Junii 1 E. 6.* surrendered to the King their Cathedral Church, and all their Manors, Lands, Tenements, Hereditaments, Franchises, and Liberties, Spiritual and Temporal, by whatsoever names they are known, or which they have or ought to have in the Right of their Church. And by the Case 41 *Eliz. Co. Rep. 3. 74.* and the Opinion of all the Judges of the King's Bench, 3 *Car. 1.* adjudged, that this was no Surrender of the Corporation.

They object, That the Words of the Surrender do not shew any Intent to surrender the Corporation, but only the Possessions.

Answer, The Being of a Corporation is a Franchise

Franchise or Liberty; and there is an express Surrender of all Franchises and Liberties, Spiritual and Temporal, by what Name soever known, which they have in the Right of their Church: And this was a Spiritual Franchise, which they had in right of their Church.

Next, This Surrender was made with intent to dissolve the Corporation, and to have a new one erected: this appears by the new Charter of Erection, made in *November* following; which recites the Surrender made to that Intent. It is not any where in the many Arguments of that Case alledged, that there wanted Words in the Surrender to do it, which would have been, if that had been the Ground of their Judgment.

In the Case cited out of *Dyer* 282. there the Words of the Surrender were, that they surrendered their Church, Houses, Lands, and Possessions, which are not half so large and ample Words as in this Surrender are contained; and the other side cite that as an Authority to prove a Corporation surrendered, and admit the Words there sufficient, and deny them to be sufficient here, though much more large, express, and

general. The arguing there in *Palmer* 501. that it is against the Nature and Constitution of Corporations, that by the Words put in their Charters, by their very Constitution, are to have perpetual Succession, *perpetuis temporibus duratur* and which by their Oaths they are sworn to preserve, or they should be *felo de se*. And the express Words of the Judges reported in these Books shew their Opinion, that the Corporation could not be surrendered. *Jones*, 168. *Dodderidge* Justice, there saith, that the Dean and Chapter cannot surrender their Corporation. *Palm.* 501. *Whitlock Inst.* there saith, For that the Dean and Chapter are Counsel to the Bishop instituted to that purpose, they cannot dissolve themselves; for the Politick Corporation is the Soul to the Body, that cannot be granted or sever'd; though the King can create a Corporation, he cannot dissolve it. And *Jones Inst.* there 502. saith, that the Dean and Chapter were Counsel to the Bishop, and cannot destroy themselves; if they could, great Inconvenience thereby will ensue to the Church.

N. B. *These Proceedings should have been inserted, according to the Order of Time, after the Trial of Colonel Sidney, in Vol. III. Some Account of which may be seen in Burnet's History of his own Times, p. 533.*



Proceedings between the King and THOMAS KENDALL and RICHARD ROE, in the King's Bench, on an Habeas Corpus upon a Commitment for High Treason. Mich. 7 Gul. III. Octob. 31. 1695.

ON *Thursday* October the 31st. 1695, the Prisoners being brought up into Court on the *Habeas Corpus*, the Keeper of *Newgate*, to whom the Writ was directed, returned the Cause of their Detainer to be a Warrant under the Hand and Seal of Sir *William Trumbull*, Knight, one of His Majesty's most Honourable Privy Council, and principal Secretary of State, directed to the Keeper of *Newgate*, or his Deputy, *prout sequitur*, "These are in His Majesty's Name to authorize and require you, to receive into your Custody the Bodies of *Thomas Kendall* and *Richard Roe*, herewith sent you, they being charged with High Treason, in being privy to, and assisting the Escape of Sir *James Montgomery*, out of the Custody of *William Sutton*, one of His Majesty's Messengers in ordinary, and charged with High Treason. You are to keep them in safe and close Custody, until they shall be delivered by due course of Law: And for so doing this shall be your Warrant. Given at the Court at *Whitehall* the 24th Day of *October*, 1695."

Sir *Bartholomew Shower* moved that the Return might be read, and then that it might be filed:

And Mr. Attorney owning that he had been attended with a Copy of it, and having nothing to say against it, the same was accordingly filed.

Then Sir *Bartholomew Shower* took Exceptions to the Return.

Sir *Bart. Shower*. My Lord, I am of Counsel for these two Prisoners; and what we desire at present is only that they may be bailed, though perhaps we might press to have them discharged, and that upon good Reason.

To induce your Lordship to bail them, I must beg your Lordship's Pardon, and I hope Mr. Attorney will hold me excused, if I make a Question whether the Person committing hath any Authority for such a Purpose; it is for my Clients, who think themselves aggrieved by this Imprisonment; and in Truth they say, That they are somewhat hardly dealt withal in this Case; for the Information against them is only for being privy to and assisting the Escape of the Centinels, who were privy to Sir *James Montgomery's* Escape: But this is Fact, of which the Court will not take Notice, and therefore I shall confine my self to the Return, as it appears before your Lordship.

With

With Submission I must insist upon it, that a Secretary of State, *quatenus* Secretary, cannot commit for Treason or Felony; he is not an Officer for such a Purpose in common Parlance. The Word *Secretary* imports only a Writer of Letters or other Escripts for a Superior; and as *Spelman* explains the Word, this is the Sense of it, with the Addition of Secrecy, of Privacy; and so is his *Glossary* upon that Word. He is not a Privy Counsellor *quatenus* a Secretary, nor is he a Justice; and though perhaps in Fact he may be in the Commission, yet unless he hath taken the Oath of that Office upon a *Dedimus*, he cannot act as such: And I have seen five or six Privy Counsellors at a Time appearing at a Sessions of the Peace for this County, in the Case of the Duke of *Bedford's* Power as *Custos Rotulorum*, to remove the Clerk of the Peace; and when Intimation was made to them of the Justices Oath, which they had not taken, they refused to vote, and did thereupon withdraw. Here *Sir William Trumbull* cannot be presumed or intended to be a Justice of the Peace, because the Commitment by him is as Secretary, and not as Justice; and so is the Return: And upon the Return, the Authority by which he commits ought to appear, otherwise the Return is vicious; and here doth appear none but that of Secretary. Now if the Office of Secretary doth not imply and carry in it a Power of Committing, then this Commitment is erroneous.

Our Constitution hath distributed the Administration of Justice, both in criminal and civil Causes, into several Courts, and hath appointed several Officers for several Purposes, some for civil, some for criminal Matters; and in Criminals some are to examine and commit, others to obey and carry, others to receive and keep; some to try and sentence, others to execute; each hath his proper Province: And of those your Lordship will take Notice, as also of their several Duties and Powers, and so do our Law Books. But a Secretary is a Court Officer of State, not relating to the Administration of Justice.

You take Notice, as do our Books, of Headboroughs, Constables, Sheriffs, Coroners, Escheators, and the like: But neither *Coke*, *Crompton*, *Fitzberbert*, *Smith*, or any Book which treats of the Jurisdiction of Courts, the Pleas of the Crown, or the Officers of Justice, do ever mention a Secretary of State; his Office rather relates to foreign Negotiations than domestick; and if any home Affairs fall under his Cognizance, it is rather as an Intelligencer, than with any Relation to Criminals, Priors, or Gaolers, &c. In all the Debates about the Liberty of the Subjects, and wrongful Commitments, which were in Parliament in 4 *Car. 1.* or 1628, and amongst all the Precedents mentioned there upon each Side, which are Multitudes, there is none by a Secretary: It is true, there are divers *per mandatum Dom' Regis*, by Warrant from the Lords of the Council. I have perused *Dr. Franklin's* Annals of King *James the 1st. fol. 261.* and *Rusworth, Vol. I. 458.* and can find none by a Warrant from a Secretary. I have read *Coke's*, *Selden's*, and *Littleton's* Arguments upon that Subject, but see nothing of a Secretary's Commitment. And it seems very strange, if such a Power were lodged in this State Officer, that there should be no Precedents for it in those

Times, when extrajudicial and general Warrants were so frequent, that they became a Grievance to the People, and such a one as laid the Foundation for the *Petition of Rights*.

I shall not controvert the Power of the Council at present, because it doth not concern the present Question: All that I can observe in the Case is, that it first began to be practised in *Sir Lionel Jenkyns's* Time; and yet even in 1678, when the Popish Plot had increased the Number of Prisoners to a wonderful Degree, it is notoriously known, that the Chief Justice *Scroggs* was frequently and often sent for to *Whitehall* to examine, and commit, and grant Warrants. And some time since the Secretaries of State have thrown that Burden off from themselves upon their Secretaries under them, who have been sworn Justices of the Peace; and *Mr. Bridgeman* hath accordingly executed the Office of a Justice of Peace at *Whitehall*, and that frequently. It hath been a Question, Whether a Chancellor or Keeper of the Great Seal can commit; and the better Opinion hath been that he cannot: And it seems to be agreed by *Glanvill's* and other Cases in *Moore's* Reports, 839, &c. that his Commitment is illegal, unless for a Cause within his Jurisdiction, as a Court of Equity: and the Matters must so appear. I must agree, that any Man may apprehend another for Felony or Treason; but there is a vast Difference between an arresting of a Traytor or Felon upon Suspicion or Knowledge, and a formal Commitment to Prison, with a Charge of Treason. And I am sure *Mr. Attorney General* will not insist upon this Reason; for then the Consequence will be, that any Man may commit as well as a Secretary: And I suppose that Doctrine will scarce be allowed, though I think that any Man may as well as he. The Reason of an Apprehension upon Suspicion, or Hue and Cry, or the like, is not to detain, but to carry to a Constable or Justice, as in 3 *Inst. 52.* Then here the Gaoler doth not return that he detains him, because he is guilty or suspected, but because by virtue of such a Warrant he is committed to his Custody.

Besides, the Reason of our Law is against it; for a Secretary cannot administer an Oath. Now the Law requires that no Man should be committed by an extrajudicial Warrant, unless upon Oath. If there be but a Suspicion, there ought to be Oath of the Cause of that Suspicion; for the Person committing cannot commit upon another's Suspicion, unless there be Oath of some reasonable Cause for it. He cannot take Bail for any Person accused, he cannot take a Recognizance to prosecute: And I may very well challenge any Man living to shew me any one Recognizance ever returned into any Court, that was taken by a Secretary, either for Appearance of a Criminal, or for the Prosecution of one: And the Practice is always otherwise; for they have often taken Bonds to the King, with Condition to appear here. And your Lordship and the Court hath often had much Trouble in that matter; for they being bound to appear here, the Court hath refused to record their Appearance, because no Recognizance returned or taken, whereupon to found such an Appearance.

Now it seems strange, nay absurd, that our Constitution, which we admire for its Wisdom, should appoint an Officer who should commit,

and yet cannot give an Oath whereon to found a Commitment, that cannot bail, that cannot take any Recognizance to prosecute: This is to make the Liberty of the Subject very precarious, notwithstanding the many Laws and Sayings of Judges in favour of it.

A Secretary is not obliged within the Statutes that require Justices to return the Informations and Examinations of the Persons accused, and Witnesses; which is a Method prescribed by the Wisdom of our Ancestors, both for the Service of our King, and the Subject; and may upon several Occasions prove useful to each.

This I may say, that Mr. Secretary *Coventry* did scruple it, and upon good Advice, even from Sir *William Jones*, he took the Oath of a Justice of Peace. Now, My Lord, I think that those Exceptions to this Power of a Secretary may very well be thought to render it so far a doubtful Question, as to induce Mr. Attorney not to oppose our being bailed, to avoid any further mention of this or any other Question.

But supposing that a Secretary can commit, yet in this Case the Parties ought to be bailed according to the *Habeas Corpus* Act; for the Act commands, that they shall be forthwith bailed, unless they be committed for Treason or Felony, specially mentioned and expressed in the Warrant; and if it be specially expressed, then upon Prayer, if not indicted, they are to be bailed the last day, &c. Now here the Commitment of a Person charged with Treason, if it goes no further, then unquestionably the Parties ought to be admitted to Bail, because that the High Treason is not specially expressed; so a Commitment for Felony generally would bring a Man within the Benefit of the Act to be bailed, because the Species of the Felony is not expressed. This is plain, and cannot be denied. Then I must further argue, that if the Facts mentioned after the Word *High Treason* be not, or cannot be Treason, it must be allowed to me, that it is the same as if it had been for High Treason generally, and without more Words: For if there be not a Species of Treason expressed, then we are still admissible to Bail; this must be acknowledged.

Now that the subsequent Matter expressed after the Word *Treason* is not any Species of Treason, I shall endeavour to make out thus: A being privy to, and assisting the Escape of Sir *James Montgomery*, out of the Custody of a Messenger, and charged with High Treason, is not any Species of Treason, it is not Treason.

First, I may with a great deal of Colour make a Question whether the rescuing or helping the Escape of one in Custody for Treason, be Treason, or only Felony: If the latter, then the Commitment is erroneous.

At the Common Law the helping any Prisoner to escape was Felony, and so is, 2 *Inst.* 589. Now the Law in this Respect is not altered otherwise than by 1 *Edw. 2. de frangentibus prisonam*, and that Statute was rather to make it less penal than more; and if to promote the Escape of one imprisoned for Treason, was at the Common Law but Felony, then this Statute seems not to make it a greater Offence; for it is in the Negative, that none shall undergo Judgment of Life or Member for the breaking of Prison, unless, the Cause, for which the Imprisonment was, did

require such a Judgment, if the Party were convicted.

The Lord *Hale*, in his *Pleas of the Crown*, saith, that Breach of Prison turns into Felony only, though the Party were committed for Treason; though in another Place he seems to be of another Opinion. Now my Argument to make this a Doubt, is this: By 2 *Hen. 6. Cap. ult.* to break Prison when committed for Treason, is declared to be Treason; which would be needless, if it had been Treason before. By 25 *Edw. 3.* nothing is to be Treason, but what is there declared to be such; and by 1 *Mar.* all Treasons and Declarations of Treasons made by any Act of Parliament since 25 *Edw. 3.* are repealed. So that by this way of arguing such Escape was only Felony.

There is one Case, viz. *Beusted's*, 16 *Car. 1. Jones Rep.* 415. upon an Insurrection in *Surrey*, where it is held, that if a Man be committed for Treason, and another breaks the Prison, and by that Means the Traitor escapes, this was Treason in the Rescuer, and there was one accordingly indicted and arraigned; but I find that he was acquitted; and though the Book says it was for want of full Evidence, yet it is more than probable, that it was the best Ingredient in his Case, that the Judges doubted what Offence it was, whether Treason or Felony. Now that Case is founded upon *Stamford's Pleas of the Crown*, 32. and all that is in *Stamford* is a Quotation of a Case in the Year Book, viz. in 1 *Hen. 6. 5.* that the Escape of a Traitor imprisoned was held Treason: But there it is put with a *quod nota*, as a strange Thing, and some call it Petit Treason: But however, it was a strange Thing, since we find in 2 *Hen. 6.* an Act of Parliament made to declare it Treason; which is improbable that such a Law should be made, if the Judges had the Year before justly condemned the poor Rescuer. So that either they doubted the Law of that Case, or that Case had some other Ingredient in it, than the Book informs us of.

This is not for receiving, aiding, and comforting a Traitor, knowing him to be such, as was the Case of *Abington*, who aided *Henry Garnet* the Superior of the Jesuites in 3 *Inst.* 138. but this is only for assisting the Escape: But supposing that such an Assistance to escape, or rescue of one committed for Treason, were Treason, and not Felony, yet in this Case, as this Warrant is, it is neither Felony nor Treason; for,

Secondly, Here is no legal Commitment of Sir *James Montgomery*; and consequently the helping him to escape is not Treason. My Lord *Coke* 3 *Inst.* 70. on 1 *Edw. 2.* says, that a voluntary Escape of a Prisoner can be no Felony, unless the Prisoner be under lawful Custody by a lawful Warrant expressing the Offence. Now there can be no Pretence, but that the same Rules must hold in Case of a Traitor's escape, as to the Warrant of Commitment, and lawfulness of Custody, as doth in Case of Felony. Now if the Party commanded to receive, or the Party, to whose Custody he is committed, were no lawful Officer, then such Custody cannot make the Rescuer guilty of any capital Offence. *Co. 2. Inst.* 550. saith, that false Imprisonment is not within the Law in this Case; now there can be no lawful Warrant in this Case, because the

the Officer was not a lawful one. This is not the Case of one carrying to Prison, for then it would have been so expressed; but here it is under the Custody of a Messenger, and charged with Treason, which supposes it a Custody with a Charge by way of Commitment. Then my Lord *Coke* explains what is a lawful Warrant, and that is twofold; either when the Offence appeareth by Matter of Record, as a *Capias* upon an Indictment, Inquisition, or Presentment; or when it doth not appear so, but only upon Oath, that a Felony is committed, and the Party is committed for the same to Gaol. And he tells us, that there is a great diversity between them; for in the first, the breaking of Prison is Felony, though there were none committed; but in the other Case, where there is no Record of an Accusation to found a Commitment on, if there be no Felony committed by him, who is committed to Prison for a supposed Felony, the breach of Prison is no Felony. Now this makes another good Exception to the Return, that here doth not appear, that there was either an Indictment or Appeal, or that there was a Felony or Treason committed; and one of them is necessary.

There must be a Felony done at the time of the Commitment; for a Relation, which is a Fiction in Law, shall never make a third Person a Felon; as *Plowd.* 401. if there be a Stroke or Wound one Day, and Death ensues upon another Day, this is Murder in the Party from the first Stroke; but the rescuing of such a Criminal before the Death is no Felony; which further shews, that a Felony done is necessary to make the Escape a capital Offence.

In 2 *Inst.* 591. *Coke* saith two or three times in four Pages, that the Weight of the Business depends upon the Lawfulness of the Warrant, or *Mittimus*; and he saith, that it must be in Writing, in the Name, and under the Seal of him that makes the same, expressing his Place, Office, and Authority, by force whereof he makes the *Mittimus*, as is to be directed to the Gaoler; and it must contain the Cause more especially, and with more Certainty, than a Writ of *Capias* need to do, because the latter is founded upon a Record, unto which a Refort may be had. Then he saith, that if a Warrant be not lawful, it is no Felony in the Gaoler to suffer him to escape. Now here, we say, it doth not appear what the Warrant was, upon which Sir *James* was in Custody; and a Messenger is not a lawful Gaoler; he is merely a Conveyancer of a Message, Notice, or Summons; and the Practice of making their several Houses Prisons is but of late date; our Law-Books do take no notice of him as any legal Officer.

Gaolers have Fees, are subject to Prosecutions for Extortion; a Messenger is not within the Laws concerning it; for he cannot take Fees *colore Officii*, who hath no Office; he is, at most, but a Gentleman Porter. I have often heard this Method of Commitments to the Custody of Messengers severely censured; and though any Man may be ordered to carry another to a Prison, yet he cannot therefore become a Gaoler to detain him, as some Messengers have done, for Nine or Eleven Months, or more. How long Sir *James* was in Custody, I cannot tell; but surely the Law, which requires Commitments to the County Gaols, is sufficient Evidence of the Insufficiency of a

Messenger's Power to detain; and if he could not legally detain, the Consequence must be, that the Escape or Rescue is no Treason.

Besides, here it doth not appear, that Sir *James* was in Custody for Treason; it is said, that he was in Custody, and charged with Treason: The last might be upon Accusation by Oath, or by an Indictment, and yet not charged in Custody with Treason.

Then it is not said with what Treason Sir *James* was charged; it might be for such a Treason, wherein the receiving or helping to escape was not Treason; and it might be for Treason generally, and then Sir *James* was bailable; and it will be hard to exclude the Rescuer from Bail, when the Person rescued might challenge it.

Then further, though the Warrant be lawful, and in particular for Felony, and the Gaoler do willingly suffer him to escape, yet till the Prisoner is attainted, the Gaoler shall not answer to the Escape, though the Prisoner be indicted; and there is a very good Reason assigned for it, because the Felony of the Prisoner shall not be tried between the King and the Gaoler, for that he is a Stranger to it. Now a Rescuer or Assistant of an Escape is the same with a Gaoler in this Case, and shall not be in a worse Condition. It is true, the Party himself, if he breaks Prison, may be indicted for the Escape before he be tried for the Felony: Now the Reason of this holds for our being bailed, for that it is impossible that we can be tried in this Case, because Sir *James Montgomery* is dead, and was never attainted, or so much as indicted. Lord *Hale* agrees with this too, that if the Prisoner break Prison, he may be arraigned of it before he be convict of the first Felony; but the Gaoler permitting a voluntary Escape, shall not be arraigned till the Prisoner be first attaint; for if the Prisoner be acquit, the Gaoler is dispensible as to any Capital Offence, or if the Prisoner die before Attainder, the Rescuer shall only be fined and imprisoned.

Now supposing the assisting the Escape of one committed for Treason, as some Books seem to say, shall make the Rescuer partake of the same Crime, for which the Party rescued was committed; yet if a Secretary cannot commit, or if a Messenger's House be not a lawful Prison †, or if Sir *James Montgomery's* Offence be not specially enough expressed, or if by reason of his Death the Escape be only finable, then these Prisoners ought to be bailed.

Mr. *Attorney General*, *e contra*, said, that they ought not to be bailed, because committed for Treason specially expressed; that harbouring a Traitor, knowing him to be such, was Treason; that there were no Accessaries, but all Principals in Treason; that rescuing him was a comforting of him; that to rescue a Felon, was Felony; to rescue a Traitor, was Treason; that a Messenger was a lawful Officer, and that any Man might imprison a Traitor; that Sir *James Montgomery's* Death was Matter of Evidence upon the Trial; that they need not set forth a Treason committed, or an Attainder, though perhaps it would be necessary to prove it when the Prisoners came to be tried; that the Power of a Secretary to commit had been settled (but he could not say when) that there were many Precedents, which he doubted

† See Proceedings against Bishop *Atterbury*, &c. N^o. 91, p 338;

not to produce, and therefore prayed time to look into it.

Mr. *Solicitor* spoke much to the same effect, with this further, That the Prisoner's Counsel admitted, that the Privy Council might commit, and a Secretary of State was much more ancient; that as to the Messenger, a Gaoler *de facto* was within the Law; that those Persons were wrong doers, and that they could not take advantage of their own wrong; and therefore the Insufficiency of Sir *James Montgomery's* Commitment was not material; and that this Warrant need not be so certain and special as an Indictment, which must have Time and Place; and that if Commitments be good in Substance, the same was enough; and therefore prayed that they might be remanded.

Sir *Bartholomew Shower* replied, That the Commitment of a Secretary was never yet allowed; that the same was always complained of; that though it were Treason to rescue one committed for Treason, yet here it did not appear to be so; that though in Trespasses a Man cannot take Advantage of his own Wrong, yet that was not the Question; because if Sir *James* was not legally in Custody, then this Fact was not Treason; that the Insufficiency of his Commitment was an Advantage allowable, especially *in favorem vitæ*; that though Sir *James's* Death did not appear upon the Return, yet it was a Reason to induce the Court to bail, since they might bail in Cases of High Treason specially expressed; and if the Court were informed that they could not be tried, it would be hard to detain them in Custody.

Lord Chief Justice *Holt*. How were the Commitments at Common Law before Justices of Peace were instituted? It is true, my Lord *Coke* saith, that none could be imprisoned till Indictment, but that deserves Consideration. If you were to enquire, and search in the Tower, undoubtedly you will find Commitments there by Secretaries of State; look into the Resolutions in *Anderson*.

Mr. Just. *Rokeby*. I can see no reason upon the whole matter, why they should not be bailed; but since Mr. Attorney is not prepared, and has had so little Notice, it is fit he should have time. Accordingly Wednesday next was appointed.

Then Sir *Bartholomew Shower* moved, that they might have their Wives and Friends, and a Solicitor come to them, for that hitherto they had been kept close Prisoners. Which was granted accordingly.

Upon Wednesday the sixth of November the Prisoners were brought up by Rule of Court; and Sir *Bartholomew Shower* moved again, that they might be bailed, and that if Mr. Attorney thought fit to oppose it, he prayed to be further heard, for that he had more matter to alledge to justify the former Exceptions to the Return.

Then Mr. Attorney and Mr. Solicitor and Sir *William Williams* came into Court.

Lord Chief Justice. Mr. Attorney, here are *Kendall* and *Rowe* brought up by Rule, and their Counsel desire to know whether you oppose their being bailed; for if you do, they desire to be further heard to the Return; you had best consider of it.

Mr. Attorney General. I should not have so much opposed it, but that several Questions have been made and argued here at the Bar; as, that a Secretary hath not power to commit, that this

Escape is not Treason, that a Messenger is not a legal Officer; and since these things have been started, I must insist upon it that this is a good Return, and that they ought to be remanded.

Lord Chief Justice. Then we must hear them again.

Sir *Barth. Shower*. My Lord, we do with Submission insist upon it, as I did the other day, that a Secretary is not such an Officer, as hath a Power of committing for Felony or Treason: I have further looked into it, and do find somewhat in the Books concerning it, more than the King's Counsel did last time urge, but not enough to warrant such a Power in the Office of a Secretary, and a great deal more against it. What I find I shall offer to your Lordship's Consideration, as it appears upon the Words of the Books, and submit it to your Judgment.

My Lord, I have perused the Resolutions of the Judges in 34 *Eliz.* 1 *Anderson* 297, 298. and I must own that it is there said, that one or more of the Lords of the Council may commit; how far that is Law, I shall endeavour to examine presently: But now I have named it, I would beg your Lordship to observe another of those Resolves; though it would be more proper anon, yet I will just mention it here, and that is, that there is a Resolution which condemns this Return, it destroys the Power of a Messenger's Office, and, if it be Law, my Clients ought to be bailed; it complains that divers Persons were against Law committed to Prison in private Places, and not to any common or ordinary Prisons, or lawful Officers, as the Sheriff or other Person lawfully authorized to have or keep a Gaol: so that upon Complaint made, the Queen's Courts could not learn to whom to direct her Majesty's Writs, and by this means Justice could not be done. Now this seems directly calculated for the 42 domestick Prisoners, at the Pleasure of the Messengers; and if Mr. Attorney will allow these Resolutions to be of any Authority in one part, he must agree it to be the same in the others.

But I shall not need it in respect of the Messengers Franchises, and therefore shall offer some things to your Consideration against those Resolutions.

In the first place they are extrajudicial, and not the Opinion of Judges upon their Oaths in any Matter before them; and I am sure my Lord *Coke* did refuse to subscribe his Opinion upon such Occasions. They are such Opinions, as the Judges may and often have varied from, when the Point hath come judicially in Question before them. Several of the Judges did so in the Case of the *Ship-Money*; and if they were not binding to the Judges, who gave the Opinions, much less can they be binding to their Successors, as legal Resolutions; and if they be Law, yet they do not relate to the Office of Secretary, but only to that of a Privy Counsellor. Now we do, without any Disrespect to Authority, for our Clients, insist upon it, that that Resolution is not Law, that one single Privy Counsellor may commit for Treason.

In the first place, what is there said, can never be reconciled to the Rules of Law, that Persons committed by them ought not to be delivered; for those general Commitments were illegal at Common Law; and so is it affirmed in the *Petition of Right*; and very great Opinions have been, that there is nothing in the *Habeas Corpus* Act, but the Penalties and Times, that was not
Common

Common Law, and that it is affirmative in substance of the antient Law of this Realm, which makes that Resolution to be suspicious; for if what is affirmed by it in exprefs Terms (*viz. That such Persons as they shall commit, ought not to be delivered*) be not Law, then what is implied, that one Privy Counsellor may commit, is more doubtful still.

I shall not inquire into the Occasion of those Resolutions, nor meddle with what our Histories tell us of that Time, and the then Jealousies between some great Men; but, as I said before, those are not judicial Opinions, but only a written Certificate delivered to the then Chancellor and Treasurer: Besides, there is not one Objection, which can be made against the Power of a Secretary in this Matter, but stands as firm and forcible against that of one Lord of the Council; we find no Authority for him to administer an Oath, or take a Recognizance, and there is no Precedent of either. And, as I said the other Day, it looks absurd, that a single Person should be an Officer to commit, and yet cannot do that which is necessary in order to it; he ought to have a Power to examine, and that upon Oath; and if upon Examination of Witnesses it appears that the Party deserves not to be committed, he ought to have Power to take Bail, as also a Recognizance to prosecute. A Justice of Peace is fineable by the Justices of Oyer and Terminer, and Gaol Delivery, if he misbehave himself, or be guilty of a wilful Irregularity therein; but it will scarce be said, that a Lord of the Council is in those Circumstances. My Lord *Coke* saith, that a Lord of the Council is made by summons and taking the Oath, and that continues during the King's Life: It is true he may be discharged, and generally it is by forbearing to summon him; suppose then it be omitted, and afterward he is summoned again, doth he take a new Oath? When doth this Authority begin? How doth it continue or end? Our Law Books take no Notice of it.

Then further, the King himself cannot arrest a Man for Treason or Felony, nor can he command one, in his Preference to be arrested for Felony or Treason; so said Sir *John Markham* to *Edw. 4.* and 2 *Inst.* 186. *per mandat. del Roy* is by Writ, or by Order or Rule of some Court of Justice; now what Judge is a Lord of the Council? He is to advise the King, and he is sworn to it, and withstand all Traitors, and to discover all traitorous Conspiracies, and so is every Subject by his Oath of Allegiance, but the Oath of a Privy Counsellor contains nothing relating to Commitments.

At Common Law, extrajudicial Commitments were Rarities; the usual Practice was to indict, and then to take them upon a Writ of *Capias*; the antient Law was tender of a Man's Liberty, and then were the Writs framed in the Register *de odio & atia, & detradendo in Ballium*, and the Writ of *Habeas Corpus*.

By *Magna Charta* 19 *Hen. 3. cap. 29.* which hath been confirmed Forty times by subsequent Acts of Parliament, it is enacted, that *nullus liber homo imprisonetur nisi per legem terræ*, which I shall explain anon. This was made upon a Grievance then complained of, *viz. illegal Commitments*: What could those be in that Age, but taking Mens Persons without a Record to

found a Charge or Accusation? and that it was so, appears by *Coke* in his Comment upon those antient Statutes: He says, that there was no Invasion upon this Law till *Edward 3ds* Time, and then the People quickly resented it; for in 5 *Edw. 3. cap. 9.* the great Charter is confirmed; but then in 25 *Edw. 3. cap. 9.* it is fully and more at large expressed, and recited, that whereas it is contained in the great Charter of the Franchises of *England*, that none shall be imprisoned, unless it shall be by the Law of the Land; it is awarded, asserted, and established, that from thenceforth none shall be taken by Petition, or Suggestion made to our Lord the King, or to the Lords of his Council, unless it be by Indictment or Presentment of his good and lawful People of the Neighbourhood, though *Magna Charta*, and the rest of the seven Statutes mentioned in the Petition of Right usually quoted upon these Occasions, be in the General, and have ambiguous Words in them, or Words made ambiguous by the King's Council in most Ages, yet this is plain and exprefs, and needs no Strain upon our Side. And I cannot find it ever pretended to on the other Side to be a Strain, they are so plain that the Inference is easy, and hard to be avoided. I will not, I must not say, that they are Authorities against the Commitment by a Privy Council, but methinks they are strong against an extrajudicial Commitment by a single Lord of the Council, unless Mr. Attorney will argue, that the Council cannot commit by reason of this Law, but a single Privy Counsellor is out of the Words of the Act; and when I hear that, he may expect another Answer.

Now for the Words *per legem terræ*: In *Magna Charta* in 2 *Inst.* 51. my Lord *Coke* doth indeed say, that in some Cases a Man may be taken and arrested before Indictment or Presentment; and one Case which he mentions is, by lawful Warrant, where there is a Witness against an Offender: Upon Suspicion there may be an Apprehension, but there cannot be a Commitment, with a Charge of an Offence, unless there be an Indictment or Presentment, or a Witness against the Offender; now there can be no Witness, but there must be an Oath: So it is by all Laws, a Man cannot be a Witness, though he may be an Informer, unless he be sworn, and by our Law, even Peers, if they are Witnesses, must be sworn. Now that a single Privy Counsellor can give an Oath, I can find no Law or Precedent for it; it is true, the Privy Council may administer an Oath, and have done so for a long time, but that every single Member can do so, doth not follow, it is no more a Consequence, than that because the House of Peers can give an Oath, therefore every Peer may at home do the same. He is one of His Majesty's most Honourable Privy Council, and that is all; and that is only (as I may with Respect say) when they are *capitulariter congregati*.

Further, my Lord *Coke* saith, that to make a Commitment lawful, the first Requisite is, that he, or they, who do commit, have lawful Authority; now whether a particular Lord of the Council hath such a lawful Authority, I must submit to your Judgment.

In ancient Times the Practice was for the Privy Council not to send for Men in Custody, but to issue Citations and Summons, and that by their Messengers, as doth the Court Christian by their Pursuivants, who cannot arrest or imprison,

prison, as in 12 *Co. Rep.* 49. In all the Records cited by *Coke* in his *Jurisdiction of Courts, cap. Privy Council*, or *Prynne's Animadversions* upon that Book, 46, there is no Precedent mentioned of imprisoning, or bringing Men into Custody, but only Summons and Citations to appear; and there are many of them.

I shall not meddle with their Power of committing for a Contempt, or refusal to answer, or question the Authority of the Countess of *Sbrensbury's Case*, 12 *Co. Rep.* 93. but I urge this only to shew the Improbability, that our Law should vest such an Authority in each Member of the Privy Council.

In *Prynne's Animadversions on 4 Inst.* it is in his Comment upon *Coke's Epilogue, pag. 422.* is a very notable Record. *Roi. Parl. Anno 28 Hen. 6. num. 56.* where there is an Impeachment of *Talbois*, for a notable Riot upon several Lords of the Council met within the Palace at *Westminster*; and it is prayed, that he may be sent to the Tower of *London*, to be kept without Bail or Mainprize for twelve Months, to answer all Indictments for that and other Riots, before the King and his Justices in his Bench within that Time; and if the Constable of the Tower should suffer him to escape, or go at large, he should forfeit One thousand Pounds; to which Article of the Commons Petition and Bill the King assenteth, so that here was an Act of Parliament (for such it is, though in form of a Petition granted, as was the ancient Form) to enforce a Commitment to the Tower for any Affront to the Lords of the Council: Now I would beg leave to observe, that it was not by way of Punishment for the Offence, but to secure the Parties to be forth coming to answer an Indictment, the Punishment must be Fine and Imprisonment: Now it seems strange, that an Act of Parliament should be made to secure a Man, in order to answer an Indictment for an Assault and Riot upon the Lords of the Council, when any one Lord of the Council might have committed him, and he might have been indicted the next Term; for the Fact was done at *Westminster* in *Middlesex*.

I find a Case in 1 *Leon. 70, 71.* it is *Newell's Case*, he was committed *per mandatum Francisci Walsingham, Militis, Principalis Secretarii, & unius de privato concilio Domine Reginae*, and the Return was held insufficient. I must agree, that the Book says it was, because the Cause for which he was committed was not alledged, and they amended the Return, and then they made it *ex sententia & mandato totius concilii privati, ita quod corpus ejus paratum habere non possimus*; it is true, that at last the Court took Exceptions to it, because the Body was not brought, and there was a very wise Distinction made by the Court, That where one is committed by one of the Privy Council, there the Cause ought to be returned; but where the whole Council do commit, there need no Cause to be alledged. Now it is plain, that this was a Distinction without a Difference, for by the Petition of Right, and the seven old Statutes, and all the Records and Law of old Time, no *Englisman* ought to be deprived of his Liberty by an extrajudicial Commitment or Warrant, unless the Cause be shewn; and I would infer, that the then King's or Queen's Council thought a Commitment by one Lord of the Council was not legal, and therefore they added *ex sententia & mandato totius privati concilii*

iii; and it seems to me, that the Court did slide over that Question, by insisting upon the other Exception: However, at the most, though it makes against the Novelty of the Commitments, yet it can never make for the Legality of them, when the whole is considered.

Upon these Considerations, I hope it will appear to your Lordship and the Court, to be a doubtful Point, whether a Secretary of State may commit; and the Consequence of that is, that the Prisoner ought to be bailed according to *Busbell's Case, Vaughan 157.* that the King's Bench may bail in any Case of Treason, if they think fit, but the Common Bench must remand, if the Cause of the Imprisonment returned be just, and well returned; but then there is this Distinction; if it shall appear to the Court, that the Party was imprisoned against the Law of the Land, they ought, by Force of *Magna Charta*, to deliver him; but if it be doubtful, and under Consideration, then he ought to be bailed: And this hath been the Practice upon Convictions by Justices of the Peace; and the Excuse of the Judges in 4 *Car.* for their *Remittitur, &c.* that it was *quousque, &c. i. e.* till further Consideration, was never allowed as a wife or legal one. Now I hope I have said enough to make it doubtful.

Then for Messengers, I have further matter to urge; the Reason why Commitments are required to be to the County Gaol, by 5 *Hen. 4. cap. 10.* is mentioned in 2 *Inst. 43.* and 9 *Co. Rep. 119.* that they may have their Trial at the next Gaol Delivery, or Sessions of the Peace; and my Lord *Coke* saith, that at Common Law the committing to Prison is only to this end, that the Party may be forth coming to be duly tried according to the Law and Custom of the Realm: And the Abbots of *St. Alban* and *Crowland* lost their Franchises of having Gaols, because they detained Men in Prison, for a long time, without making a Deliverance; and all this doth in Reason argue against Messengers Power to make their Houses Prisons.

My Lord *Coke* saith, in 2 *Inst. 43.* that the Statute 5 *Hen. 4.* extendeth to all Judges and Justices for two Reasons: First, Because this Act is declarative of the Common Law; and Secondly, *ubi lex est specialis, & ratio ejus generalis, generaliter accipienda est*; and if so, this was a false Imprisonment of *Sir James Montgomery*, and then the Consequence is what I urged the other Day.

I find further, in 2 *Inst. 705.* that by the Parliament Roll, 51 *Edw. 3. numb. 68.* it appears, that Gaols were anciently to be repaired at the King's Charge; and by *Lord Coke* upon 23 *Hen. 8. cap. 2.* concerning the new erecting of Gaols, his Opinion is, that the same cannot be done without Act of Parliament; and I cannot find any Act of Parliament for making the forty two Houses of the Messengers to be lawful Prisons: If there be any such, I suppose the King's Counsel will shew them to your Lordship; nay, I cannot find any Grant of such a Franchise to them.

Besides, the Reason of the Law is with us. Out of the County Gaols you have at every Sessions of Gaol Delivery, Calendars of the Prisoners that are in Custody there, but of the Prisoners in Custody of Messengers you can have no Notice; and this is no small Mischief in respect of the Subjects Liberty; for at a Gaol Delivery the Calendar is to be called over, and by the Calendars

bars in former times were the Executions made without any special Warrant from the Judge or Recorder, which is but a late Practice.

Besides, according to 3 *Inst.* 209. a Man regularly before the *Habeas Corpus* Act, if committed for Treason or Felony by a Person having Authority to commit, was not to be discharged until he was inquired of, and either indicted or acquitted, or an *Ignoramus* found, and delivered by Proclamation; now how this could be practised of a Messenger's Ward, is to me unaccountable.

I will in this Case offer to your Lordship what I find in this Matter, with Sincerity, and submit it to your Judgment. There is in 12 *Co. Rep.* 129. a Case cited out of the Year Books, viz. 22 *Affize pl.* 49. One was beheaded for killing *Adam Walton, nuncii Domini Regis, missi ad mandatum ejus exequend'* which is there taken for Petit Treason: This is all that I can find of antient Authority, which mentions such a Creature as a Messenger; but nothing can be inferred from hence to prove the Messengers in Ordinary to be Keepers of Gaols, for the receipt of Felons and Traitors.

Nay, I find further a Case, which seems to overthrow the Commitment to any other Prison than the County Gaol: I will but name it, and submit its Consideration to your Lordship's Judgment; it is in St. *John's* Argument at a Conference concerning the Attainder of the Earl of *Strafford* (it is fol. 46 of the 4to Print of that Argument) the Case of Sir *John Mortimer*, who was drawn, hanged, and quartered for breaking the Prison of the Tower, having been committed thither upon Suspicion of Treason: But this was in 2 *Hen. 6.* and upon an Attainder by Bill in Parliament, and so it is in *Cotton's Abridgment of the Records*, pag. 368. and there it is mentioned as a strange Thing to be done in Times of Peace, and when the Realm was in quiet, for a Man to be condemned without Trial or Arraignment. Now I might infer from hence, that if the Law had been undoubtedly plain concerning an Escape out of the Tower, as a legal Prison, there had been no need of an Act of Parliament to attain him; but however, it may argue thus much, that if a Bill were necessary for such an Escape, that an Act of Parliament is certainly necessary to make a Rescuer of one suspected of Treason out of the Custody of a Messenger to be guilty of Treason; but all these I submit to your Lordship's Consideration. All that I contend for is to make it a doubtful Question to the Court, whether upon this Return, taking it for true, it is possible to indict and convict these Prisoners for Treason? for if not, they ought to be bailed.

Then there is another Exception, which I just mentioned the last time, and that is, that it is not mentioned in this Warrant, what the Species of Treason was, for which Sir *James Montgomery* was committed. I shall, as I have already, avoid the Repetition of any thing, which I then offered; there are several Treasons at this Day, where the receiving, comforting, and relieving of them afterwards, knowing them to be such, may not be Treason; and then in such Case the helping him to escape will not be so, and consequently it ought to have been alledged in the Warrant, what the Treason was for which Sir *James Montgomery* was committed. Now it is no Treason to receive and comfort a Counterfeiter of the Great Seal, it

is only Misprision, for there are no Accessaries in Treason, and Principal he is not, because he did not know of it at the Time; to this effect are the Words of the Book, 12 *Co. Rep.* 81. so it is of the receiving and comforting a Jesuit, or other *Englishman* taking Orders abroad, and returning into *England*; for by 26 *Eliz.* that is made Felony; which Statute would never have been made, if it had been Treason, *Dyer* 296, 297. *Corrier's* Case. If I know that one hath made false Monee, and receive, comfort, and abett him, this is only Misprision: How far these are Law I am not to argue, but I suggest the Words or Effect of the Authority, and submit them. Sure I am of this, that if your Lordship and the Court be satisfied that they cannot be attained of Treason, if the Fact be as this Return is, then you will not remand them.

Mr. Solicitor was pleased to argue, that these are Niceties too subtle for a Return upon a *Habeas Corpus*; but according to *Vaughan*, 136. the Writ of a *Habeas Corpus* is now the most usual Remedy, by which a Man may be restored to his Liberty, if he have been against Law deprived of it; and therefore it is, that the Writ doth command to know, whether it be according to Law, or against Law; and therefore the Cause of the Imprisonment ought by the Return to appear, as specially and certainly to be judged by the Court, where the Return is made, as it did appear to the Court or Person authorized to commit, else the Return is insufficient. Now the Reason of adjudging that Return in *Bushell's* Case to be insufficient, was because it was only said, that their Verdict was against full and manifest Evidence, and did not say what; by the same Reason Sir *James Montgomery's* Treason ought to have been set forth in this Case; and as to Credence, no more ought to be given to a Person committing, when a *Habeas Corpus* is brought, than there is to a Court giving a Judgment, when a Writ of Error is brought to examine it, in order to Affirmance or Reversal; for an *Habeas Corpus* is brought in like manner to examine the Cause of the Party's Imprisonment, either to bail or discharge, or else to remand him, which is to affirm the Commitment to be legal, and upon good Cause.

I have modern Authority to justify much nicer Exceptions to Commitments, than those I have mentioned; such Authority as Mr. Solicitor will not deny to be good. Complaint hath been of a Warrant of Commitment, that it did not appear in whose Reign the Treason was committed, whether in the late King's, or the former King's; it is observed in the Remarks upon *Cornish's* Trial, and I am sure Mr. Solicitor must own that to be much nicer than what I have offered upon this; I do not justify that, but my Exceptions to the Return.

Mr. Serjeant *Levinz* argued on the same Side, that the Return was ill, because the Commitment was to a Messenger; it ought to have been to a County Gaol, that the Custody upon an Apprehension ought to be but twenty four Hours, *Britton* 19. *Customer of Normandy* 456. *Hil. 22 Edw. 4 pl.* 4. those Messengers exacted Fees, viz. 6 s. 8 d. or 10 s. per diem. It is in effect to fine the Party before he is convicted. Then he said, that all those Questions might have been spared, if Mr. Attorney would consent to their being bailed.

Lord Chief Justice. In truth most of them might have been spared, for they have been argued more for Pleasure than Necessity.

Then

Then Mr. *Attorney General*, and Mr. *Solicitor*, insisted, that the rescue of one in Custody upon Suspicion of Treason, was Treason; that the setting forth the Overt Act was more for the Advantage of the Prisoner, than barely alledging the Species of Treason: That as to the Secretary's Commitment, it was owned now not to be such a Novelty as was pretended the last Time: That it was very ancient; that the Case in 11 *Leon.* is very flat to that Purpose; that in the Tower they found a Commitment in 1660, by Secretary *Morris*, and that many more had been since, but that Sir *Joseph Williamson*, who had the Papers, was now in *Ireland*; that it was not needful, that he who commits, should be able to give an Oath; that the House of Commons could not give an Oath, and yet could commit; and more to the like Effect.

Sir *Bartholomew Shower* replied, that he was glad to hear there were so few Precedents for a Secretary's Power; that if there had been more, Mr. *Attorney* would have shewn them; that the House of Commons Power was an Instance not fit for him to answer; that he did desire no more of Mr. *Attorney*, than that a Secretary could not give an Oath, and then he hoped the Consequence would be plain; and so submitted it to the Court.

Lord Chief Justice. I did always give Credit to the Resolutions of the Judges in *Anderson*, and it is Part of a Privy Counsellor's Oath to take care of the King's Person against all Traitors, &c. was there not a Gaol Delivery at Common Law? And are not the Commissioners by their Commission to inquire of the Prisoners in that Gaol, and a Grand Jury to be impanelled? And consequently, doth not the Law suppose some to have been committed thither before? And then, by whom were they committed? Though a Messenger be not a proper Officer, yet any Person may be ordered to receive for a convenient Time for Examination, &c. Commitments regularly ought to be to the County Gaols, and I wish the Justices of the Peace, who commit to *New Prison*, and the *Gate-house*, were here to hear this. But, Mr. *Attorney*, the Question is, whe-

ther you ought not to have specified these two Things in your Warrants, for what Treason Sir *James* was committed; and my Reason is, because the Escape will be the same Species of Treason with that, for which the Party rescued was committed; and secondly, that he had done a Treason, that Sir *James* was guilty. But, Mr. *Attorney*, will you further consider of it, though I think we must bail them in the mean time, an *Habeas Corpus* being *festinum remedium*; but I would hear my Brothers Opinion.

J. Rokeby. Sir *Barth. Shower*, I am glad to see that you have rectified a Mistake you were in about a Secretary's Commitment: It was long before Sir *Lionel Jenkins's* time: *Walsingham* committed near Two hundred Years ago; and there is another Precedent in 2 *Leon.* 175. *Hilleyard's* Case, I think, that a *Conservator pacis* at the Common Law may commit, and so may a Constable; it is incident to his Power of committing, that he may give an Oath, and take a Recognizance, and (*quod mirum*) one of the Council may commit. I would not have the Students go away with the Notion of the Novelty of it: I take Secretaries of State to be great Officers; they are Centinels to watch for the Preservation of the King, and the common Peace of the Realm: And for Messengers, for any thing appears, he might be only carrying to Gaol; but yet I think they ought to be bailed, because it is not expressed in the Warrant, what the Species of Treason was for which Sir *James Montgomery* was committed.

J. Eyre. There may be a Difference between carrying to Prison, and a Commitment with a Charge upon them; and there may be a difference between specifying and not specifying Sir *James's* Treason. Upon the whole, I think they ought to be bailed.

J. Gregory was absent.

Accordingly they were bailed to appear the last Day of Term, to answer such Matters as should then be objected against them.

This Case is reported in 5 *Mod. Rep.* 79. and should have been inserted next before the Trial of *Charnock* and others.

* Justices of the Peace are not by Common Law, but appointed by Statutes, the first of which was 1 *Edw. 3. cap. 16.* By Common Law there were only Conservators of the Peace, whose Power was very short of a Justice's now a days. See *Crompton's* and *Dalton's* Justice.

The End of the Fourth Volume.





